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JUDGEMENTS, EXECUTION AND GARNISHMENT

150-18.385
Oregon Department of Revenue Tax Garnishments and Orders to Withhold Child or Spousal Support

(1) The Department of Revenue is authorized to continuously garnish up to 25 percent of an employee's disposable earnings to recover delinquent state tax debt. Concurrently, a district attorney or the Division of Child Support of the Department of Justice is authorized to request the courts to order the withholding of delinquent and current child or spousal support from an employee's disposable earnings.

(2) Under ORS 18.385(4), the maximum disposable earnings subject to garnishment is reduced by an order to withhold wages for child or spousal support under 25.378, 419B.408 or 419C.600 or ORS Chapter 110. Normally, any other existing garnishments would then be limited to 25 percent of disposable earnings after subtracting the order to withhold wages. However, 18.385(6) specifies that, for garnishments to pay state tax debt, the provisions of 18.385(4) do not apply. Therefore, a garnishment to pay state tax debt would be calculated upon disposable earnings and not reduced by an order to withhold child or spousal support.

Example 1: Larry has $4,000 per month of disposable earnings.
Larry owes delinquent child support totaling $15,000. An order to withhold child support has been granted that requires Larry's employer to withhold a specified amount of $1,400 from disposable earnings.
Larry also owes a state personal income tax debt totaling $5,000. The department has garnished Larry's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold child support and the garnishment as follows:
(A) Disposable earnings — $4,000
(B) Order to Withhold specified amount of $1,400 for child or spousal support — ($1,400)
(C) Personal Income Tax Garnishment at 25 percent ($4,000 x .25) — ($1,000)
(D) Net disposable earnings to Larry — $1,600
(E) Payment for Order to Withhold — $1,400
(F) Payment for Personal Income Tax Garnishment — $1,000

(3) If for any reason orders to withhold wages for child or spousal support and garnishments for state tax debt exceed the disposable earnings of the taxpayer, any orders to withhold wages under ORS 25.378 will have priority over any other legal process, including all garnishments for state tax debt or otherwise (ORS 25.375). The employer will reduce payments pursuant to the department's garnishment as needed.

Example 2: Renee's employer has been paying a specified amount of $1,400 from Renee's disposable earnings under an order to withhold child support. The employer now has received a Special Notice of Garnishment from the department that causes a one-time garnishment of 100 percent of Renee's disposable earnings. Since more than 100 percent of Renee's disposable earnings has been attached, under ORS 25.375, the order to withhold now takes priority. The employer would compute and distribute payments under the order and garnishment as follows:
(A) Disposable earnings — $4,000.
(B) Order to Withhold specified amount of $1,400 for child or spousal support — ($1,400).
(C) Personal Income Tax Garnishment at 100 percent but limited to remainder of disposable earnings after order to withhold is paid ($4,000 x 100% = $4,000 less order of $1,400) — ($2,600)
(D) Net disposable earnings to Renee — $0
(E) Payment for Order to Withhold — $1,400
(G) Payment for Personal Income Tax Garnishment — $2,600

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 23.185
Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185 by REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-23.186, REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-18.385-(A)
Oregon Department of Revenue Other Agency Account Garnishments

(1) Under ORS 293.250, the Department of Revenue may render assistance to recover delinquent debts owed to any state officer, board, commission, corporation, institution, department or other state organization assigned by the agency to the Department of Revenue for collection, including actions to continuously garnish up to 25 percent of an employee's disposable earnings.

(2) Under ORS 18.385(4), nonexempt disposable earnings are reduced by an order to withhold child or spousal support under 25.378, 419B.408 or 419C.600 or ORS Chapter 110. The maximum disposable earnings subject to garnishment for the period is determined by 18.385(2)(a) through 18.385(2)(e) minus any amount required to be withheld from an individual's disposable earnings for the period pursuant to an order to withhold child or spousal support issued under 25.378 and others. The order to withhold child or spousal support may reduce the amount available for garnishment to zero.

(3) Under ORS 18.385(2)(a) through 18.385(2)(e) the nonexempt disposable earnings subject to garnishment for the period is calculated by reducing the individual's disposable earnings for that period by the amount of disposable earnings exempt from garnishment. The amount of disposable earnings exempt from garnishment is the greater of 75 percent of the disposable earnings for the period under 18.385(1) or the minimum exemption amount under 18.385(2)(a) through 18.385(2)(e).

Example 1: Dick has $1,000 per week of disposable earnings. Dick owes child support totaling $15,000. An order to withhold for child or spousal support under ORS 25.378 has been issued to Dick's employer directing the employer to withhold a specified amount of $225 from Dick's disposable earnings. Dick also owes a state agency for a delinquent student loan totaling $5,000 (a state non-tax debt). The Department of Revenue has garnished Dick's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold for child or spousal support and the garnishment as follows:
(A) Disposable earnings — A — $1,000
(B) Minimum weekly exemption — B — $218
(C) 75 percent of disposable earnings — C — $750
(D) Earnings exempt from garnishment (greater of B or C) — D — $750
(E) Nonexempt earnings subject to garnishment (A minus D) — E — $250
(F) Order to withhold specified amount of $225 for child or spousal support — F — $225
(G) Disposable earnings subject to garnishment (E minus F) — G — $25
Although the Department of Revenue has issued a 25 percent garnishment that would normally return $250, because of the order to withhold for child or spousal support, the amount available on the state non-tax debt garnishment is limited to $25.

Example 2: Assume the same facts as in Example 1 except that the order to withhold child or spousal support is $350. The employer would calculate the order to withhold child or spousal support and garnishment as follows:
(A) Disposable earnings — A — $1,000
(B) Minimum weekly exemption — B — $218
(C) 75 percent of disposable earnings — C — $750
(D) Earnings exempt from garnishment (greater of B or C) — D — $750
(E) Nonexempt earnings subject to garnishment (A minus D) — E — $250
(F) Order to withhold specified amount of $350 for child or spousal support — F — $350
(G) Disposable earnings subject to garnishment (E minus F) — G — ($100)
Since line (F) is greater than line (E), resulting in a negative number for line (G), the amount available for the garnishment is zero.

Example 3: John has $250 per week disposable earnings. John owes a state agency for a delinquent student loan totaling $5,000 (a state non-tax debt). The Department of Revenue has garnished John's employer for 25 percent of disposable earnings. John is not under an order to withhold for child or spousal support. The employer would calculate and pay the garnishment as follows:
(A) Disposable earnings — A — $250
(B) Minimum weekly exemption — B — $218
(C) 75 percent of disposable earnings — C — $187.50
(D) Earnings exempt from garnishment (greater of B or C) — D — 218
(E) Nonexempt earnings subject to garnishment (A minus D) — E — $32
(F) Order to withhold for child or spousal support — F — $0
(G) Disposable earnings subject to garnishment (E minus F) — G — $32

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 23.185
Hist.: REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; Renumbered from 150-23.185-(A) by REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-23.186-(A),

REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-18.855(5)
Appeal Period after Garnishment Challenge Denied

If a person makes a challenge to a garnishment, and that challenge is denied in whole or in part by the department, the person may request a contested case hearing before an administrative law judge of the Office of Administrative Hearings established under ORS 183.605. To be valid, the hearing request must be in writing and must be received by the department within 90 days of the date on the face of the Response to Challenge to Garnishment letter issued by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 18.855
Hist: REV 8-2002, f. & cert. ef. 12-31-02; REV 2-2006, f. & cert. ef. 7-31-06, Renumbered from 150-18-902(5)

150-18.855(6)
Garnishment of Wages

Circumstances in which a debtor may be jeopardizing the collection of a tax, and which are considered justification for garnishment of 100% of the debtor's wages under ORS 18.902(6) include, but are not limited to, the following:

(1) The department receives information that, in the judgment of the department, indicates the debtor is attempting to jeopardize collection of the tax. For example: The debtor directs the employer to pay over the debtor's earnings to another entity;

(2) The department receives information that, in the judgment of the department, indicates the debtor may cease employment or change jobs to avoid paying taxes;

(3) The department receives information that, in the judgment of the department, indicates the debtor intends to leave the state to avoid paying taxes;

(4) The department receives information that, in the judgment of the department, indicates that the debtor has changed jobs in the past to avoid garnishment; or

(5) The debtor's failure to comply with Oregon tax laws in an attempt to avoid or evade the tax was the basis for assessment of the tax being collected by garnishment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 18.855
Hist.: RD 10-1983, f. 12-20-84, cert. ef. 12-31-84; RD 7-1988, f. 12-19-88 cert. ef. 12-31-88; Renumbered from 150-29.375(2)(c), REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 2-2006, f. & cert. ef. 7-31-06, Renumbered from 150-18.902(6)

DIVISION 90

NOTICE OF TAX PROVISIONS TO TENANTS OF CLOSING MANUFACTURED DWELLING PARK

150-90.650
Notice of Tax Provisions to Tenants of Closing Manufactured Dwelling Park

(1) A landlord must provide notice regarding the tax credit available to tenants of a closing manufactured dwelling park.

(2) The notice to tenants of a closing park must include:

(a) The qualifications for the personal income tax credit

(b) Information on how to apply for the personal income tax credit, and

(c) Instructions regarding how to appeal the property tax assessment.

Sample: TAX CREDIT: If you own and live in a mobile (manufactured) home in a park that is closing, and leave that park because you received a closure notice, you may qualify for a $5,000 refundable tax credit on your Oregon personal income tax return.
To qualify, you must:
* Own and live in the manufactured home as your main residence;
* Rent space in the closing park;
* Receive a notice that the park is closing while you own and live in the manufactured home; and
* Move out of the park because it's closing.
If you qualify, you must attach a completed Schedule MPC to your Oregon income tax return for the year you leave the park.

Example: You move out of a closing park on October 15, 2009 and you qualify for the credit. You'll claim it on your 2009 Oregon income tax return, due April 15, 2010. If the park converts to a subdivision and you sell your manufactured home to someone who buys a lot in the subdivision, you won't qualify for this credit. For more information and to download Schedule MPC, visit www.oregon.gov/DOR/PERTAX. PROPERTY TAX APPEAL: If you receive notice that your park is closing, you may appeal the property tax assessment on your manufactured home. To appeal, send a completed Real Property Petition, 150-310-063, to the Board of Property Tax Appeals in the county where the park is located. For more information, see the publication, How to Appeal Your Property Value. The petition and publication are at www.oregon.gov/DOR/PTD. You may also contact the Department of Revenue for information at 1-800-356-4222 or questions.dor@state.or.us.

Stat. Auth.: ORS 305.100, 90.650
Stats. Implemented: ORS 90.650
Hist.: REV 4-2009, f. & cert. ef. 7-31-09

DIVISION 118

INHERITANCE TAX

150-118.NOTE
Natural Resource Property Inheritance Tax Refund

(1) Application for refund of inheritance tax authorized by 2010 Oregon Laws, chapter 107 must be made on a form prescribed by the department.

(2) Refund applications must be postmarked by the later of the following:

(a) December 31, 2010; or

(b) The expiration of the statute of limitations period described in ORS 118.227.

Stat. Auth.: ORS 305.100 & 2010 OL Ch.107
Stats. Implemented: 2010 OL Ch. 107
Hist.: REV 6-2010(Temp), f. & cert. ef. 5-7-10 thru 9-30-10; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10

150-118.005
Definitions

The term "intangible personal property" includes but is not limited to stocks, bonds, notes, currency, bank deposits, accounts receivable, patents, trademarks, copyrights, royalties, goodwill, partnership interests, limited liability interests, life insurance policies, annuity contracts, brokerage accounts, and other choices in action.

Stat. Auth: ORS 305.100
Stats. Implemented: ORS 118.010–118.300 & 314.364
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010
Deductions Allowed in Determining Estate Tax or Fiduciary Income Tax

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) An estate may claim deductions allowable under sections 2053 or 2054 of the Internal Revenue Code (IRC) for either estate tax purposes or fiduciary income tax purposes, but not both. The executor of an estate may make different elections for federal and Oregon purposes.

(2) If deductions are claimed against fiduciary income, the executor must include with the return a statement that the deductions are not being claimed for estate tax purposes.

Example 1: The executor of Estate A elects to deduct $19,500 of expenses in determining the estate's federal income tax. For Oregon, the executor elects to claim the deduction in determining estate tax. The amount deducted for federal purposes is not allowed for Oregon fiduciary income tax purposes.

Example 2: The executor of Estate B elects to deduct $10,000 of expenses in determining the estate's federal income tax. The executor elects to claim these deductions in determining Oregon's fiduciary income tax. No modification to income is required for Oregon. A deduction may not be made on the Oregon estate tax return.

Example 3: The executor of Estate C elects to claim a deduction of $15,000 for federal estate tax purposes. For Oregon, the executor elects to claim the deduction for fiduciary income tax purposes. The deduction may not also be made on the Oregon estate tax return if the election is made by deducting the $15,000 on the Oregon fiduciary income tax return.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.010 – 118.300 & 314.364
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(1)
Imposition of Tax

This rule applies to estates of decedents who die before January 1, 2012.A tax equal to the state death tax credit allowable for federal estate tax purposes is imposed. The tax is due in every case even though the credit may not be claimed on the federal estate tax return, Form 706.

(1) Property within the jurisdiction of the state includes the following:

(a) Resident Decedent.

(A) Real property situated in Oregon.

(B) Tangible personal property situated in Oregon.

(C) Intangible personal property wheresoever situated.

(b) Nonresident Decedent.

(A) Real property situated in Oregon.

(B) Tangible personal property situated in Oregon.

(C) Intangible personal property situated in Oregon.

NOTE: See ORS 118.010(4)(b) which provides an exemption as to intangible personal property of nonresident decedents.

(2) The phrase "within the jurisdiction of the state" connotes extent of power and has a broader meaning than the phrase "within the state" which denotes locality. Property may be within the jurisdiction of the state but not physically situated in the state, for example:

(a) Stock of an Oregon corporation is within the jurisdiction of this state although the certificate may not be within this state.

(b) A savings account, checking account, and certificate of deposit in an Oregon bank are within the jurisdiction of this state although the passbook or certificate may not be within this state.

(c) A promissory note given by a resident of Oregon is within the jurisdiction of this state although the note may not be within this state.

(3) The term "intangible personal property" includes stocks, bonds, notes, currency, bank deposits, accounts receivable, patents, trademarks, copyrights, royalties, goodwill, partnership interests, life insurance policies, and other choices in action.

(4) The doctrine of equitable conversion is recognized in the administration of the Oregon inheritance tax law.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: 9-71; 11-73; 9-74; 12-31-77; RD 4-1997, f. 9-12-97 cert. ef. 12-31-97, REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(2)
Deductions Allowed on Either the Inheritance Tax Return or the Fiduciary Income Tax Return

This rule applies to estates of decedents who die before January 1, 2012. Deductions allowed under sections 2053 or 2054 of the Internal Revenue Code (IRC) may be claimed on either the Oregon inheritance tax return (Form IT-1) or the Oregon fiduciary income tax return (Form 41), but not both. The personal representative of an estate may make different elections for federal and Oregon returns. If the deductions are claimed on the Oregon Form 41, attach a statement that the deductions are not being claimed on the Oregon Form IT-1. For federal purposes, those deductions may be taken on either the federal estate tax return (Form 706) or the federal estate income tax return (Form 1041) under IRC 642(g).

Example 1: Peter dies in 2004 with a gross estate of $900,000. The personal representative of the estate elects to deduct $19,500 of expenses on the federal Form 1041. For Oregon, the personal representative elects to take the deduction on the Oregon Form IT-1. The amount deducted on the federal Form 1041 must be added back to income on the Oregon Form 41.

Example 2: Sally dies in 2004 with a gross estate of $950,000. The personal representative of the estate elects to deduct $10,000 of expenses on the federal Form 1041. The personal representative does not claim these deductions on the Oregon Form IT-1. The deductions claimed on the federal Form 1041 flow through to the Oregon Form 41. No modification to income is required.

Example 3: Mildred dies in 2004 with a gross estate of $2,000,000. The personal representative of the estate elects to claim a deduction of $15,000 on the federal Form 706. For Oregon, the personal representative elects to claim the deduction on the Oregon Form 41. The election is made by subtracting the deduction from the Oregon return. The deduction is not allowed on the Oregon Form IT-1 if it was claimed on the Oregon Form 41. The personal representative must reduce the deductions by $15,000 on the Oregon Form IT-1.

[ED. NOTE: Forms referenced are available from the Agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: REV 2-2004(Temp), f. 4-30-04 cert. ef. 5-1-04 thru 9-30-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(3)
Apportionment of Tax

This rule applies to estates of decedents who die before January 1, 2012.

(1) Where property is left in two or more states by a decedent, the maximum state tax credit allowed against the federal estate tax is apportioned. The numerator of the apportionment formula is the value for federal estate tax purposes of the property within the jurisdiction of this state notwithstanding that some of such property for Oregon inheritance tax purposes may be exempt, deductible, appraised at different values or considered in computing a credit. The denominator of the apportionment formula is the value of the gross estate for federal estate tax purposes.

(2) The executor shall, upon demand, file a copy of the federal estate tax return and such other information deemed necessary by the department in the computation of the additional tax. In case of failure to file such returns as these rules provide, the department shall compute the tax upon the basis of the best information available.

(3) If the amount of federal estate tax is increased or decreased subsequently, the pick-up tax imposed upon such estate shall be changed accordingly. In such case it is the duty of the executor to notify the department of the changes.

(4) Example of apportionment of federal credit where decedent leaves property in three states that impose death taxes: [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: 9-71; 12-19-75, Renumbered; 1-1-77, 12-31-77, Renumbered; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; Repealed by RD 4-1997, f. 9-12-97 cert. ef. 12-31-97, Renumbered from 150-118.100(2); REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(4)(b)
Reciprocal Exemption of Intangible Personal Property of Nonresident Decedent

This rule applies to estates of decedents who die before January 1, 2012. Intangible personal property within the jurisdiction of the state of Oregon and owned by a nonresident of this state is exempt from inheritance tax if a like exemption is made by the laws of the state or country of decedent's residence in favor of residents of this state. There is no such exemption allowed as to property owned by a deceased resident of a state which does not impose a death tax. However, if a state has a death tax law which does not impose a tax on intangible personal property owned by a nonresident of that state, the "like exemption" requirement of ORS 118.010(4)(b) is satisfied, and Oregon would exempt intangible personal property owned by a deceased resident of that state. A nonresident is one who at the time of death had a permanent dwelling place and an official or legal residence outside the State of Oregon. To have a change of domicile there must be:

(1) Residence in a new place;

(2) Intent to abandon the old domicile; and

(3) Intent to acquire a new domicile (196 Or 256).

NOTE: For definition of the term "intangible personal property," see OAR 150-118.010(1).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: 9-74; 12-19-75; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97, Renumbered from 150-118.060; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(7)
Separate Oregon Elections

This rule applies to estates of decedents who die before January 1, 2012.

(1) For deaths after December 31, 2001, and before January 1, 2012, the Oregon inheritance tax is computed using the Internal Revenue Code (IRC) in effect on December 31, 2000. Federal changes enacted after this date, including the "Economic Growth and Tax Relief Reconciliation Act of 2001", do not affect the computation of Oregon tax. Oregon allows separate elections, including but not limited to elections provided by IRC Sections 2031(c), 2032, 2032A, 2033A, 2056 and 2056A that would have been allowed under federal law in effect as of December 31, 2000, whether or not a federal estate tax return is filed. The Oregon elections are irrevocable. If a federal estate tax return is not required with respect to the decedent's death, the Oregon elections must be made in the same manner as required under the IRC on a return filed with the Oregon Department of Revenue.

Example 1: The personal representative may not make a qualified terminal interest property (QTIP) election on the 2004 Oregon Inheritance Tax Return under the following circumstances. Harold dies in 2004 with an estate valued at $950,000. He is survived by his wife, Wanda. They had provided for a credit shelter trust funded by an amount equal to the unused federal exclusion amount. The trust is set up to distribute or accumulate income to someone other than the spouse and allows for discretionary distribution of income to the surviving spouse. The trust does not qualify for a QTIP election under IRC 2056(b)(7), as in effect as of December 31, 2000.

Example 2: The personal representative may make a QTIP election on the 2004 Oregon Inheritance Tax Return under the following circumstances. Winifred dies in 2004 with an estate valued at $1,500,000. She is survived by her husband, Harvey. They had provided for a credit shelter trust funded by an amount equal to the unused federal exclusion amount. The trust provides for all income to be distributed to the surviving spouse and otherwise qualifies for the federal QTIP election. The personal representative files a 2004 federal estate tax return without claiming a QTIP election. The personal representative may file the 2004 Oregon return claiming a QTIP election because that election would have been allowed under federal law effective on December 31, 2000.

(2) If a QTIP election is taken when the first spouse dies, the estate of the surviving spouse must include the value of any property included in the QTIP election provided in IRC 2044. The Oregon and federal gross estate amount will be different for the surviving spouse's estate when a separate election is taken for Oregon only.

Example 3: Same situation as example 2. The personal representative claimed an Oregon only QTIP election on Winifred's Oregon IT-1 return. Harvey dies in 2005. Harvey's estate for Oregon will include the value of the Oregon only QTIP taken for Winifred per IRC 2044 "Certain property for which a marital deduction was previously allowed". Harvey's gross estate for Oregon and for federal will be different because of the Oregon only QTIP election taken on Winifred's Oregon IT-1 return.

(3) For purposes of the Oregon tax, the obligations of electing parties, agreements required of persons benefiting from elections, and the inclusion of property in the gross estate of a surviving beneficiary are the same as under the IRC.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010
Hist.: REV 2-2004(Temp), f. 4-30-04 cert. ef. 5-1-04 thru 9-30-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.010(8)
Elections

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) An estate may elect a larger or smaller amount, percentage or fraction of the qualified terminal interest property (QTIP) for Oregon tax purposes than was elected for federal estate tax purposes in order to reduce the Oregon estate tax liability while making full use of the federal unified credit. In addition to or in lieu of a QTIP the estate may elect to claim Oregon Special Marital Property (OSMP) to reduce the estate tax liability.

(2) The Oregon and federal taxable estate amount will be different for the surviving spouse's estate when a separate QTIP or OSMP election was taken for Oregon. In addition to the value of property for which a federal QTIP election was made, the value of property for which an Oregon QTIP or OSMP election was made is includible as part of the Oregon taxable estate to the extent that the property is subject to Oregon estate tax.

(3) The executor must identify the assets by schedule, item number, and the fixed amount, percentage or fractional interest that are included as part of the Oregon QTIP or OSMP election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified.

Example 1: W dies in 2012 with a gross estate of $7,000,000. The decedent established a federal QTIP trust for the benefit of W's surviving spouse H, an Oregon resident, in an amount to result in no federal estate tax. For Oregon, the executor may elect a larger fixed amount, percentage or fractional interest QTIP or an OSMP. To achieve zero Oregon estate tax, the Oregon QTIP or OSMP election will be the difference between the federal exemption amount and the Oregon exemption amount. H was an Oregon resident at the time of H's death. Upon H's death, the assets remaining in the Oregon QTIP or OSMP trust must be included in H's gross estate.

(4) The amount to be included in the estate on the death of a surviving spouse is limited to trust property that is subject to Oregon estate tax. If a QTIP or OSMP election was taken when the first spouse dies, the property that is required to be included in the estate of the surviving spouse is dependent upon the residency status of the surviving spouse. If a resident decedent, the gross estate of a surviving spouse must include the value of any property included in the QTIP or OSMP election. If a nonresident decedent, the gross estate of a surviving spouse must include the value of any property included in the QTIP or OSMP election to the extent that the property consists of real property located in Oregon or tangible personal property located in Oregon.

Example 2: Same facts as Example 1, except H was not an Oregon resident at the time of H's death. The Oregon estate must include the value of any real property located in Oregon and any tangible personal property located in Oregon remaining in the trust; intangible property is excluded from the estate.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.010–118.300 & 314.364
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.100(1)
Due Dates and Extensions of Time to File

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) An estate return shall be filed and the tax shall be paid to the Department of Revenue on the date the federal estate tax is payable or, if no federal estate tax return is required, no later than nine months following the date of death of the decedent. An estate tax return is due the day of the ninth calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such ninth month, the last day of the ninth month is the due date. For example, if the decedent dies on July 31, the estate tax return and tax payment must be made on or before April 30 of the next year.

(2) When the due date falls on a Saturday, Sunday, or a legal holiday, the due date for filing the return is the next succeeding day that is not Saturday, Sunday or a legal holiday. For this purpose, "legal holiday" means a holiday recognized statewide in Oregon or a holiday recognized in the District of Columbia.

(3) The department may grant an extension of time to file an estate tax return, generally not to exceed six months. If an estate has been granted an extension of time to file a federal estate tax return, the department will accept that as an approved extension to file the Oregon estate tax return. The executor must submit a copy of the federal extension request with the Oregon return when filed. If the estate does not need a federal extension, the executor may request an extension for Oregon only by submitting a federal extension form to the department on or before the due date of the Oregon estate tax return and writing "Oregon Only" on the top of the federal form.

(4) If the Internal Revenue Service denies the extension request, but grants a period of time from the date of denial in which to file the federal return without imposition of delinquency charges, the department will not impose penalties for late filing if the Oregon return is received by the department within one month from the Inter-

nal Revenue Service's date by which the federal return must be filed with no imposition of delinquency charges. The executor must submit a copy of the federal extension request denial with the Oregon return when filed.

(5) An extension of time to file, without an approved extension of time to pay, does not relieve the estate from the five percent penalty for failure to pay the tax on or before the original due date and interest accrues during the extension period. See OAR 150-118.260 for information regarding interest and penalty.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.100
Hist.: 12-19-75; 12-31-77, Renumbered; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; RD 4-1997, f. 9-12-97 cert. ef. 12-31-97, Renumbered from 150-118.110(3); REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.100(6)
Property Values and Appraisals

This rule applies to estates of decedents who die on or after January 1, 2012.

(1) The fair market value of an estate's property must be determined as of the date of death or six months following the date of death if the alternate valuation method is elected. The property value reported on the estate tax return must be substantiated. The executor is required to explain how the value was determined and must attach copies of any appraisals used to value property included on the return. If there was no appraisal, the executor must attach a statement to the return explaining how the value was determined. If the determination of value is based on a county property tax statement, the determination of value must be supported by other evidence of value.

(2) A fee appraisal represents both common and best practice for determination of the value for most real and personal property but may not always be necessary. For example, where an Oregon Special Marital Property election has been made, the value of the asset(s) included within the election may not have an impact upon the estate tax.

Stat. Auth.: ORS 305.100 & 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.140
Estate Tax Credit for Natural Resource Property

Part I of this rule applies to estates of decedents who die on or after January 1, 2012. For the user's convenience, Part II of the rule contains provisions applicable to estates of decedents who die before January 1, 2012.

Part I (applies to estates of decedents who die on or after January 1, 2012)

(1) Definitions. The following definitions apply for purposes of ORS 118.140 and Part I of this rule:

(a) "Active Management" is defined by Internal Revenue Code (IRC) Section 2032A(e)(12) to mean the making of the management decisions of a business (other than the daily operating decisions).

(b) "Ancestor" means a person from whom the decedent is directly descended, such as a parent, grandparent, or great-grandparent. The term does not include aunts, uncles, or cousins.

(c) "Cash equivalents" means accounts receivable, inventory, marketable securities, capital or sinking funds, prepaid expenses and other assets that are spent, maintained, used or available for use, in the operation of a farm business, forestry business, or fishing business.

(d) "Disposition" means to sell, exchange, transfer, convey, or otherwise dispose of natural resource property that was used to compute the natural resource property credit, if such disposition results in the property no longer qualifying for the credit.

(e) "Domestic partner" means an individual who has entered into a domestic partnership as defined in ORS 106.310. Per the general applicability provision of ORS 106.340 "spouse" as used in these rules includes domestic partner.

(f) "Family member" means a member of the family as defined in IRC section 2032A, and for purposes of ORS 118.140 includes:

(A) An ancestor of the decedent;

(B) The spouse of the decedent;

(C) A lineal descendant of the decedent or of the decedent's spouse;

(D) A lineal descendant of a parent of the decedent; or

(E) The spouse of any lineal descendant described in paragraph (C) or (D). For purposes of the preceding sentence, a legally adopted child of an individual is a lineal descendant of the adoptive parent(s).

(g) "Lineal descendant" means a person in a direct line of descent from the decedent, such as a child, grandchild or great-grandchild.

(h) "Lineal descendant of a parent of the decedent" means a decedent's siblings, children and grandchildren of those siblings, and any other person in a direct line of descent from the decedent's siblings.

(2) Material participation by a Family Member. In order to qualify under ORS 118.140(8), at least one family member must materially participate in the business after the transfer.

(a) Material participation is a factual determination, and the types of activities which will support such a finding will vary. No single factor is determinative.

(b) Actual employment of the family member on a substantially full-time basis (35 hours a week or more) or to any lesser extent necessary personally to manage fully the farm or business in which the real property to be valued under section 2032A is used constitutes material participation.

(c) Payment of self-employment tax for employment with respect to the farm business, forestry business or fishing business is not conclusive as to the presence of material participation, and the requirement can be met even though no self-employment tax is payable by the family member with respect to income derived from the business.

(d) As provided by section 2032A of the Internal Revenue Code, active management shall be treated as material participation.

(e) The rules for determining material participation are illustrated by the examples found in CFR 20.2032A-3(g).

(f) Examples of active management decisions that can be used to demonstrate material participation include the following: inspecting growing crops, animals, forests, or equipment; reviewing and approving annual crop plans in advance of planting; making a substantial number of the management decisions of the business operation; approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended; deciding what crops to plant or how many cattle to raise; determining what fields to leave fallow; determining where and when to market crops and other business products; determining how to finance business operations; and determining what capital expenditures the trade or business should make.

(3) If a transferee disposes of property resulting in additional tax as described in ORS 118.140(9)(a), the transferee must file a report with the department and pay the additional tax. The report may be made by filing a copy of the form described in ORS 118.140(10), identifying the asset or assets that no longer qualify for the credit, and including a calculation of the additional tax as described in ORS 118.140(9)(e). The report and payment of the tax are due within six months of the disposition. Interest and penalties under ORS 118.260 apply if the report is not filed and tax is not paid on or before the due date prescribed in ORS 118.140(9)(e).

Part II (applies to estates of decedents who die before January 1, 2012)
Inheritance Tax Credit for Natural Resource or Commercial Fishing Property

(4) Definitions. The following definitions apply for purposes of ORS 118.140 and this rule:

(a) "Active Management" is defined by Internal Revenue Code (IRC) Section 2032A(e)(12) and means the making of the management decisions of a business (other than the daily operating decisions). Treasury Regulations 20.2032A-3(e) through (g) provide additional examples of active management.

(b) "Adjusted gross estate" means the value of the gross estate reduced by the sum of the amounts allowable as a deduction under either IRC sections 2053 or 2054, or both. The amount is determined on the basis of the facts and circumstances in existence on the date (including extensions) for filing the return of tax imposed by chapter 118 (or, if earlier, the date on which the return is filed).

(c) "Cessation of qualified use" means the natural resource property or fishing business property use has changed and the property no longer qualifies as natural resource property or fishing business property.

(d) "Current assets" means the sum of cash and cash equivalents, accounts receivable, inventory, marketable securities, prepaid expenses and other assets of the qualified natural resource business that can be converted to cash within one year. Current assets do not include assets not used in the qualified natural resource business, long-term assets such as capital or sinking funds, or personal assets.

(e) "Current liabilities" means the sum of all money owed to the qualified natural resource business that is required to be paid within one year.

(f) "Disposition of property" means to sell, exchange, or otherwise dispose of natural resource property or fishing business property that was used to compute the natural resource credit, if such disposition results in the property no longer qualifying for the credit.

(g) "Domestic partner" means an individual who has entered into a domestic partnership as defined in the Oregon Family Fairness Act, ORS 106.300 to 106.340.

(h) "Member of family" means, with respect to a decedent:

(A) An ancestor of the decedent;

(B) The spouse or domestic partner of the decedent;

(C) A lineal descendant of the decedent, of the decedent's spouse or domestic partner, or of a parent of the decedent, or

(D) The spouse or domestic partner of any lineal descendant described in paragraph (C). For purposes of the preceding sentence, a legally adopted child of an individual is treated as the child of such individual by blood.

(i) "Working capital" means current assets less current liabilities.

(j) "Working capital of a farm, natural resource-based business or fishing business" means working capital in an amount that represents the funds needed to operate the business annually.

(5) Federal Elections Binding for Oregon. Because ORS 118.007 ties Oregon inheritance tax law to the Internal Revenue Code (IRC) as it existed on December 31, 2000, elections that were available on December 31, 2000, and that are made for federal estate tax purposes are binding for Oregon inheritance tax purposes unless specifically provided otherwise by statute or rule. Property that is excluded from the estate due to claiming a marital deduction under IRC §2056 cannot be included in the Oregon estate in order to claim a tax credit under this section.

Example 1: Edwina passed away on July 1, 2007; her husband survives her. The value of her gross estate is $8,000,000, made up entirely of natural resource property. For federal estate tax purposes, the estate elects a marital deduction of $6,000,000. The unified credit offsets tax otherwise due on the balance of the estate, $2,000,000, and there is no federal tax due. For Oregon purposes, the $6,000,000 marital deduction election applies. In addition, the estate may elect to establish a Special Oregon Marital property trust as provided in ORS 118.016 to shelter $1,000,000 of the value of the estate (the difference between the $1,000,000 Oregon taxable estate and the $2,000,000 federal taxable estate). Alternatively, the estate may use any portion of the $2,000,000 in value to claim a natural resource credit against tax imposed on the estate.

(6) Active Management by a Member of Family. If natural resource property or a commercial fishing business is owned indirectly by the decedent or a member of the family, the following requirements must be met to qualify for a credit under ORS 118.140:

(a) At least one member of the family must engage in active management of the natural resource property or commercial fishing business after the transfer.

(A) The determination of whether active management occurs is factual, and the requirement can be met even though no self-employment tax is payable by the member of the family with respect to income derived from the farm or other trade or business operation.

(B) Among the farming activities, various combinations of which constitute active management, are inspecting growing crops, reviewing and approving annual crop plans in advance of planting, making a substantial number of the management decisions of the business operation, and approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended.

(C) Examples of active management decisions are what crops to plant or how many cattle to raise, what fields to leave fallow, where and when to market crops and other business products, how to finance business operations, and what capital expenditures the trade or business should make.

(b) An otherwise qualifying natural resource property or commercial fishing business qualifies for the credit without active management if it is the subject of a net cash lease or percentage lease from the decedent or a member of the decedent's family.

(c) The property also qualifies for the credit if it is held in trust for a member of the family or if the property is transferred directly to a member of the family.

(d) If an indirect interest is held in trust for a member of the family, it qualifies as long as a member of the family is engaged in the active management of the business.

(e) The trustee does not have to be engaged in active management if these requirements are met.

(7) Prior Use Requirement.

(a) An estate that otherwise qualifies for the commercial fishing business property credit is not required to meet the aggregate use period of five out of eight years ending on the date of the decedent's death.

(b) Active management of the natural resource property is not a requirement prior to death.

Example 2: Kelly died on April 3, 2007. Kelly owned and operated Kelly's Fishing Boat business starting in February 2005. The estate files the tax return with the department on June 17, 2008, claiming the commercial fishing business credit, and pays the inheritance tax due. The estate may claim the commercial fishing business credit providing all other requirements to qualify for the credit are met.

(8) Future Use Requirement. In order for the estate to meet the requirements of ORS 118.140(7)(a) the following apply.

(a) Cash and like cash assets that are included in the credit calculation as working capital must be spent on the operation of the business either during the year of death or any of the eight calendar years following the decedent's death. Current assets remaining unspent on January 1 of the ninth calendar year following the decedent's death are subject to recapture of tax under ORS 118.140(7)(a).

(b) Payment of federal estate taxes or state inheritance taxes is not considered to be an expense incurred in operation of the natural resource business. Thus, use of cash or other assets to pay those taxes results in recapture of the credit to the extent the cash or asset was used as the basis for the credit.

Example 3: The Smith estate claimed a credit in 2007 based on farming assets worth $1,000,000. In 2009, the estate sold a combine for $100,000 to pay additional federal estate tax resulting from an audit. Sale of the combine results in recapture of the tax credit because the combine was not used in the farming business for 5 of the 8 years following the decedent's death.

(9) Claiming a Partial Credit. In determining whether the value of the credit property is at least 50 percent of the total estate, all of the eligible property must be considered, regardless of an election to claim only a partial credit under ORS 118.140(2)(b)(C).

(10) Working Capital. The determination of whether an amount qualifies as "working capital of a farm, natural resource-based business or fishing business" is based on the facts and circumstances existing at the decedent's death. However, the department will presume that working capital that does not exceed the highest amount of working capital present at any time during the five years prior to the year of the date of death qualifies as "working capital of a farm, natural resource-based business or fishing business." This presumption may be overcome by the facts in a particular case, including, but not limited to, the growth rate of the business, the length of the business cycle or the proximity of the date of death to the harvest date.

(11) Interest and Penalty. The department will not charge penalty or interest if an estate claims a natural resource property or commercial fishing business property credit or if the estate is directly affected by the changes made to ORS 118.140 by chapter 28, Oregon Laws 2008 and the return is filed and tax is paid before September 1, 2008. This provision applies to estates of decedents dying on or after January 1, 2007, and before December 1, 2007.

Example 4: John died on June 23, 2007. The regular due date of the inheritance tax return is March 23, 2008. The estate files the return with the department on August 29, 2008, claiming the natural resource credit, and pays the inheritance tax due. Because the return is filed and the tax is paid before September 1, 2008, the interest and penalty which would otherwise result from late filing and late payment is cancelled.

(12) Disposition or Disqualified Property. Upon the disposition or cessation of use of natural resource property or fishing business property for which the estate claimed a natural resource credit, additional inheritance tax becomes due. The additional inheritance tax is due and payable within six months after the date of the disposition or cessation of use occurs and must be reported on a form prescribed by the department.

(13) Interest and penalties under ORS 118.260 apply for a failure to file the return or failure to pay the tax on or before the due date prescribed in section (9).

Stat. Auth.: ORS 305.100 & 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 4-2008(Temp), f. & cert. ef. 5-23-08 thru 11-17-08; REV 13-2008, f. & cert. ef. 11-3-08; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.160
Filing Requirements for Estate Tax Returns

(1) If the estate is required to file a federal estate tax return, the executor must include a complete copy of the federal return, schedules, and supporting documents with the Oregon estate tax return.

(2) If the estate is not required to file a federal estate tax return, the executor must prepare and include with the Oregon estate tax return the federal schedules and supporting documents that would have been required to be filed if the estate had been required to file a federal estate tax return.

Stat. Auth.: ORS 305.100 & 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.160-(B)
Inheritance Tax Return; Extension of Time to File

(1) This rule applies to estates of decedents who die on or after January 1, 2003 and before January 1, 2012.

(2) The executor shall, not more than nine months after the date of the decedent's death, file with the department an inheritance tax return, Form IT-1. A complete copy of the federal estate tax return and schedules must be filed with the Oregon Form IT-1. If the estate is not required to file a federal estate tax return, the executor must prepare a federal estate tax return and schedules reflecting federal estate tax law in effect December 31, 2000 and file that return and schedules with the Oregon inheritance tax return.

(3) If the executor cannot file a return within nine months, the department may allow additional time, usually not to exceed six months, to file the return. A copy of the federal extension request must be attached to the front of the Oregon return when filed and will serve as evidence of a granted extension by the department.

(4) If the Internal Revenue Service denies the extension request, but grants a period of time from the date of denial in which to file the federal return without imposition of delinquency charges, the department will not impose delinquency charges if the Oregon return is received by the department within one month from the last date on which the Internal Revenue Service would accept the federal return without imposition of delinquency charges. A copy of the denied extension request must be attached to the front of the Oregon return at the time of filing.

(5) An extension of time to file does not relieve the estate from the five percent penalty for failure to pay the tax on or before the original due date. Interest accrues during the extension period.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.160
Hist.: TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-188.160(2); RD 15-1987, f. 12-10-87 cert. ef. 12-31-87; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 1-2010(Temp), f. & cert. ef. 2-19-10 thru 7-31-10; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.171
Procedure for Determination

(1) The following sections of ORS Chapter 305 relate to determination of taxes and appeals under Chapter 118, except where the context requires otherwise.

(a) Penalty and interest waivers, 305.145
(b) Audit of returns, 305.265;
(c) Determination of deficiencies, 305.265;
(d) Assessments, 305.265;
(e) Claims for refund, 305.270;
(f) Conferences, 305.265 and 305.270;
(g) Appeals to Director, 305.275 and 305.280;
(h) Appeals to Tax Court, 305.515 and 305.560.

(2) A claim for refund shall be by letter or an amended return; however, the department may require an amended return. A tax paid before the due date is considered as having been paid on the due date for purposes of determining whether the claim for refund was filed within three years from the payment of the tax.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.171
Hist.: 12-31-77; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.225
Extension of Time to Pay Tax

(1) An executor may request an extension of time to pay the estate tax. The extension request must be in writing and submitted to the department by the date the estate return is due, including extensions of time to file, or 30 days from the date shown on a notice of deficiency. Collateral determined acceptable by the department must be secured for payment of the estate tax. An extension to pay tax does not eliminate penalties for late filing of a return, and interest continues to accrue on unpaid tax at the rate provided in OAR 150-305.220(1). See OAR 150-118.260.

(a) If a federal extension of time to pay has been obtained and acceptable collateral is secured for payment of the Oregon estate tax, the department will grant an extension to pay the Oregon estate tax for the same period of time as an approved federal extension. The executor must submit the Oregon extension request in writing and the estate must secure acceptable collateral for payment of the Oregon estate tax. A copy of the accepted federal extension must be submitted with the Oregon return.

(b) If reasonable cause exists and acceptable collateral is provided to the department, the department may grant an extension of time for payment of estate tax for up to 14 years, or, in the case of an estate tax deficiency, for a period of up to four years. If a federal extension of time to pay federal estate tax has been granted, the department may extend additional time for the payment of Oregon estate tax for up to 14 years if reasonable cause exists and collateral acceptable to the department is provided.

(2) In general, reasonable cause exists if:

(a) The estate can pay the tax only by disposing of property for less than market value or by borrowing money at a rate in excess of the mortgage money market (on terms that would inflict loss on the estate), or

(b) The gross taxable estate includes a beneficial interest in one or more closely held businesses whose value exceeds either 35 percent of the gross taxable estate or 50 percent of the net taxable estate. For purposes of this rule:

(A) "Interest in a closely held business" means, as determined immediately before the decedent's death, an interest that was:

(i) An interest as a proprietor in a trade or business carried on as a proprietorship;

(ii) An interest as a partner in a partnership carrying on a trade or business, if the gross taxable estate includes 20 percent or more of the total capital interest in that partnership, or the partnership had 15 or fewer partners;

(iii) Stock in a corporation carrying on a trade or business, if 20 percent or more of the voting stock of such corporation is included in the gross taxable estate, or such corporation had 15 or fewer shareholders. Stock, or a partnership interest, that is held by a husband and wife as community property or as joint tenants, tenants by the entirety, or tenants in common, is treated as owned by one shareholder or one partner, whichever is applicable.

(B) "Trade or business" does not include an investment or holding company;

(C) An extension only applies to the portion of tax attributable to the closely held business. To determine the portion of tax attributable to the closely held business, divide the value of the interest in the closely held business by the taxable estate amount, and multiply that ratio by the computed net tax.

Example 1: A's estate assets included a retail store valued at $900,000 that had been operated by the decedent. Listed securities, cash, a family residence and miscellaneous personal effects made up the balance. The taxable estate was $1,300,000. The department may grant an extension for the payment of tax on the portion attributable to the value of the store; i.e. $900,000 divided by $1,300,000 multiplied by tax owed.

Example 2: B's taxable estate of $1,400,000 included $950,000 of stock in a closely held corporation. The balance of the property was listed securities and personal effects. The corporation was a holding company with the majority of corporate assets invested in real estate. The estate could not show that money could only be borrowed on terms that would inflict loss upon the estate. The department will not grant an extension of time to pay the tax.

Example 3: C's taxable estate of $2,100,000 included farm land valued at $1,050,000. The balance of the estate was real property, listed securities, cash and personal effects. The estate leased the farm land for cash rent, which is considered an investment in real property and not a trade or business; the department will not grant an extension for payment of tax.

Example 4: D's taxable estate of $1,200,000 included a tree farm valued at $800,000. The farm consisted of all pre-merchantable timber. The estate demonstrated that the farm could only be sold at a sacrifice price in a depressed market and that money could only be borrowed on terms that would inflict loss upon the estate. The department may grant an extension for payment of the tax that is attributable to the tree farm's value of $800,000.

(3) The department generally will accept the following as collateral for purposes of extending the date for payment of tax:

(a) A first mortgage or trust deed on real property with a value at least double the amount of the tax paid on extension;

(b) A surety bond executed by a corporation licensed to do business in the State of Oregon. The bond must be at least double the amount of the tax paid on extension and must be renewed every five years.

(4) Collateral must be received within 60 days from the date the estate return is due, including extensions of time to file, or within 60 days from the date the estate return is filed, whichever is earlier.

(5) The executor must make payments in at least equal annual installments for the tax paid on extension, plus accrued interest. The department may cancel an extension of time to pay and collect the tax plus interest if any installment is not paid on or before its due date.

(6) The department may cancel an extension of time to pay and collect the tax plus interest if the value of the interest in a closely held business is reduced by one-third or more through sale, exchange or other disposition, or through aggregate withdrawals of money or other property.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.225
Hist.: 12-31-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.250
Estate Tax Receipt

A receipt issued by the department as required by ORS 118.250 to an executor, trustee or other payor is not a final determination of the estate tax liability; the department may determine that an estate owes additional tax under ORS 118.010.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.250
Hist.: 9-74; 12-31-77; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; Renumbered from 150-118.250(1) by REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; Renumbered from 150-118.250(1), REV 8-2013, f. & cert. ef. 12-26-13

150-118.260
Penalties and Interest

(1) Penalties

(a) For purposes of determining the five percent penalty under ORS 118.260(1) or the 20 percent penalty under ORS 118.260(2), the tax required to be shown on the return is reduced by the amount of any tax that is paid on or before the due date of the return, excluding extensions.

(b) If an estate fails to file a return by the due date, including extensions, and also fails to pay the tax by the due date, only one five percent delinquency penalty will be added.

(c) ORS 305.145 and the rules implementing that statute apply to penalties imposed under ORS 118.260 and requests for waiver of penalty. The one-time penalty waiver provision provided by OAR 150-305.145(4) does not apply to penalties imposed under chapter 118.

(2) Interest on Refunds and Deficiencies

(a) A refund of an overpayment of estate tax accrues interest at the rates provided in OAR 150-305.220(2).

(b) A deficiency in tax accrues interest at the rates provided in OAR 150-305.220(1).

(c) For the estates of decedents who die on or after January 1, 2012, if an estate has been granted an extension to pay tax under ORS 118.225, or if a beneficiary has elected to defer payment of tax under ORS 118.300, interest accrues at the rates provided in OAR 150-305.220(1).

(d) Except as provided in (2)(c), if the estate tax is not paid within 60 days of assessment, the annual interest rates provided in OAR 150-305.220(1) are increased by four percentage points pursuant to ORS 305.222.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.250
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.260(6)
Refund of Excess Payment

This rule applies to estates of decedents who die before January 1, 2012. Where payment exceeds the amount of tax shown by the return or as determined by audit of the return, the excess shall be refunded without application from the taxpayer. The department does not have authority to pay interest on the refund for interest periods beginning prior to May 31, 1982.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.260(6)
Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.265
Application for Determination of Estate Tax and Discharge from Personal Liability

(1) The executor may apply to the department for a determination of tax due and discharge from personal liability of estate tax.

(2) The written application must include the following information:

(a) The name and date of death of the decedent;

(b) The decedent's Social Security Number;

(c) If the executor applies before filing the estate tax return, a copy of the decedent's will, the decedent's trust, or other document indicating the person is authorized to act on behalf of the estate.

(3) The discharge does not apply to tax liability resulting from assets of the decedent's estate that are still in the possession or control of the executor.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 118.260(6)
Hist.: REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

150-118.300
Bond for Deferment of Tax

(1) A beneficiary electing to defer payment of the tax under ORS 118.300 must, within nine months of the decedent's death, file with the Director a signed statement indicating that the person has not come into actual possession or enjoyment of the property.

(a) A beneficiary of real property, as defined in ORS 111.005(28), is not required to provide a bond.

(b) A beneficiary of personal property, as defined in ORS 111.005(25), must give a bond to the State of Oregon in double the amount of the tax, with such sureties as the Director may approve, conditioned for the payment of the tax and accrued interest at such time and period as the beneficiary comes into actual possession or enjoyment of the property.

(2) The department will accept a bond:

(a) In a form approved by the Director and executed by a company licensed to issue surety insurance by the Oregon Department of Consumer and Business Services, Insurance Division;

(b) Executed by a corporate surety, other than a surety company, provided such corporate surety establishes that it is within its corporate powers to act as surety for another individual, partnership, association, or corporation; or

(c) Executed by two or more individual sureties meeting the requirements of subsection (2)(d) that is secured by a:

(A) A mortgage on real or personal property;

(B) A certified, cashier's or treasurer's check drawn on any bank authorized by the State Division of Finance and Corporate Securities to do business in the State of Oregon;

(C) A United States postal, bank, or express money order;

(D) Corporate bonds or stocks, or by bonds issued by the State of Oregon, or by a political subdivision of this state; or

(E) Any other collateral acceptable to the Director.

(d) Each surety that executes a bond under subsection (2)(c) must:

(A) Have property, including Oregon real property, that is subject to execution and with a current market value net of all encumbrances that is at least equal to the penalty of the bond;

(B) Agree to not encumber the secured property while the bond continues in effect;

(C) Annually file an affidavit with the department as to the adequacy of the security.

(3) A beneficiary must file a return with the Director within six months of the date the person comes into actual possession or enjoyment of the property in question.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.300

Hist.: Eff. 9/71, Amended 12/19/75, 12/31/77; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13

DIVISION 137

CRIMINAL FINE AND ASSESSMENT ACCOUNT DISTRIBUTION

150-137.300

Criminal Fine Account Distribution

(1) Monthly, the department will distribute moneys available in the Criminal Fine Account after final deposits into the account for the calendar month have been made by the Oregon Department of Revenue and Oregon Judicial Department.

(2) The department will distribute to the General Fund all moneys remaining in the Criminal Fine Account after distributing the monthly allocations to funds and programs referenced in Oregon Laws 2011, Chapter 597, Section 53.

Stat. Auth.: ORS 305.100; 137.300

Stats. Implemented: ORS 137.300

Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; Renumbered from 150-137.300(3), REV 5-2012, f. 7-20-12, cert. ef. 8-1-12; Renumbered from 150-137.300(3), REV 7-2013, f. & cert. ef. 12-26-13

150-137.302(7)

Criminal Fine and Assessment Public Safety Fund Distribution

The department will distribute moneys available in the Criminal Fine and Assessment Public Safety Fund on a monthly basis following a deposit made from the Criminal Fine and Assessment Account.

(1) Distribution to recipient agencies is made monthly based on the allocation of funds described in Oregon Laws 2003, chapter 699.

(2) After the debt service obligations described in ORS 137.302(5) are satisfied, if the remaining moneys in the Criminal Fine and Assessment Public Safety Fund are insufficient to pay for the monthly distributions to the remaining recipients, these distributions shall be reduced proportionally in sufficient amounts to accommodate the revenue shortfall.

(3) If the remaining moneys in the Criminal Fine and Assessment Public Safety Fund are more than sufficient to pay for the monthly distributions to the remaining recipients, any excess money would remain in the fund and be included in next month's distribution calculation.

Stat. Auth.: ORS 305.100; 137.302

Stats. Implemented: ORS 137.302

Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

DIVISION 180

CIVIL PENALTIES FOR NON PARTICIPATING MANUFACTURERS OF THE MASTER SETTLEMENT AGREEMENT

150-180.455

Civil Penalties for Non Participating Manufacturers of the Master Settlement Agreement

(1) The Department of Revenue may assess a civil penalty against any person who sells, holds or possesses cigarettes for sale in Oregon that are cigarettes of a tobacco product manufacturer or brand family that were acquired at a time that the particular tobacco product manufacturer or brand family was not included on the nonparticipating manufacturer directory developed by the Oregon Department of Justice.

(a) The department will apply the following guidelines to determine the amount of the penalty, including the factors described in subsection (3) of this rule:

Incident — Penalty Not to Exceed — Minimum Penalty

First — Warning notice

Second — $100 per pack — $1,000

Third — $500 per pack — $1,000

Fourth — $1,000 per pack — $1,000

Fifth and subsequent — $5,000 per pack — $1,000

(b) For any single incident, including each sale, possession for sale or offer to sell, the department will not impose a total penalty that exceeds the greater of $5,000 or 500 percent of the retail value of the cigarettes.

(2) The Department of Revenue may assess a civil penalty against any person who affixes an Oregon tax stamp to a package of cigarettes produced by a tobacco product manufacturer or brand family that, at the time the stamp was affixed, was not included on the Dept. of Justice's directory of nonparticipating manufacturers. The department will apply the following guidelines to determine the amount of the penalty, including consideration of the factors described in subsection (3) of this rule:

Incident — Penalty Not to Exceed — Minimum Penalty

First — Warning notice

Second — $100 per stamp affixed — $1,000

Third — $500 per stamp affixed — $1,000

Fourth — $1,000 per stamp affixed — $1,000

Fifth and subsequent — $5,000 per stamp affixed — $1,000

(3) The department may consider the following factors when determining the civil penalty for the violations listed in subsection (1) and (2) of this rule:

(a) Number of previous inspections by the Department of Revenue held at the business;

(b) Number of previous violations of Chapter 323 provisions;

(c) Size of business; and

(d) Any other factors the department considers relevant to its determination.

Stat. Auth.: ORS 305.100 & 323.440

Stats. Implemented: ORS 180.455

Hist. REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

DIVISION 181

CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION RULES

150-181.534(9)
Statement of Purpose and Statutory Authority

(1) Purpose. These rules control the Department of Revenue's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor in a position covered by OAR 150-181.534(9)-(B)(2)(a). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor.

(2) Authority. These rules are authorized under ORS 181.534 and 305.100.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(A)
Definitions

As used in this rule, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 150-181.534(9)-(D) or a final fitness determination under 150-181.534(9)-(F), an authorized designee has determined that the subject individual is fit to be an employee, volunteer, contractor or vendor in a position covered by 150-181.534(9)-(B).

(2) "Authorized Designee" means a Department employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(5) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 150-181.534(9)-(G).

(6) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 150-181.534(9) through 150-181.534(9)-(M).

(7) "Criminal Records Check" or "CRC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (Nationwide Criminal Records Check).

(8) "Denied" means that, pursuant to a preliminary fitness determination under OAR 150-181.534(9)-(D) or a final fitness determination under 150-181.534(9)-(F), an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, contractor or vendor in a position covered by 150-181.534(9)-(B).

(9) "Department" means the Oregon Department of Revenue or any subdivision thereof.

(10) "False Statement" means that, in association with an activity governed by these rules, a subject individual either provided the Department with materially false information about his or her criminal history, such as materially false information about his or her identity or conviction record, or failed to provide to the Department information material to determining his or her criminal history.

(11) "Fitness Determination" means a determination made by an authorized designee pursuant to the process established in OAR 150-181.534(9)-(D) (preliminary fitness determination) or 150-181.534(9)-(F) (final fitness determination) that a subject individual is or is not fit to be a Department employee, volunteer, contractor or vendor in a position covered by 150-181.534(9)-(B), subsections (2)(a) through (n).

(12) "Other Criminal Records Information" means any information, in addition to criminal offender information, sought or obtained by the Department about a subject individual relevant to determining the individual's criminal history.

(13) "Related" means that an individual has a relationship with another person described by one of the following labels: spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(14) "Subject Individual" means an individual identified in OAR 150-181.534(9)-(B) as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(B)
Subject Individual

"Subject Individual" means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Is employed by or applying for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a volunteer, contractor, or vendor; and

(2) Is, or will be, working or providing services in a position:

(a) in which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) in which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(c) That has payroll functions;

(d) In which the person has responsibility for receiving, receipting or depositing money or negotiable instruments;

(e) In which the person has responsibility for billing, collections or other financial transactions;

(f) In which the person has responsibility for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(g) that has mailroom duties as the primary duty or job function of the position;

(h) In which the person has responsibility for auditing the Department or other governmental agencies;

(i) That has personnel or human resources functions as one of the position's primary responsibilities;

(j) in which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information;

(k) In which the person has access to chemicals or hazardous materials, to facilities in which chemicals and hazardous materials are present or to information regarding the transportation of chemical or hazardous materials;

(l) In which the person has access to property to which access is restricted in order to protect the health or safety of the public;

(m) In which the person provides security, design or construction services for government buildings, grounds or facilities; or

(n) In which the person has access to critical infrastructure or security-sensitive facilities or information.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(C)
Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual shall complete and sign the Department of Revenue Criminal Records Request form and, if requested by the Department, a fingerprint card. Both forms ask for identifying information, e.g., name, birth date, Social Security Number, physical characteristics, marital status, driver's license or identification card number and current address. The Department of Revenue Criminal Records Request form also asks for information about prior residences and for details concerning any circumstance listed in OAR 150-181.534(9)-(D), subsections (3)(a)–(f).

(b) A subject individual shall complete and submit to the Department the Department of Revenue Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(c) The Department shall receive a fingerprint card from a subject individual under the age of 18 years only if the subject individual also submits the written consent of a parent or guardian.

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve an issue hindering the completion of a criminal records check, e.g., providing additional proof of identity.

(2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when:

(a) An individual meets the definition of "subject individual," but has not been approved under these rules, unless the individual was a Department employee serving in his or her current position prior to the effective date of these rules and that position does not involve authorized designee responsibilities;

(b) An individual employed by the Department meets the definition of "subject individual" because he or she is either moving to or applying for a position that meets the criteria of OAR 150-181.534(9)-(D), subsections (2)(a)–(n), if:

(A) The Department has not conducted a fitness determination on the subject individual within the previous three years;

(B) The subject individual had been previously approved under OAR 150-181.534(9)-(F)(3)(b); or

(C) An authorized designee determines that the new position requires greater responsibility for functions covered by OAR 150-181.534(9)-(B), subsections (2)(a)–(n), than the subject individual's prior position.

(c) An authorized designee has reason to believe that a subject individual committed a crime listed in OAR 150-181.534(9)-(G) and either a fitness determination has not yet been done on the subject individual or the crime had not been identified in a prior fitness determination;

(d) An authorized designee has reason to believe that a factor relevant to a fitness determination listed in OAR 150-181.534(9)-(F)(2), not previously identified in a fitness determination, applies to a subject individual who had been previously approved under 150-181.534(9)-(F)(3)(b);

(e) Required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) is conducted. When an authorized designee determines under subsection (2) of this rule that a criminal record check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee shall conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(b) Oregon Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct an Oregon criminal record check when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or other criminal records information; or

(B) The authorized designee requests a nationwide criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct a nationwide criminal record check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of or information provided by a subject individual because, e.g., the subject individual fails to disclose a Social Security Number, discloses a Social Security Number that appears to be invalid, or does not have an Oregon driver's license or identification card;

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department;

(E) (reserved)

(F) The Department Director or Deputy Director seeks to serve as an authorized designee; or

(G) A subject individual is a Department of Revenue employee working in, moving to, or applying for a position within the Human Resources Unit of the Department's Administrative Services Division designated by the Department Director or the Director's designee as including the responsibilities of an authorized designee.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(D)
Preliminary Fitness Determination

(1) An authorized designee may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) An authorized designee shall make a preliminary fitness determination about a subject individual based on information disclosed by the subject individual under OAR 150-181.534(9)-(C)(1) and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 150-181.534(9)-(G);

(b) Within the last five years, has been arrested for or charged with a crime listed under OAR 150-181.534(9)-(G);

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 150-181.534(9)-(G);

(d) Is currently on probation, parole, or another form of post-prison supervision for a crime listed under OAR 150-181.534(9)-(G);

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 150-181.534(9)-(G); or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 150-181.534(9)-(G) if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 150-181.534(9)-(F).

(6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 150-181.534(9)-(J) or otherwise.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(E)
Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 150-181.534(9)-(D).

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under OAR 150-181.534(9)-(F), may not appeal the termination under the process provided under OAR 150-181.534(9)-(J).

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 150-181.534(9)-(F)(3)(d), then the Department shall immediately terminate the subject individual's employment or appointment.

(5) A subject individual whose employment or appointment is terminated under subsection (4) of this rule may avail himself or herself of the appeal process provided under OAR 150-181.534(9)-(J).

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(F)
Final Fitness Determination

(1) An authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR150-181.534(9)-(C)(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (2)(a) through (f) of this rule in relation to information provided by the subject individual under OAR 150-181.534(9)-(C)(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other criminal records information from the subject individual or any other source, including law enforcement agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 150-181.534(9)-(G);

(b) The nature of any crime identified under subsection (2)(a) of this rule;

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (2)(a) of this rule or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (2)(a) of this rule;

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (2)(a) of this rule;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 150-181.534(9)-(G);

(E) Whether a conviction identified under subsection (2)(a) of this rule has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of an employer;

(G) The disposition of a pending indictment identified under subsection(2)(a) of this rule;

(H) Whether the subject individual has been arrested for or charged with a crime listed under OAR 150-181.534(9)-(G) within the last five years;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 150-181.534(9)-(G);

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 150-181.534(9)-(G);

(K) Whether the subject individual has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 150-181.534(9)-(G);

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 150-181.534(9)-(G) if committed by an adult;

(M) Periods of incarceration of the subject individual;

(N) Whether the subject individual has a history of drug or alcohol abuse which relates to his or her criminal activity and the subject individual's history of treatment or rehabilitation for such abuse; and

(O) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) Possible Outcomes of a Final Fitness Determination

(a) Automatic Approval. An authorized designee shall approve a subject individual if the information described in sections (1) and (2) of this rule shows:

(A) No credible evidence that the subject individual has been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 150-181.534(9)-(G)(1);

(B) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 150-181.534(9)-(G)(2) within ten years of the date that the subject individual signed the Department of Revenue Criminal Records Request form;

(C) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 150-181.534(9)-(G)(3) within five years of the date that the subject individual signed the Department of Revenue Criminal Records Request form;

(D) No credible evidence that the subject individual has a pending indictment for a crime listed in OAR 150-181.534(9)-(G);

(E) No credible evidence of the subject individual having made a false statement; and

(F) No discrepancies between the criminal offender information, other criminal records information and information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(F) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If an authorized designee approves a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations.

(B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual prior to removing a restriction.

(d) Denial.

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(F) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process.

(C) If a subject individual is denied as not fit, then the subject individual may not be employed by or provide services as a volunteer, contractor or vendor to the Department in a position covered by OAR 150-181.534(9)-(B)(2).

(4) Final Order. A completed final fitness determination becomes a final order of the Department unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 150-181.534(9)-(J)(2)(a) or an alternative appeals process as provided by 150-181.534(9)-(J)(6).

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(G)
Crimes Relevant to a Fitness Determination

(1) Permanent Review Crimes.

(a) ORS 162.015, Bribe giving;
(b) ORS 162.025, Bribe receiving;
(c) ORS 162.065, Perjury;
(d) ORS 162.085, Unsworn falsification;
(e) ORS 162.235, Obstructing governmental or judicial administration;
(f) ORS 162,265, Bribing a witness;
(g) ORS 162.275, Bribe receiving by a witness;
(h) ORS 162.305, Tampering with public records;
(i) ORS 162.405, Official misconduct II;
(j) ORS 162.415, Official misconduct I;
(k) ORS 162.425, Misuse of confidential information;
(l) ORS 163.005, Criminal homicide;
(m) ORS 163.095, Aggravated murder;
(n) ORS 163.115, Murder;
(o) ORS 163.118, Manslaughter I;
(p) ORS 163.125, Manslaughter II;
(q) ORS 163.145, Criminally negligent homicide;
(r) ORS 163.160, Assault IV;
(s) ORS 163.165, Assault III;
(t) ORS 163.175, Assault II;
(u) ORS 163.185, Assault I;
(v) ORS 163.187, Strangulation;
(w) ORS 163.190, Menacing;
(x) ORS 163.200, Criminal mistreatment II;
(y) ORS 163.205, Criminal mistreatment I;
(z) ORS 163.207, Female genital mutilation;
(aa) ORS 163.208, Assault of Public Safety Officer;
(bb) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
(cc) ORS 163.225, Kidnapping II;
(dd) ORS 163.235, Kidnapping I;
(ee) ORS 163.275, Coercion;
(ff) ORS 163.355, Rape III;
(gg) ORS 163.365, Rape II;
(hh) ORS 163.375, Rape I;
(ii) ORS 163.385, Sodomy III;
(jj) ORS 163.395, Sodomy II;
(kk) ORS 163.405, Sodomy I;
(ll) ORS 163.408, Unlawful Sexual penetration II;
(mm) ORS 163.411, Unlawful Sexual penetration I;
(nn) ORS 163.415, Sexual abuse III;
(oo) ORS 163.425, Sexual abuse II;
(pp) ORS 163.427, Sexual abuse I;
(qq) ORS 163.435, Contributing to the sexual delinquency of a minor;
(rr) ORS 163.452, Custodial sexual misconduct I;
(ss) ORS 163.454, Custodial sexual misconduct II;
(tt) ORS 163.465, Public indecency;
(uu) ORS 163.537, Buying or selling a person under 18 years of age;
(vv) ORS 163.670, Using child in display of sexually explicit conduct;
(ww) ORS 163.684, Encouraging child sexual abuse I;
(xx) ORS 163.686, Encouraging child sexual abuse II;
(yy) ORS 163.687, Encouraging child sexual abuse III;
(zz) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
(aaa) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
(bbb) ORS 163.732, Stalking;
(ccc) ORS 164.057, Aggravated theft I;
(ddd) ORS 164.075, Theft by extortion;
(eee) ORS 164.085, Theft by deception;
(fff) ORS 164.125, Theft of services;
(ggg) ORS 164.162, Mail theft or receipt of stolen mail;
(hhh) ORS 164.225, Burglary I;
(iii) ORS 164.325, Arson I;
(jjj) ORS 164.377, Computer crime;
(kkk) ORS 164.395, Robbery III;
(lll) ORS 164.405, Robbery II;
(mmm) ORS 164.415, Robbery I;
(nnn) ORS 165.007, Forgery II;
(ooo) ORS 165.013, Forgery I;
(ppp) ORS 165.017, Criminal possession of a forged instrument II;
(qqq) ORS 165.022, Criminal possession of a forged instrument I;
(rrr) ORS 165.032, Criminal possession of a forgery device;
(sss) ORS 165.042, Fraudulently obtaining a signature;
(ttt) ORS 165.055, Fraudulent use of a credit card;
(uuu) ORS 165.080, Falsifying business records;

(vvv) ORS 165.095, Misapplication of entrusted property;
(www) ORS 165.100, Issuing a false financial statement;
(xxx) ORS 165.800, Identity theft;
(yyy) ORS 166.015, Riot;
(zzz) ORS 166.155, Intimidation II;
(aaaa) ORS 166.165, Intimidation I;
(bbbb) ORS 166.220, Unlawful use of weapon;
(cccc) ORS 166.270, Possession of weapons by certain felons;
(dddd) ORS 166.720, Racketeering activity unlawful;
(eeee) ORS 167.065, Furnishing obscene materials to minors;
(ffff) ORS 167.070, Sending obscene materials to minors;
(gggg) ORS 167.075, Exhibiting an obscene performance to a minor;
(hhhh) ORS 167.080, Displaying obscene materials to minors;
(iiii) ORS 167.262, Adult using minor in commission of controlled substance offense;
(jjjj) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;
(kkkk) ORS 411.630, Unlawfully obtaining public assistance;
(llll) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
(mmmm) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
(nnnn) ORS 475.840, Prohibited acts generally (regarding drug crimes);
(oooo) ORS 475.846, Unlawful manufacture of heroin;
(pppp) ORS 475.848, Unlawful manufacture of heroin within 1,000 ft of school;
(qqqq) ORS 475.850, Unlawful delivery of heroin;
(rrrr) ORS 475.852, Unlawful delivery of heroin within 1,000 ft of school;
(ssss) ORS 475.854, Unlawful possession of heroin;
(tttt) ORS 475.856, Unlawful manufacture of marijuana;
(uuuu) ORS 475.858, Unlawful manufacture of marijuana within 1,000 ft of school;
(vvvv) ORS 475.860, Unlawful delivery of marijuana;
(wwww) ORS 475.862, Unlawful delivery of marijuana within 1,000 ft of school;
(xxxx) ORS 475.864, Unlawful possession of marijuana;
(yyyy) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine;
(zzzz) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 ft of school;
(aaaaa) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine;
(bbbbb) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 ft of school;
(ccccc) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine;
(ddddd) ORS 475.876, Unlawful manufacture of cocaine;
(eeeee) ORS 475.878, Unlawful manufacture of cocaine within 1,000 ft of school;
(fffff) ORS 475.880, Unlawful delivery of cocaine;
(ggggg) ORS 475.882, Unlawful delivery of cocaine within 1,000 ft of school;
(hhhhh) ORS 475.884, Unlawful possession of cocaine;
(iiiii) ORS 475.886, Unlawful manufacture of methamphetamine;
(jjjjj) ORS 475.888 Unlawful manufacture of methamphetamine within 1,000 ft of school;
(kkkkk) ORS 475.890, Unlawful delivery of methamphetamine;
(lllll) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 ft of school;
(mmmmm) ORS 475.894, Unlawful possession of methamphetamine;
(nnnnn) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;
(ooooo) ORS 475.906, Penalties for distribution to minors;
(ppppp) ORS 475.908, Causing another person to ingest a controlled substance;
(qqqqq) ORS 475.910, Application of controlled substance to the body of another person;
(rrrrr) ORS 475.916, Prohibited acts involving records and fraud;
(sssss) ORS 475.918, Falsifying drug test results;
(ttttt) ORS 475.920, Providing drug test falsification equipment
(uuuuu) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
(vvvvv) ORS 475.975, Unlawful possession & distribution of iodine in its elemental form;
(wwwww) ORS 475.976, Unlawful possession & distribution of iodine matrix;
(xxxxx) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
(yyyyy) ORS 811.140, Reckless driving;
(zzzzz) ORS 811.182, Criminal driving while suspended or revoked;
(aaaaaa) ORS 811.540, Fleeing or attempting to elude police officer;
(bbbbbb) ORS 811.700, Failure to perform duties of driver when property is damaged;
(cccccc) ORS 811.705, Failure to perform duties of driver to injured persons;
(dddddd) ORS 813.010, Driving under the influence of intoxicants (DUII);
(eeeeee) ORS 819.300, Possession of a stolen vehicle;
(ffffff) Any federal crime;
(gggggg) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
(hhhhhh) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
(iiiiii) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;
(jjjjjj) Any crime based on criminal liability for conduct of another pursuant to ORS161.155, when the underlying crime is listed in this section (1);
(kkkkkk) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (1) as determined by the authorized designee;
(llllll) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (1) as determined by the authorized designee.
(2) Ten-Year Review Crimes.
(a) ORS 133.076, Failure to appear on criminal citation;
(b) ORS 162.075, False swearing;
(c) ORS 162.117, Public investment fraud;
(d) ORS 162.175, Unauthorized departure;
(e) ORS 162.185, Supplying contraband;
(f) ORS 162.195, Failure to appear II;
(g) ORS 162.205, Failure to appear I;
(h) ORS 162.285, Tampering with a witness;
(i) ORS 162.295, Tampering with physical evidence;
(j) ORS 162.365, Criminal impersonation;
(k) ORS 162.367, Criminal impersonation of peace officer;
(l) ORS 162.369, Possession of false law enforcement identification card;
(m) ORS 162.375, Initiating a false report;
(n) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;
(o) ORS 163.195, Recklessly endangering another person;
(p) ORS 163.445, Sexual misconduct;
(q) ORS 163.467, Private indecency;
(r) ORS 163.700, Invasion of personal privacy;
(s) ORS 163.750, Violating court's stalking protective order;
(t) ORS 164.043, Theft III;
(u) ORS 164.045, Theft II;

(v) ORS 164.055, Theft I;
(w) ORS 164.095, Theft by receiving;
(x) ORS 164.140, Criminal possession of rented or leased personal property;
(y) ORS 164.215, Burglary II;
(z) ORS 164.235, Possession of burglar's tools or theft device;
(aa) ORS 164.255, Criminal trespass I;
(bb) ORS 164.265, Criminal trespass while in possession of firearm;
(cc) ORS 164.272, Unlawful entry into motor vehicle;
(dd) ORS 164.315, Arson II;
(ee) ORS 164.335, Reckless burning;
(ff) ORS 164.354, Criminal Mischief II;
(gg) ORS 164.365, Criminal Mischief I;
(hh) ORS 165.037, Criminal simulation;
(ii) ORS 165.065, Negotiating a bad check;
(jj) ORS 165.074, Unlawful factoring of payment card transaction;
(kk) ORS 165.085, Sports bribery;
(ll) ORS 165.090, Sports bribe receiving;
(mm) ORS 165.102, Obtaining execution of documents by deception;
(nn) ORS 165.572, Interference with making a report;
(oo) ORS 166.023, Disorderly conduct I;
(pp) ORS 166.025, Disorderly conduct II;
(qq) ORS 166.065, Harassment;
(rr) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
(ss) ORS 167.212, Tampering with drug records;
(tt) ORS 807.620, Giving false information to police officer;
(uu) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
(vv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (2) pursuant to ORS 161.405, 161.435, or 161.450;
(ww) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (2);
(xx) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (2) as determined by the authorized designee;
(yy) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (2) as determined by the authorized designee.
(3) Five-Year Review Crimes.
(a) ORS 164.245, Criminal trespass II;
(b) ORS 164.345, Criminal mischief III;
(c) ORS 830.053/990, Fraudulent report of theft of boat;
(d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435 or 161.450;
(e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (3).
(f) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (3) as determined by the authorized designee.
(g) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (3) as determined by the authorized designee.
(4) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.
(5) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(H)
Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:
(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 150-181.534(9)-(B);
(b) The subject individual does not provide materials or information under OAR 150-181.534(9)-(C)(1) within the timeframes established under that rule;
(c) An authorized designee cannot locate or contact the subject individual;
(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 150-181.534(9)-(F)(2); or
(e) The Department determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process.
(2) A subject individual does not have a right to a contested case hearing under OAR 150-181.534(9)-(J) to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(I)
Notice to Subject Individual of Fitness Determination

(1) An authorized designee shall provide, in a format approved by the Department, written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness.
(a) The authorized designee shall record on the notice the date on which the fitness determination was either closed as incomplete or completed.
(b) If the notice pertains to a completed final fitness determination, it shall be accompanied by a separate notice addressing the subject individual's right to request a contested case hearing to appeal the Department's determination and containing the information required by OAR 137-003-0505.
(2) An authorized designee shall provide for hand delivery or first class mail delivery of the notice as soon as possible after completion or closure of a fitness determination, but in no case later than 14 calendar days after the date of completion or closure, to the address provided by the subject individual on the DAS Criminal Records Request form, or to an updated address as provided in writing by the subject individual.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(J)
Appealing a Fitness Determination

(1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a completed final fitness determination made under OAR 150-181.534(9)-(F) that he or she is fit or not fit to hold a position with, or provide services to the Department as an employee, volunteer, contractor, or vendor. Section (6) of this rule identifies an alternative appeal process available only to current Department of Revenue employees.
(2) Process:
(a) A subject individual may appeal a fitness determination by submitting a written request for a contested case hearing to the address specified in the notice provided under OAR 150-181.534(9)-

(I) within 14 calendar days of the date appearing on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(c) The Department shall provide the subject individual or the subject individual's legal representative with all of the information required under OAR 137-003-0510 in writing before the hearing.

(d) As provided in OAR 137-003-0510(3), if participating in a contested case hearing, the Department and the subject individual may agree to use a collaborative method of dispute resolution designed to encourage them to work together to develop a mutually agreeable solution, such as negotiation or a settlement conference.

(3) Discovery:

(a) A subject individual's hearing request under section (2)(a) of this rule shall constitute a discovery request for the following records:

(A) Any records the subject individual has a right to inspect under OAR 150-181.534(9)-(K)(2)(e), and

(B) In accordance with the Public Records Law, any records described in OAR 150-181.534(9)-(K)(3)(a).

(b) The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order. If the subject individual or subject individual's legal counsel does not file written exceptions with the Department within 14 calendar days after service of the proposed order, the proposed order shall become the final order.

(b) Exceptions. If the subject individual or the subject individual's legal counsel files timely written exceptions to the proposed order with the Department, the Department Director or the Director's designee shall consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(c) Default. A completed final fitness determination made under OAR 150-181.534(9)-(F) shall constitute a final order without a hearing as provided under 137-003-0672.

(6) Alternative Process. A subject individual currently employed by the Department of Revenue may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section (7), a subject individual may use any process made available by the providing agency.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 150-181.534(9)-(F) by submitting a new Department of Revenue Criminal Records Request form.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(K)
Recordkeeping and Confidentiality

(1) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Oregon Department of State Police.

(a) Records the Department receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.

(c) An authorized designee shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) Authorized designees shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(f) If a subject individual with a right to inspect criminal offender information under subsection (2)(e) of this rule requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law.

(3) Other Records.

(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including Department of Revenue Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees shall have access to the records identified under subsection (3)(a) of this rule.

(c) An authorized designee shall have access to records identified under subsection (2)(a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) A subject individual shall have access to records identified under subsection (2)(a) pursuant to the terms of the Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(L)
Authorized Designees

(1) Appointment.

(a) The Department Director or the Director's designee shall designate positions within the Human Resources Unit of the Department's Administrative Services Division as including the responsibilities of an authorized designee.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.

(c) Appointments shall be made by the Department Director or the Director's designee at his or her discretion.

(2) The Department Director and Deputy Director may also serve as authorized designees, contingent on being approved under the Department's criminal records check and fitness determination process.

(3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee is related to the subject individual; or

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (3)(b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status.

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated.

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position within the Human Resources Unit of the Department's Administrative Services Division, and thereby suspend or terminate his or her status as an authorized designee, if the employee fails to comply with OAR 150-181.534(9) through 150-181.534(9)-(L) in conducting criminal records checks and fitness determinations.

(c) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 150-181.534(9)-(G). Failure to make the required report is grounds for termination of the individual's appointment to a designated position within the Human Resources Unit of the Department's Administrative Services Division, and thereby termination of his or her status as an authorized designee.

(d) The Department will review and update an authorized designee's eligibility for service in a designated position within the Human Resources Unit of the Department's Administrative Services Division, during which a new criminal records check and fitness determination may be required:

(A) Every three years; or

(B) At any time the Department has reason to believe that the authorized designee has violated these rules or no longer is eligible to serve in his or her current position within the Human Resources Unit of the Department's Administrative Services Division.

(5) A denial under OAR 150-181.534(9)-(F)(3) related to a designated position within the Human Resources Unit of the Department's Administrative Services Division is subject to the appeal rights provided under 150-181.534(9)-(J).

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

150-181.534(9)-(M)
Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the subject individual on whom criminal offender information is sought, or, if the subject individual is an employee of a Department contractor or vendor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.

(3) The Department shall not charge a fee if the subject individual is a Department employee, a Department volunteer, or an applicant for employment or a volunteer position with the Department.

Stat. Auth.: ORS 181.534, 305.100
Stats. Implemented: ORS 181.534
Hist.: REV 5-2008, f. 8-29-08

DIVISION 183

DESCRIPTION OF ORGANIZATION

150-183.330(1)
Obtaining Information from the Department

(1) Sources of Information. The department provides information to the public through several sources.

(a) Taxpayers may call for general tax information. The department answers questions about tax-related matters such as figuring income taxes, filing tax returns, and obtaining copies of forms and tax returns. Department listings are in the telephone directory.

(b) The department provides Oregon tax publications and forms. Write to: Oregon Department of Revenue, 955 Center Street NE, Salem, Oregon 97301 to request copies of these publications or forms.

(c) Internet access. Many forms, publications, and administrative rules and other information may be accessed at the department website: www.dor.state.or.us.

(2) Access to Records.

(a) The department provides individuals access to any public record (as defined in ORS 192.410) not exempted from disclosure in ORS 192.501, 192.502, 192.505, or other statutes exempting certain public records from disclosure. The department also provides access to records that the requestor has a right to inspect.

(b) The department may require the taxpayer to submit a written request in order to obtain access to requested records. The written request must include:

(A) A description of the records with sufficient detail for the department to identify and locate them;

(B) A statement specifying whether the taxpayer wishes to inspect the records or be furnished copies;

(C) A statement agreeing to pay for search or document charges incurred in responding to the request per OAR 150-192.440; and

(D) The notarized signature of the requestor.

(3) Additional Information. Other administrative rules provide additional information on obtaining department information or obtaining review of agency actions.

(a) For information on petitions for review of agency actions, see OAR 150-306.115.

(b) For information on agency conference procedures, see OAR 150-305.265.

(c) For information on charges for copies of records, see OAR 150-192.440.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 183.330
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 5-2000, f. & cert. ef. 8-3-00

150-183.341(2)
Oregon Attorney General's Model Rules of Procedure Under the Administrative Procedure Act

The Department of Revenue, for its rulemaking functions, adopts the following Model Rules of Procedure under the Administrative Procedure Act as those rules were in effect January 1, 2006:

(1) Definitions, 137-001-0005;

(2) Public Input Prior to Rulemaking, 137-001-0007;

(3) Assessment for Use of Collaborative Process in Rulemaking, 137-001-0008;

(4) Use of Collaborative Dispute Resolution in Rulemaking, 137-001-0009;

(5) Permanent Rulemaking Notice, 137-001-0011

(6) Limitation of Economic Effect on Small Businesses, 137-001-0018;

(7) Conduct of Rulemaking Hearings, 137-001-0030;

(8) Rulemaking Record, 137-001-0040;

(9) Agency Rulemaking Action, 137-001-0050;

(10) Secretary of State Rule Filing, 137-001-0060;

(11) Petition to Promulgate, Amend, or Repeal Rule, 137-001-0070;

(12) Temporary Rulemaking Requirements, 137-001-0080;

(13) Objections to Statements of Fiscal Impact, 137-001-0087;

(14) Statement of the Objective of Proposed Rules, 137-001-0095.

(15) Review of New Rules, 137-001-0100.

Stat. Auth.: ORS 183.341, 305.10

Stats. Implemented: ORS 183.341

Hist.: RD 7-1988, f. 12-19-88, cert. ef. 12-31-88; RD 4-1992, f. & cert. ef. 12-29-92; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2006, f. & cert .ef. 7-31-06

150-183.341(4)

Notifying Interested Parties of Intended Rulemaking Actions

(1) The Department of Revenue has established a process to allow interested parties to request notification of the department's intended rulemaking activities.

(a) Persons may mail written requests for notification to: Oregon Department of Revenue, Attn: Rules Coordinator, Director's Office, 955 Center St NE, Salem, OR 97301-2555.

(b) Requests may also be sent by electronic mail to: rulescoordinator.dor@state.or.us.

(2) A person whose request is received by the Rules Coordinator on or before the 20th day of the month will receive notification of any intended rulemaking actions as published in the Oregon Bulletin for the next succeeding month. A person whose request is received after the 20th day of the month will receive notification of any actions scheduled for the second succeeding month.

Example: In June, Renee sent a request to be added to the mailing list of interested parties. If the Rules Coordinator receives the request on June 20, Renee will receive notification of any intended actions as published in the July issue of the Oregon Bulletin. If, instead, the Rules Coordinator receives the request on June 25, Renee will receive notification beginning with intended actions as published in the August issue of the Oregon Bulletin.

(3) A request for notification will remain in effect for future rulemaking actions until the person withdraws the request or the department determines that the address used for sending notification is invalid.

(4) The department will send notification of its intended rulemaking activity by mail or, if requested, by electronic mail. For purposes of ORS 183.335(8), if the interested party chooses to receive notification electronically, that notice is considered "mailed" on the date it is sent by the department to the requestor.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 183.335 & 183.341

Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

DIVISION 192

PUBLIC RECORDS

150-192.440

Charges for Copies of Records

The department shall provide, upon request, a copy of any public record or a record which the requestor has a right to inspect. The following charges are established for locating records, preparing copies, and making the records or copies available to the public. These charges shall not apply to other Oregon agencies or agencies of other states which exchange information on a reciprocal basis.

(1) Document charge. The charge is $4.00 for locating a document, preparing copies of twenty or less pages, certifying the copies, and furnishing the copies to the taxpayer. This charge applies to the following:

(a) A tax return.

(b) Other documents; for example, an appraisal report or a court decision.

(c) Miscellaneous printed matter consisting of four or more pages.

(d) The reproduction of a cassette tape recording.

(2) Search charge. The charge is the actual costs for making records available in unusual time consuming situations. The search charge shall be paid before the requestor is permitted to inspect the records or to receive copies. This charge covers but is not limited to the cost of activities such as:

(a) Identifying records not clearly defined in the request.

(b) Locating numerous records.

(c) Accumulating records maintained in several locations.

(d) Examining the records to determine that disclosure does not violate the confidentiality laws; ORS 118.525, 119.515, 192.500, 308.290(5), 308.413 and 314.835. This includes costs such as disclosure officer's fees, department attorney's fees, and other related expenses.

(e) Observing the requestor's inspection of the records.

(3) Per page charge. The charge is $.25 per page for furnishing copies under the following situations:

(a) For each page in excess of 20 pages where the $4.00 document charge applies. For example, a copy of a 22-page document would cost $4.50. If the $4.00 charge is paid in advance, a billing for only $.50 shall not be mailed to the requestor. The minimum billing is $4.00.

(b) For each page where the search charge applies.

(4) The document charge and per page charge apply to copies made by duplicating equipment and to pages produced by word processing equipment from magnetic discs.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 192.440

Hist.: TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84

150-192.501

Department Records Exempt from Disclosure

(1) The department shall protect as confidential the material listed in paragraph 2 of this rule and contained in its files relating to business activities of any person. ("Person" as used in this rule is defined in ORS 311.605.) There shall be no access to files containing confidential material except by department employees or by those authorized by the department, by statute, or by court order. Any department employee having access or charged with controlling or maintaining such files shall be familiar with and comply with the department's procedures regarding security of the confidential material. Each employee shall sign a statement that explains their responsibility for the maintenance of confidentiality of the department's confidential materials.

(2) The confidential materials included in the above referenced files are:

(a) Real and personal property tax returns and supporting schedules filed under ORS 308.290.

(b) Statements filed by companies such as railroads, gas, electric, and telephone in connection with the assessment of their properties under ORS 308.525.

(c) Reports of gross earnings filed by telephone companies under ORS 308.720 in connection with the in-lieu tax on gross earnings.

(d) Statements filed by mutual or cooperative associations engaged in operating electric transmission and distribution systems under ORS 308.810 in connection with the in lieu tax on gross earnings.

(e) Information collected by the department for purposes of establishing values under ORS 321.282 and 321.430. This includes but is not limited to sales of logs, standing timber sales between private parties, logging costs and other costs associated with logging. Particulars of private timber sales and purchases where the sales price was agreed upon on or after October 3, 1989, and log sales and purchases made on or after July 1, 1989, are subject to the confidentiality provisions of 321.381 and are not subject to this rule.

(f) Harvest forecast information obtained by the department from private parties.

(g) "Trade secrets" as defined under ORS 192.501(2).

(h) Research and statistical data of the department which allows identification of confidential material relating to the business activities of any person.

(i) Any information voluntarily submitted to the department in confidence and not otherwise required by law to be submitted when such information should reasonably be considered confidential. Such information includes but is not limited to production records, sale or purchase records, financial statements or similar business records to the extent such information would permit identification of the individual enterprise. It is the finding of the department that public interest would suffer by the disclosure of such information.

(3) It is the policy of the department to protect confidential information in its files. However, if a court lawfully orders the disclosure of confidential data, the department will limit the information disclosed in strict compliance with rulings of the court. Confidential information provided by a taxpayer which is relevant to the determination of the taxability or valuation of the taxpayer's property may be disclosed in any administrative proceeding in which the taxability or valuation is an issue.

(4) The handling of confidential materials shall be as follows:

(a) The department mail clerk makes distribution to the Property Tax Division which further sorts and directs the mail to the proper work station.

(b) Returns are assembled for processing in restricted areas only.

(c) Confidential material is stored in and returned to files at end of day and protected from visual inspection by unauthorized persons at all times.

(d) Confidential areas are kept secured after working hours.

(e) Materials acquired by field appraisers or delivered by taxpayers will follow procedures in the above form as stated in items c through e.

(5) For public access to department records not exempted from disclosure in ORS 192.500, refer to OAR 150-183.330(1) for proper procedure.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 192.501
Hist.: 12-31-80, Renumbered from 150-308.290; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90

DIVISION 198

SPECIAL DISTRICTS

150-198.955(3)(a)
Assets of Dissolved Districts

Surplus funds of the dissolved district shall be treated as an offset. The offsets shall be apportioned between the districts who share territory with the dissolved district in the following manner.

(1) The assessor shall use the value used to compute taxes for the current year to do this calculation. Only the value in code areas which both districts share shall be used in this calculation.

(2) The assessor shall list individually the value of each district within the shared territory of the dissolved district.

(3) The assessor shall establish a multiplier for each district in the following manner. Divide the shared value of each district within the dissolved district's territory by the total shared value of all of the districts established in (2). The sum of the multipliers of the districts for this step shall equal 1.00.

(4) The assessor shall multiply the total offset available for apportionment by the individual district multiplier. This will yield the offset for each district. The total offsets for all districts must equal the total available for offset.

(5) The assessor shall divide the apportioned offset for the district by the shared value used to compute taxes for the district in order to determine the offset rate for each of those districts whose total territory lies within the boundaries of the dissolved district.

(6) The assessor shall subtract the offset rate from the district general operating tax rate in the same manner as all other offsets rates. For those taxing districts that have territory both within and outside of the boundaries of the dissolved district, the tax rate shall be adjusted for the offset **only in code areas** that are shared with the dissolved district.

Example: Dissolved district provides $16,000 to the county.
Step 1: In this example the county deducts $6,000 for actual administrative expenses. This leaves $10,000 as the total offset amount.
Step 2: Calculate the values for the taxing districts within the boundaries of the dissolved district and calculate the multiplier. [Table not included. See ED. NOTE.]
Step 3: Multiply the total offset available by the multiplier for each district. [Table not included. See ED. NOTE.]
Step 4: Divide the offset amount by the district's taxable value within the shared territory; subtract this rate from the district's operating rate in those code areas where there is shared territory with the dissolved district. [Table not included. See ED. NOTE.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 198.955
Hist.: RD 9-1990, f. 12-20-90, cert. ef. 12-31-90; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99

DIVISION 222

CITY BOUNDARY CHANGES; MERGERS; CONSOLIDATION; WITHDRAWALS

150-222.111
Phase in of City Tax Rate

(1) Cities that use the provisions of ORS 222.111 shall certify their ad valorem property taxes as outlined in this rule.

(2) When a city certifies taxes under ORS 310.060 it shall include an additional schedule setting forth the ratio of the rate in the annexed area to the highest rate of taxation for city purposes to other property in the city as provided in the annexing ordinance. It is the responsibility of the city to inform the assessor of the ratio to be applied in each portion of the city according to the phase in provisions.

(3) When final value for the tax year is known, the assessor shall calculate the city tax rates based on the ratio schedule included with the city notice of property tax certification.

(4) At the time of adoption of the ordinance that will phase-in the tax rate, the city shall notify the assessor's office and the assessor shall establish separate code areas for each territory subject to phase-in.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 222.111
Hist.: RD 12-1987, f. 12-18-87, cert. ef. 12-31-87; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99

150-222.111(3)
Calculating Phase-in City Tax Rates

(1) Only the tax rate of the city will be affected by this rule.

(2) This calculation shall be done for each category of levy of the city when the assessor is notified by the city that an annexed area is to have its rate phased-in over a number of years under the authority of ORS 222.111. The assessor shall use these steps to calculate the city tax rate(s):

Step 1: Establish the annexed area(s) as a separate code area(s).
Step 2: Determine the current year rate computation value of the city without the annexed area(s) for which tax rates are being phased in.
Step 3: Determine the current year rate computation value of the annexed area(s) for which tax rates are being phased-in.
– If the city certifies only a rate, determine the maximum billing rate. Any tax offset rate is subtracted from the certified rate based on the value of the nonphased-in areas of the city. Multiply the phase-in ratio percentage by the billing rate for each phase-in area established as a separate code area. The result of this calculation will be the city billing rate for that phase-in area.
– If the city only certifies a rate, it is not necessary to complete the rest of the steps. The remaining steps only apply in the case where the city has certified a levy in dollars and cents.
Step 4: Multiply the current year taxable assessed value of the annexed area(s) for which tax rates are being phased-in, by the ratio that the tax rate of the annexed area will be to the maximum rate within the area(s) of the city which will pay the maximum tax rate of the city.
Step 5: Add the result(s) of Step 4 of this rule to the value determined in Step 2.
Step 6: Divide the net category of levy for the city by the value calculated in Step 5 and truncate the rate as provided in OAR 150-310.090. This is the maximum tax rate of the city.
Step 7: Multiply the result of Step 6 by the ratio the rate in the annexed area will be and round to 7 decimal places. The result is the maximum rate of the city for the category of levy in the annexed area for the fiscal year.

Step 8: Multiply the result of Step 7, the rate in the annexed area, by the current year rate computation value of the annexed area. This is the amount to be raised for this category of levy of the city, before any compression due to the limits of Section 11b, Article XI of the Oregon Constitution, in the annexed area.
Step 9: Multiply the result of Step 6 (the maximum city rate) by the current year rate computation value of the city without annexed area(s) which will have a ratio of the city tax rate (the value determined in Step 2). This is the amount of tax to be raised for this category of levy of the city, before any compression due to the limits of Section 11b, Article XI of the Oregon Constitution, in the city portion which is paying the maximum rate.
Step 10: Verify the result by adding the results of Step 8 and 9. This amount should equal the city's category of levy, except for any loss due to the truncation of tax rates.
Example: *City has certified under their permanent rate limit general government category:* 4.90 per thousand. City has certified under the exempt category: $900,000 for debt service. The city's phase-in ratio percentage is: Annex 1 - 45.00% and Annex 2 - 70.00%. [Table not included. See ED. NOTE.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 222.111
Hist.: RD 3-1991, f. 12-30-91, cert. ef. 12-31-91; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99

DIVISION 267

MASS TRANSIT DISTRICTS

150-267.380(1)(c)
Wages

Generally, wages include all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash. Thus, salaries, fees, bonuses, commission on sales or insurance premiums are wages within the meaning of the statute if paid as compensation for services performed by the employee for the employer. The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework or a percentage of profits; and may be paid hourly, daily, weekly, monthly or annually. Generally, the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. Taxable emoluments — see OAR 150-316.162(2)(A)

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 280.060
Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84

150-267.380(2)
Wages Exempt From Transit Payroll Tax

For purposes of the transit district payroll taxes, certain payrolls are exempted from taxation by exclusion of the amounts paid from the definition of wages. The following are clarifications of some of the allowable exemptions:

(1) All foreign insurance companies (those formed under laws from other states), their adjusters, agents, office support staff are specifically exempted by ORS 731.840. This exemption does not extend to domestic insurers, health care contractors, and motorist service clubs.

(2) ORS 267.380(2)(h) states if remuneration is not subject to withholding under ORS Chapter 316 it is not subject to the transit payroll tax. All wages paid for domestic service described in 316.162(c) are exempt from withholding and transit payroll tax. If the remuneration is not subject to withholding under ORS Chapter 316 such wages would be exempt from the transit payroll tax but generally are subject to transit self-employment tax. Unless a real estate agent meets all the requirements of 316.209, the remuneration for services performed by that agent will be subject to transit payroll taxes.

(3) ORS 267.380(4), which subjects deferred compensation to transit tax, creates an exception to the general rule stated in 267.380(2)(h), which exempts from transit tax remuneration not subject to withholding tax.

(4) The exemption in ORS 267.380(2)(c) applies to labor not in the course of the employer's trade or business. The exemption does not apply to wages for substantial labor not in the regular course of the employer's trade or business, such as the construction of a private home where the owner is the employer.

(5) Transit payroll tax is imposed only on that portion of the payroll paid with respect to duties performed by employees within the District. If an employee performs services both inside and outside the District, the employer shall prorate the wages paid to that particular employee based upon the relative amounts of time worked by that employee within and without the District.

(6) The exemption in ORS 267.380(2)(e) applies solely to seasonal labor in connection with the planting, cultivating or harvesting of agricultural crops. Transit payroll tax applies to the entire wages of "regular" farm employees even though, as a part of their duties, they engage in planting, cultivating or harvesting.

(7) Certain state agencies are exempt from transit payroll tax under the provisions of ORS 267.430.

(8) Internal Revenue Code Section 501(c)(3) institutions (charitable and other nonprofit institutions) other than hospitals are exempt from transit payroll taxes. For the purposes of ORS 267.380(2)(a), a hospital is defined as:

(a) A permanent facility or organization with facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, or to provide treatment for the mentally ill.

(b) A hospital's parent or subsidiary 501(c)(3) organization that provides administrative and support functions to the hospital.

(9) Employers may be relieved of the duty to pay transit tax where it can be shown to the satisfaction of the department that subject wages paid to each individual employee will be $300 or less in a calendar year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 267.380
Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 8-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-267.380(2)(h)
Employer-Employee Application

Unless the context requires otherwise, for purposes of administration of transit district payroll taxes, determination whether an employer-employee relationship exists will be made under rules adopted pursuant to state withholding statutes. See OAR 150-316.167(1) and 150-316.162(2)(j).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 267.380
Hist.: RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 7-1992, f. & cert. ef. 12-29-92, Renumbered from 150-267.380(2)-(H); RD 7-1992, f. & cert. ef. 12-29-92

150-267.380(4)
Items Included in Wages

For tax years beginning on or after January 1, 1992, "wages" includes elective payments into a Simplified Employee Pension, IRC 3121(a)(5)(C) or an annuity contract, IRC 3121(a)(5)(D). Contributions, IRC 3121(v)(1)(A); to a 401k retirement plan; employee contributions under IRC 3121(v)(3)(A) and employer contributions under IRC 3121(a)(5)(E), to a government deferred compensation plan including contributions "picked up" by a governmental unit, IRC 3121(v)(1)(B) (and contributions to a nonqualified plan, a Section 457 plan, or a 403(b) annuity).

Example: Linda works for a firm subject to Lane Transit District Payroll Tax. She earned $30,000 wages for tax year 1992. She put $3,000 into her 401k retirement plan. Linda's employer also put $1,000 in her 401k. Linda's "wages," for the purpose of determining the LTD payroll tax, is $31,000.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 267.380
Hist.: RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-267.385(3)
Reports and Payments

(1) For 1990 and subsequent years transit excise taxes are paid quarterly with the Oregon Quarterly Combined Tax Report. For purposes of quarterly filing, calendar quarters are used. The first quarter is January through March; the second quarter is April through June; the third quarter is July through September and the fourth quarter is October through December.

(2) Payment due dates are determined by corresponding state due dates for withholding tax returns. When an employer files an Oregon Quarterly Combined Tax Report, the transit excise information and tax must be filed and paid on or before the end of the month following the quarter with the combined tax report.

(3) For 1989 and prior years if an employer files a semi-annual withholding tax return, the transit excise tax for the 1st and 2nd quarters is due July 31. The 3rd and 4th quarter tax and return are due January 31st of the following year. No other reporting periods will be permitted without prior approval of the Department and concurrence of the transit district.

(4) For rules governing annual agricultural filing, see OAR 150-316.202(4).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 267.385
Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

DIVISION 276

PUBLIC BUILDINGS

150-276.595
Field Office Parking

(1) In General. Pursuant to ORS 276.594, the Department of General Services (“General Services”) has authority to establish charges for parking spaces located in the capitol area in the city of Salem. Excluding that area, the Department of Revenue (“the Department”) will charge employees a parking fee for spaces the agency owns or controls through a direct lease, lease purchase, or installment purchase agreement. Control is defined as having the right to the spaces, to identify who may use the spaces, to post signs marking the spaces, and to charge for the spaces.

(a) The rate charged will be determined on a pro rata basis of the Department’s cost of acquiring the parking spaces. If the Department’s cost cannot be determined, then the rate established by General Services for paid parking in the immediate vicinity of the office will be used. If there are no established General Services parking rates, then the Department’s fee will be based on local market rates. Specifically, the parking fee charged by the Department will be an average of the rates charged for similar parking facilities in the immediate vicinity of the office, by private vendors. To encourage the use of alternative modes of transportation, a reduction to the parking fee, determined above, will be allowed for participants in car or van pools. The Department accepts the rate discount allowed by General Services for pool participants.

(b) The Department Fiscal Section (“Fiscal”) will monitor all office leases and determine if the department owns or controls parking spaces.

(2) Establishing parking procedures. The field office manager for each office will determine priorities for use of owned or controlled parking space. Priority will be given to state vehicles assigned to the office, visitors, the disabled, and parking for agency employees not stationed at the office. Unused spaces may be sublet to office employees. Fiscal will be notified of employees who may sublet parking spaces.

(a) Fiscal will annually review and establish parking fees for spaces sublet to employees. Fiscal will also determine the process for payment and collection of parking fees from sublet parking spaces.

(b) Fiscal will notify the union of proposed changes in parking rates pursuant to Article 15 of the Collective Bargaining Agreement.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 276.595
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

DIVISION 280

LOCAL BUDGET

150-280.060(A)
Calculating the Estimated Dollar Weighted Life for Local Option Taxes

(1) For local option taxes used to fund capital projects, the estimated dollar weighted life of capital projects shall be calculated in the following manner.

(a) The useful life of the project shall be estimated in years.

(b) The cost of the project shall be estimated in dollars and cents.

(c) The estimated useful life of the project shall be multiplied by the estimated cost of the project. This is the weight of the project.

(d) The weight of the project is divided by the cost of the project to come up with the estimated dollar average life of the project. This is the maximum time that may be financed using a local option tax.

(2) For a local option tax that only funds one capital project, the estimated dollar weighted life of the project will equal the useful life of the project.

(3) For a local option tax that supports more than one capital project, complete (1)(a) through (1)(c) above for each capital project. Sum the cost of all of the projects and sum the weight of all the projects in the local option tax. Then divide the total weight by the total cost to arrive at the estimated dollar average life of the capital project for this tax.

Example: A city decides to go out for a local option for their police department. The local option tax is going to be used to purchase 2 new computers, 2 patrol cars and rewire the station house. What is the estimated dollar average life of the capital projects financed by this local option levy? [Table not included. See ED. NOTE.]

(4) Normal rounding is used in calculating the estimated dollar average life.

(5) Local option tax for capital projects can not exceed 10 years.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 280.060
Hist.: REV 3-1998, f. & cert. ef. 6-30-98

150-280.075
Tax Election Ballot Measure Requirements

(1) All ballot titles are required to contain essentially the same language within the standard format as outlined in ORS 250.035.

(2) The caption is limited to not more than 10 words. The purpose is to identify the type of tax presented for voter approval. The name of the municipal corporation and dollar figures must not be included in the caption.

(3) The question is limited to 20 words that plainly state the purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure. The question must contain the following:

(a) The name of the municipal corporation. The word “district” may be substituted for the full name of the municipal corporation if the full name appears in the ballot measure summary;

(b) The amount of property tax in dollars and cents, or the tax rate per $1,000 of assessed value;

(c) The purpose of the tax, such as operating, capital project, or establishing a permanent rate limit;

(d) The first fiscal year the tax is to be imposed; and

(e) The length in years that the proposed tax is to be imposed.

(4)(a) Directly after the question for a proposed new local option tax, the following statement is required: “This measure may cause property taxes to increase more than three percent.”

(4)(b) In lieu of the statement required by subsection (a) of this section, for a question that is requesting the renewal of a current local option tax, the following statement is required: “This measure renews current local option taxes.” To qualify as a renewing measure, a measure must ask for the same tax rate or annual dollar amount as the current local option tax, or a lower rate or amount, and be for substantially the same purpose as the current local option tax.

(c) The statement required by subsection (a) or (b) of this section is not included in the 20-word limitation.

(5) The summary is limited to 175 words and explains the purpose of the tax in plain language. It must not advocate a yes or no vote on the question. The summary must contain the following:

(a) As the first sentence, except for elections held in May or November of any year: "This measure may be passed only at an election with at least a 50 percent voter turnout." This statement is not included in the 175-word limitation;

(b) For a dollar amount local option, the total amount of money to be raised by the measure, and;

(c) For a tax rate local option, an estimate of the amount of taxes to be raised in each year in which the tax will be imposed.

(6) If an estimated tax rate is included in the summary of a measure requesting an annual dollar amount levy, it must also contain the following statement: "The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of estimate." This statement is not included in the 175-word limitation.

EXAMPLE ONE-YEAR LOCAL OPTION (RATE) (May or November election):
Caption: One-year Local Option Tax
Question: Should Sample City impose $.40 per $1,000 of assessed value for operating purposes for one year beginning 2008–2009? This measure may cause property taxes to increase more than three percent.
Summary: The purpose of this measure is to provide funds for the general operations of Sample City. It will enable the city to maintain operations at their current level. It is estimated that the requested rate will raise $100,000 in fiscal year 2008-2009.
EXAMPLE MULTIPLE-YEAR LOCAL OPTION (UNIFORM DOLLAR AMOUNT) (March or September election):
Caption: Nine-year Capital Project Local Option Tax
Question: Should the district impose $20,000 each year for nine years to purchase two vehicles and a maintenance shed beginning 2008–2009? This measure may cause property taxes to increase more than three percent.
Summary: This measure may be passed only at an election with at least a 50 percent voter turnout. The taxes to be raised in nine years total $180,000, to be imposed in equal amounts of $20,000 each year. The taxes will be used to purchase two new city vehicles to replace existing vehicles. The tax revenue will also be used to acquire a maintenance shed to house the city's park maintenance equipment. The city currently has no maintenance shed. It is estimated that the proposed tax will result in a rate of approximately $.10 per $1,000 of assessed value in the first year. The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of estimate.
EXAMPLE MULTIPLE-YEAR LOCAL OPTION (RATE) (RENEWAL) (March or September election):
Caption: Three-year Operating Local Option Tax
Question: Should Sample County impose $.76 per $1,000 of assessed value for operations for three years beginning 2008–2009? This measure renews current local option taxes.
Summary: This measure may be passed only at an election with at least a 50 percent voter turnout. This measure will continue a current local option tax that, without renewal, will expire in 2008. If renewed, the tax revenue will continue to be used to operate the county at its current levels of service. It is estimated the proposed rate will raise $152,000 in 2008-2009, $156,560 in 2009-2010, and $161,260 in 2010-2011 for a total of $469,820.
EXAMPLE PERMANENT RATE LIMIT (May or November election):
Caption: Permanent Rate Limitation
Question: Should District be authorized to impose $3.50 per $1000 of assessed value as a permanent rate limit beginning 2008-2009?
Summary: The measure will establish a permanent tax rate limit for the new Sample Service District. In the first year of imposition it is estimated that the proposed rate will raise $42,000 for the new district. The taxes will be used to pay for the general operations of the district.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 280.060
Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 8-2000, f. & cert. ef. 8-3-00; REV 5-2009, f. & cert. ef. 7-31-09; REV 17-2010, f. 12-17-10, cert. ef. 1-1-11

DIVISION 285

ENTERPRISE ZONES

150-285C.140(12)
Waiver of Enterprise Zone Application for Authorization Filing Deadline Requirement

(1) The Department of Revenue will waive the application for authorization filing deadline requirement under ORS 285C.140(1) if:

(a) The taxpayer had knowledge of the enterprise zone property tax exemption program prior to initiating its investment, as shown by contacts made by the taxpayer with the Oregon Business Development Department (doing business as Business Oregon), the enterprise zone sponsor, the local zone manager or the county assessor; and

(b) The reason for the late submission of the application constitutes good and sufficient cause as defined in OAR 150-307.475.

(2) In addition to the extraordinary circumstances identified in OAR 150-307.475, good and sufficient cause may also include reasonable reliance on misinformation provided by enterprise zone sponsor personnel, local zone manager or Oregon Business Development Department (doing business as Business Oregon) personnel.

(3) The following is an example of a filing deadline waiver request that the Department of Revenue would grant:

Example: A company began meeting with the local zone manager in July 1999. The local zone manager assured the company that it would be authorized and that construction could proceed. The company was authorized in March 2000. Just prior to authorization in March 2000, during a physical inspection of the property, the county discovered that a building was already under construction. The company otherwise met the program criteria and filed a timely enterprise zone exemption claim.
Stat. Auth.: ORS 305.100, 285C.140 & 285C.125
Stats. Implemented: ORS 285C.140
Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2000, f. & cert. ef. 8-3-00, Renumbered from 150-285.613(8); Renumbered from 150-285B.719(8), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-285C.180
Enterprise Zone Statutory Definitions

(1) "Additions to existing buildings or structures" means an enlargement of building space including construction which creates additional floor space or which creates more building volume by raising a ceiling or roof and in the case of a structure includes, but is not limited to, increasing the area of a parking lot to provide additional parking spaces.

(2) "Building" means a real property improvement erected to stand more or less permanently, usually with walls and roof, and designed for human use and occupancy or as a shelter. Building includes, but is not limited to, warehouses and manufacturing plants. Building also includes all structural components necessary to make the building usable such as wiring, plumbing, a foundation, heating and cooling ducts.

(3) "Construction in progress" means after work begins or that the foundation for the building or structure was partially or wholly laid.

(a) Acceptable documentation means a letter from the contractor, a building official or someone else who is not an employee of the firm concerning when work began.

(b) "Beginning date after interruption" means:

(A) If work begins and then stops for six months or more and/or a new building permit is issued, the beginning date is when work is resumed.

(B) If a firm goes out of business, stops construction and sells the property, the beginning date is when work is undertaken by the new owner.

(C) When rebuilding after a fire, or some other natural disaster, work begins when construction starts, not upon starting demolition or cleanup.

(4) "Destination resort" as used in ORS 285C.135(5) means a facility with hotel accommodations at which visitors stay in order to access amenities connected to the resort, including but not limited to a development that satisfies the criteria under 197.435 to 197.467 for siting on certain lands and for limiting or allowing uses and activities in accordance with an acknowledged comprehensive plan.

(5) "Hotel or motel" as used in ORS 285C.135(5) and consistent with 699.005 means a facility that:

(a) Offers rooms, suites of rooms, cabins, houses or other such units for transient lodging to persons typically from beyond the local area through direct overnight rental, time-share arrangements or other types of limited transactions;

(b) May include one or more visitor-oriented services, facilities or recreational activities, including but not limited to restaurants, laundry, conference rooms, golf course, swimming pool, tennis courts, ski runs, marinas or bicycle paths; and

(c) May be commonly described or labeled as an inn, resort, convention center or by other such names.

(6) "Machinery and equipment" means any property used in the business activity or process except land, buildings and structures. It does not include furniture, commercial fixtures or structural components of a building such as standard wiring, plumbing, heating or cooling systems. Specialized pipes, air filtration systems, specialized wiring or other systems necessary for the manufacturing process are considered machinery and equipment rather than a structural component of a building. Machinery and equipment that is not easily movable is considered to be real property. Machinery and equipment that is readily movable is considered as personal property. "Readily movable" property is generally unattached in any way to a building or structure and also is not connected to other real property machinery and equipment. An example of "readily movable" property would be tools, testing equipment or a personal computer.

(7) "Modification" means to alter or change the elements of a property by modernization, renovation or remodeling.

(a) "Modernization" means to take corrective measures to bring a property into conformity with changes in style.

(b) "Renovation" means the process by which older structures or historic building are modernized, remodeled or restored.

(c) "Remodeling means a type of renovation that changes the basic plan, form or style of the property.

(8) "Personal or household use or consumption" means consumption normally undertaken by an end user and not by a business in the course of business operations.

(9) "Site preparation" means an activity carried on to prepare raw land for construction including fill, grading, leveling, installation of underground utilities and installation of utility connections.

(10) "Structure" means a real property improvement including ramps, loading docks, and parking surfaces. Structure does not include buildings.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 285C.180
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 6-1994, f. 12-15-94, cert. ef. 12-31-94, Renumbered from 150-284.115; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; REV 8-2000, f. & cert. ef. 8-3-00, Renumbered from 150-285.570-(A); REV 9-2004 f. 2-29-04 cert. ef. 12-31-04, Renumbered from 150-285B.713

150-285C.409
Commencement and Duration of Long-Term Nonurban Oregon Enterprise Zone Exemption

(1) For purposes of ORS 285C.409 and this rule, a facility is "in service" when a certified business has received a permit to occupy and use the building for its intended purpose.

(2) All real and personal property including improvements, machinery, and equipment newly located at the facility are exempt from ad valorem property tax for a minimum of seven and a maximum of 15 consecutive tax years. The period for the exemption commences with the first tax year for which the facility was placed in service as of the assessment date for that tax year. If there is no express written agreement between the certified business firm and the zone sponsor on the number of tax years for which the facility is to be exempt, the period for the exemption will be seven consecutive tax years.

(3) The following are examples of how to determine the tax year for which the exemption commences:

Example 1: The property for which the exemption is claimed was placed in service on November 15, 2002. The first assessment date after the property was placed in service is January 1, 2003. Therefore, the exemption commences with the 2003-04 tax year.

Example 2: The property for which the exemption is claimed was placed in service on February 15, 2003. The first assessment date after the property was placed in service is January 1, 2004. Therefore, the exemption commences with the 2004-05 tax year.

Stat. Auth.: ORS 305.100 & 285C.125
Stats. Implemented: ORS 285C.409
Hist.: REV 8-2000, f. & cert. ef. 8-3-00; Renumbered from 150-OL 1997, Ch 835, sec. 38, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-285C.420
Assessor's Action When A Long-Term Nonurban Oregon Enterprise Zone Facility is Disqualified

(1) Upon discovering that a certified business no longer qualifies for the property exemption under ORS 285C.409, the assessor must give written notice of exemption disqualification.

(2) The notice must include:

(a) A statement that the property is disqualified from the exemption for the following tax year,

(b) A statement explaining the reason for the disqualification,

(c) A calculation of the additional tax liability, and

(d) A statement that the additional tax liability will be added to the next general property tax roll.

(3) The additional tax liability must equal the taxes that would otherwise have been assessed against the disqualified property for each of the tax years the property was exempt under ORS 285C.409.

Stat. Auth.: ORS 305.100 & 285C.125
Stats. Implemented: ORS 285C.420
Hist.: REV 8-2000, f. & cert. ef. 8-3-00; Renumbered from 150-OL 1997, Ch 835, sec. 39, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

DIVISION 291

PERSONAL INCOME TAX SURPLUS REFUND

150-291.349
Procedures for Handling State Personal Income Tax Surplus Credit

(1) Surplus Credit Generally. This rule applies for biennia beginning on or after July 1, 2011, when personal income taxpayers are credited a surplus of tax revenues under ORS 291.349(4). Taxpayers claim the credit in odd-numbered tax years and calculate the credit based on the tax return information for the immediately preceding even-numbered tax year (base tax year).

(2) Surplus Credit Procedure. No later than October 15 following the end of the biennium for which a surplus is determined, the department will make publicly available to taxpayers the applicable surplus percentage amounts and information giving guidance on the calculation of the surplus credit.

(a) Personal income taxpayers calculate their surplus credit by multiplying the applicable surplus percentage amount by their total personal income tax liability for the base tax year.

(b) The total personal income tax liability is determined after allowing a credit for income taxes paid to another state (under ORS 316.082, 316.131, and 316.292) and before any other credit or offset against tax liability, allowed or allowable.

(c) If a surplus credit reduces tax liability to zero, the department will refund any unused surplus credit amount as an overpayment of tax. The department may offset an overpayment of tax due to any unused surplus credit amount to pay debts owing to the State of Oregon or other parties as indicated in ORS 314.415 and 293.250. The department will issue a notice when this occurs. The department will offset any unused surplus credit amount consistent with the priority set out in OAR 150-314.415(2)(f)-(B).

(3) Changes in filing status or spouse/registered domestic partner (RDP). A taxpayer who files returns using a different filing status in the base tax year and the immediately succeeding tax year, when claiming a surplus credit, or who files jointly with a different taxpayer in the base tax year and the immediately succeeding tax year, when claiming a surplus credit, must compute their surplus credit as follows:

(a) From another filing status to married/RDP filing jointly. The surplus credit allowed on the joint return is the combination of the surplus credits as calculated based on each taxpayer's separate return from the base tax year.

Example 1: George and Robin each file their 20XX personal income tax returns, using the single filing status. George has a total personal income tax liability of $2,000. Robin has a total personal income tax liability of $3,000. In 20X1, George and Robin marry. After the end of the biennium in 20X1, a surplus credit is determined with an applicable percentage amount of 5%. George and Robin file their 20X1 personal income tax return jointly. They must each calculate their surplus credit separately and report the sum on their return. George's surplus credit is $100 ($2,000 x 0.05) and Robin's surplus credit is $150 ($3,000 x 0.05). They will claim a surplus credit of $250 on their 20X1 joint personal income tax return.

(b) From married/RDP filing jointly to another filing status. The surplus credits claimed by each taxpayer on their separate returns must bear the same proportion to the total surplus credit calculated according to ORS 291.349(5) as the federal adjusted gross income of each taxpayer bears to the federal adjusted gross income of both taxpayers on the joint return for the base tax year.

Example 2: Shawna and Nathan are married and file their 20XX personal income tax return, using the married filing jointly filing status. Their total federal adjusted gross income (AGI) is $65,000. Their total personal income tax liability is $5,000. Shawna's portion of the total AGI is $45,500, or 70%. Nathan's portion of the total AGI is $19,500, or 30%. In 20X1 Shawna and Nathan divorce and neither remarries during that year. After the end of the biennium in 20X1, a surplus credit is determined with an applicable percentage amount of 4%. When Shawna and Nathan file their separate 20X1 personal income tax returns, they will calculate separate surplus credits based on their 20XX AGI. Shawna will claim a surplus credit of $140 (5,000 x 0.04 x 0.70). Nathan will claim a surplus credit of $60 (5,000 x 0.04 x 0.30).

(c) From married/RDP filing jointly to married/RDP filing jointly with a different spouse/RDP. The provisions of this subsection apply to a taxpayer who files a joint return with one spouse/RDP for the base tax year and then divorces, marries a different spouse/RDP during the immediately succeeding tax year, and files a joint return with their new spouse/RDP for the immediately succeeding tax year. The surplus credit allowed on the joint return with the new spouse/RDP is the combination of the surplus credits as calculated based on each taxpayer's separate return from the base tax year.

Example 3: Duane and Fern are married and file their 20XX personal income tax return, using the married filing jointly filing status. Their total AGI is $80,000. Their total personal income tax liability is $7,500. Duane's portion of the total AGI is $48,000, or 60%. Fern's portion of the total AGI is $32,000, or 40%. In 20X1, Duane and Fern finalize their divorce. Duane marries Leslie that same year. Leslie filed a 20XX personal income tax return, using the single filing status. Her total personal income tax liability was $2,000. After the end of the biennium in 20X1, a surplus credit is determined with an applicable percentage amount of 2%. When Duane and Leslie file their joint 20X1 personal income tax return, they must each calculate their surplus credits separately and report the sum on their return. Duane's surplus credit is $90 ($7,500 x 0.02 x 0.60), calculated according to subsection (b) of this section. Leslie's surplus credit is $40 ($2,000 x 0.02). They will then add their separate credits and claim a $130 surplus credit on their joint 20X1 personal income tax return. Fern will claim a surplus credit of $60 ($7,500 x 0.02 x 0.40) on her 20X1 personal income tax return.

(d) Death of a taxpayer. The provisions of this subsection apply when a taxpayer dies during the base or immediately succeeding tax year and personal income taxpayers are credited a surplus of tax revenues after the end of that biennium. The taxpayer's representative may file a return on their behalf to claim the surplus credit. If one of the two taxpayers on a jointly filed return from the base tax year dies, the surviving taxpayer from the joint return may claim the full amount of the surplus credit.

(4) Surplus Credit and subsequent increase in tax liability. If a taxpayer claims a surplus credit and subsequently there is an increase in the tax liability for the base tax year, the taxpayer must recalculate and apply their surplus credit in the following manner:

(a) Determine the revised surplus credit under section (2) of this rule using the total personal income tax liability as determined in an audit or review or as self-assessed by the taxpayer if an amended return is filed with the department;

(b) If within the time allowed by law, adjust or amend the return for the odd-numbered tax year to include the revised surplus credit.

Example 4: Beth files her 20XX Oregon personal income tax return showing a total personal income tax liability of $5,000. A surplus credit of 10% of 20XX tax year personal income tax liabilities is determined for tax year 20X1. Beth files her 20X1 Oregon personal income tax return claiming a surplus credit of $500 ($5,000 x 0.10). Later, the department adjusts her 20XX personal income tax return increasing her tax liability before credits by $2,000. Beth's revised 20XX total personal tax liability is $7,000 ($5,000 + $2,000). She will multiply this amount by 10% to calculate her revised surplus credit of $700 for tax year 20X1. Within the time allowed by law, Beth must correct her 20X1 personal income tax return to claim the additional $200 ($700 [allowed] - $500 [already claimed]) of surplus credit. The department may offset the additional $200 to any outstanding debt before refunding any portion to Beth.

(5) Surplus Credit and subsequent decrease in liability. If a taxpayer claims a surplus credit and subsequently there is a decrease in tax liability for the base tax year, the taxpayer must recalculate and apply their surplus credit in the following manner:

(a) Determine the revised surplus credit under section (2) of this rule using the total personal income tax liability as determined in an audit or review or as self-assessed by the taxpayer if an amended return is filed with the department;

(b) If within the time allowed by law, adjust or amend the return for the odd-numbered tax year to include the revised surplus credit.

Example 5: Use the same facts as example 4, except Beth files a 20XX amended personal income tax return reducing her total personal income tax liability from $5,000 to $3,000 and claiming a refund of $2,000. Beth's revised surplus credit for tax year 20X1 is $300 ($3,000 x 0.10). Within the time allowed by law, Beth must correct her 20X1 personal income tax return to include the revised credit and determine the amount previously allowed that she must pay back. Beth's original surplus credit was $500. This means she must pay back $200 ($500 [original surplus credit] - $300 [revised surplus credit]). In addition to any other allowable offsets, the department will offset the refund from Beth's 20XX amended return to pay back the excess surplus credit she previously claimed, plus interest.

(6) Interest accrual.

(a) Interest accrues according to ORS 314.415 on a refund of any unused surplus credit amount under subsection (2)(c) of this rule.

(b) Interest accrues according to ORS 314.400(7) on the amount of any surplus credit that a taxpayer must pay back under section (5) of this rule.

(7) Tax determined by the department on behalf of a delinquent taxpayer. If a taxpayer fails to file a return, the department may determine the taxpayer's tax liability under ORS 314.400. If the department determines a taxpayer's tax liability for a tax year in which personal income taxpayers are credited a surplus of tax revenues under 291.349(4), the amount of surplus credit will not be included in the department's calculation of tax liability until:

(a) The taxpayer files a return with the department for the base tax year;

(b) The taxpayer accepts the tax liability assessed by the department for the base tax year; or

(c) The taxpayer's liability is determined by the court for the base tax year.

(8) Returns and the statute of limitations. The department will refund any unused surplus credit amount as an overpayment of tax only as the limitations under ORS 314.415 will allow.

(9) Claiming a surplus credit when a taxpayer otherwise has no requirement to file. The provisions of this section apply to taxpayers who are not otherwise required to file a return. If a taxpayer files a return and has, or the department determines the taxpayer has, a personal income tax liability for the base tax year, the taxpayer must file a return in the immediately succeeding tax year in order to claim a surplus credit and receive a refund.

(10) Joint return apportionment of refund. If two taxpayers together file a joint return claiming a surplus credit and either spouse requests the department make separate refunds under ORS 314.415(7), the department will apportion the total refund according to 314.415(7) and OAR 150-314.415(7). The following is an example applying this section and subsection (3)(a) of this rule:

Example 6: John and Mary were not married and filed their 20XX personal income tax returns separately. John had a total personal income tax liability of $3,000. Mary had a total personal income tax liability of $1,000. In 20X1, they marry and later file their personal income tax return using the married filing jointly filing status. A surplus credit of 4% of 20XX tax year personal income tax liabilities is determined for tax year 20X1. John and Mary calculate their total surplus credit according to subsection (3)(a) of this rule. John calculates a separate surplus credit of $120 ($3,000 x 0.04) and Mary calculates a separate surplus credit of $40 ($1,000 x 0.04). They claim a total surplus credit of $160 on their 20X1 personal income tax return.

Mary is behind on her student loan payments and the department offsets Mary and John's entire 20X1 refund to pay that debt. John requests that the department split the 20X1 refund, to avoid offsetting his portion of the refund to pay Mary's loan. Their 20X1 joint return contains the following information:

AGI: $50,000; John's AGI: $40,000 (80% of total AGI); Mary's AGI: $10,000 (20% of total AGI); Total Refund $1,000.

The surplus credit calculation and the calculation for splitting refunds are independent of each other. The department splits the total refund according to ORS 314.415(7) and OAR 150-314.415(7). John's portion of the refund is $800 ($1,000 x 0.80) and the department sends it to him. Mary's portion of the refund is $200 ($1,000 x 0.20) and the department offsets it to pay her student loan.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 291.349 & 305.100

Stats. Implemented: ORS 291.349

Hist.: REV 6-2008, f. 8-29-08, cert. ef. 8-31-08; REV 9-2012, f. 12-18-12, cert. ef. 1-1-13; REV 2-2013, f. & cert. ef. 3-28-13

DIVISION 293

AUTHORITY TO MAKE REFUNDS

150-293.250(2)
Assigning Delinquent Accounts

(1) Assigning an account to the Collections Unit's restricted program for refund offset only while an account is also assigned to a private collection firm is permitted. However, assigning an account to both the Collection Unit's unrestricted program for full collection activity and a private collection firm is prohibited.

(2) The general purpose of the Collections Unit is to render assistance to state agencies as defined in ORS 293.235 in collecting delinquent debt owed, or by law considered owed, to the assigning state agency. The Collections Unit may also accept certain debts owed the county parole boards under contracts with the Department of Corrections; debts owed the State Accident Insurance Fund; Oregon Health and Science University; and Oregon community colleges. With three exceptions shown in section (3) below, the department will not accept delinquent debt owed to any other person or entity.

(3) The department may accept, from another state agency, or the state court system, delinquent debt owed for:

(a) Child or spousal support;

(b) Criminal judgments that impose monetary obligations; or

(c) Judgment debts obtained under ORS 169.151 owed counties for expenses for keeping prisoners.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 293.250

Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 8-2007(Temp), f. & cert. ef. 10-5-07 thru 12-31-07; Administrative correction 1-25-08; REV 2-2008, f. & cert. ef. 2-15-08

150-293.445(4)
Refunds on Receivable Accounts

In the case of an overpayment on an account, the Department of Revenue shall not refund or allow credit amounts under $25 unless a written request or refund claim is filed by the person who paid the money.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 293.445

Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 7-1988, f. 12-19-88, cert. ef. 12-31-88

150-293.475(3)
Duplicate Checks

(1) The department may issue a duplicate check if the original check has been lost, stolen, destroyed, or cashed because of forgery. The taxpayer must contact the department and request a "Statement of Ownership" form. The form must be completed and returned to the department. If a joint check was originally issued, both taxpayers must sign the "Statement of Ownership" form.

(2) If the check has been cashed because of forgery, the taxpayer must submit a "Statement of Ownership" form to the department. The department will compare the signature(s) on the cashed check to the signature(s) on the "Statement of Ownership" form. If it appears that the signature(s) on the check was forged, the department will send the following forms to the taxpayer(s):

(a) An "Affidavit: Claimant's Forged Endorsement," to be completed and notarized; and

(b) A separate "Handwriting Exemplar" to be completed and witnessed by two persons. All forms required in the case of a forged check must be completed and returned to the department within 15 months of the date the check was cashed for a duplicate check to be issued. The department will advise the State Treasurer of the forged check.

(3) No interest will be paid on the duplicate check.

[ED. NOTE: The forms referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 293.475

Hist.: RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-293.525(1)(b)
Notification of Requirement to Make Payments by Electronic Funds Transfer; Penalty for Noncompliance; Exceptions

(1) Any person, required by federal law to make federal corporation estimated tax payments or federal payroll tax payments by means of electronic funds transfer (EFT), is also required to make such payments by EFT for Oregon corporation estimated tax (ORS 314.518) and Oregon combined quarterly payroll taxes and assessments (ORS 316.198).

(2) The department will notify a person, in writing, of the requirement to make payments by EFT. The notice will provide the person with information as to how to register and begin making EFT payments, and will inform the person of the penalty for failure to comply.

(3) If a person does not begin making payments by EFT within 90 days after notification, as described in section (2), a penalty may be assessed equal to five percent of the payments made by means other than EFT received after the 90 days has expired.

(4) A penalty will not be assessed against payments made by means other than EFT if at the time payment is due:

(a) The person is not required to make such payments by EFT for federal purposes;

(b) Payment by electronic funds transfer is not possible because of the registration waiting period;

(c) The department's EFT system or the Automated Clearing House Network is not operational;

(d) The department has granted the person an exemption from the requirement to make payment by EFT; or

(e) Any other circumstance occurs which, in the judgment of the department, reasonably prevented the person from paying by EFT.

Stat. Auth.: ORS 305.100 & 293.525.

Stats. Implemented: ORS 293.525

Hist: REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 18-2010, 12-17-10, cert. ef. 1-1-11

DIVISION 294

LOCAL BUDGET

150-294.175
Department of Revenue Review of the County Assessment, Appeal, Collection, and Distribution of Property Taxes

(1) As used in ORS 294.175, the following definitions will apply:

(a) "Adequacy to provide the resources needed to achieve compliance" means: Appropriate and sufficient resources to maintain compliance with all laws and rules pertaining to the assessment, levying, and collection of property taxes.

(b) "Laws requiring equality and uniformity in the system of property taxation" includes administrative rules implementing those statutes.

(c) "Equality" means equity of assessments as required by the Oregon Constitution and laws to achieve fairness in property taxation.

(d) "Other laws" include but are not limited to Chapters 305 to and including 312.

(e) "Review" under ORS 294.175 may include, but is not limited to, an examination by the department of any county records, both paper and magnetic media; interviews with county staff; field review of values and procedures; and special studies.

(2) County programs operating under a department approved conference agreement or plan must maintain levels of uniformity and equity established under the agreement or plan.

(3) At the department's discretion, the department may examine any property and records to verify the accuracy of county records.

(4) For counties under the Computer Assisted Valuation program, part of the review will consist of the review required by ORS

308.027. When the department conducts a review of counties not under ORS 308.027, current appraisals will be reviewed to ensure they comply with the established standards for an appraisal contained in OAR 150-308.027(10).

(5) The department must provide written notice to the county governing body, assessor, and tax collector of any scheduled review no less than 30 days prior to the date the review is scheduled to begin. This notice must contain:

(a) The date the department will begin its review;

(b) The purpose of the review;

(c) A list of initial records the county must provide to the department. The records must be provided no later than the date specified in (a) above. The county must provide the department access to any records requested that are not available in hard copy or portable format;

(d) An estimate by the department of the number of department staff who will participate in the review. The county must make available adequate work space for the conduct of this review.

(6) The determination by the department that assessment and taxation activities, functions or services of the county are not adequate to maintain compliance or are not in compliance with a conference agreement or plan must be made no later than 40 days prior to the next fiscal quarter. The department will notify the county governing body within 10 days by certified or registered mail of its final determination of deficiency and the approximate amount of funds that will be withheld. If the department's notice is not sent in a timely manner, the funds will be withheld from the next following fiscal quarter which begins at least 40 days from the date of mailing the notice. No further notice by the department will be required. If the deficiency is corrected to the department's satisfaction at least 30 days prior to the start of the ensuing fiscal quarter, no funds will be withheld.

(a) Example 1:

Next fiscal quarter begins—October 1; Department makes determination—August 15; Department notifies county by—August 15; No corrective action taken by county; Funds withheld from county beginning—October 1.

(b) Example 2:

Next fiscal quarter begins—October 1; Department makes determination—September 5; Department notifies county by—September 14; No corrective action taken by county; Funds withheld from county beginning—January 1.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.175
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(D)

150-294.175(1)(c)
Expenditures for Assessment and Taxation

(1) Expenditures include all direct costs, including personnel and supplies, associated with the assessment and appeal of property values and the collection and distribution of property taxes, as set out in ORS Chapters 305 through 312 and 321 or other statutes relating to the assessment, appeal, collection, and distribution of property taxes. Costs resulting from the performance of these functions performed in the offices of the county must be allowed.

(2) All expenditures for assessment and taxation funding will be for no more than one fiscal year.

(3) Costs incurred by the assessor's, tax collector's, and treasurer's office, or any other office in the county that are not attributable to assessment and taxation as set out in ORS Chapters 305 through 312 and 321 or any other statute or meet the requirements of section (1) of this rule must not be allowed.

(4) Direct costs include:

(a) Personnel Services.

(b) Materials and Services. The cost of transportation included as a direct cost must be determined using one of the following two methods:

(A) The estimate of the actual cost of operating vehicle for a twelve-month period plus a depreciation allowance for the useful life of the vehicle.

(B) The mileage rate used in the other county programs, with the estimate of number of miles to be driven based on historical information.

(c) Capital Outlay.

(A) In determining what is a capital outlay expenditure, counties must use the definition presently used by the individual county to determine whether or not an item is capital outlay.

(B) Automobiles purchased by the county and used for assessment and taxation functions are included as an expense item under section (4)(b)(1)(A) of this rule. They must not be included as part of the capital outlay expenditures eligible to be certified for funding under ORS Chapter 294.

(C) The county must be limited in the amount of capital outlay expenditure to be funded by these statutes to the higher of:

(i) $50,000; or

(ii) Six percent (6%) of the total dollars certified as expenditures under the statutes for funding pursuant to ORS Chapter 294.

(d) Data processing support based on the actual cost of items directly relating to assessment and taxation. For example:

(A) System operating costs will be allocated on a pro rata share based on the ratio of usage for assessment and taxation functions.

(B) Development of new computer applications to support the assessment and taxation functions.

(C) Technical education of assessment and taxation staff.

(D) Software changes required because of changes to laws or rules which govern the assessment, appeal, levy, collection or distribution of property taxes.

(E) Software changes requested by the user to improve or extend the functionality of the system.

(F) Elimination of reproducible errors (BUGS) in the application software.

(G) Installation of periodic software upgrades.

(H) Training of user staff in the use of new or enhanced software.

(I) Technical assistance for personal computer support.

(J) Only cadastral maps or mapping necessary for the assessor's office must be included in the expenditures for assessment and taxation funding. All other costs for maps or mapping must not be allowed.

(5) Indirect costs associated with the assessment, appeal, collection, and distribution of property taxes will be determined using one of the following methods.

(a) A percentage amount approved by a Federal Granting Agency for the county in accordance with the *Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government*. The percentage must be applied in the same manner as has been approved by the Federal Agency; or

(b) Five percent of the total direct expenditures less capital outlay.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.175
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; REV 8-2000, f. & cert. ef. 8-3-00; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(A)(1)

150-294.175(2)
Definition: Certification of Compliance. Plan to Achieve Adequacy

(1) On or before May 1 of each year, each county will file with the Department of Revenue an estimate of expenditures as required by ORS 294.175. The Department of Revenue will determine the adequacy of each county's estimates of expenditures to comply with the requirements of 308.027, 308.232, 308.234, ORS Ch. 309, and other laws requiring equality and uniformity in the system of property taxation. For any county whose proposed expenditures are neither at a level nor of a type to achieve adequacy as determined by the department, the county will state how it intends to comply with a plan to achieve adequacy previously approved by the department.

(2) Any county which is not in compliance as of January 1, of any year, and does not have a plan to achieve adequacy which has been approved by the department must, in lieu of the statement of

compliance required under section 1 of this rule, submit a plan to achieve adequacy. After its review of the plan, the department will, if it deems necessary before approval, set a date for a meeting to be held with the county. The meeting may be for review of the plan only, or may be held in conjunction with the conference with the county governing body on their expenditure level.

(3) At the meeting the department and county governing body, assessing officials, and others as appropriate, will conduct a thorough review of the plan to identify and resolve any areas of disagreement. Before the conclusion of the meeting the department will inform the county governing body of its agreement with the plan, or modifications that may be necessary to the plan before approval. If the department and county governing body reach agreement on the county's plan, or modified plan, the department will include in its approval, based upon the plan, the number of years for the county to reach full compliance.

(4) Within ten days after the date of the meeting, the county governing body must furnish to the department a signed resolution of intent by the county governing body and assessing official to meet the provisions of the plan.

(5) If the department and county governing body can not reach agreement on the plan, or if the signed statement of intent is not furnished to the department by June 1 of the year, the department must issue a denial of certification under Or. Laws 1989 Ch. 796 Sec. 2 Sub. (6).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.005
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 2-1995, f. 12-29-95, cert. ef. 12-31-95; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(B)(2)

150-294.175(2)-(A)
Contents of Grant Application

(1) On or before May 1 of each year, each county must file with the Department of Revenue an application in order to participate in the grant program provided through the County Assessment Function Funding Assistance Account under ORS 294.178.

(2) The county must submit a grant application on forms provided by the department.

(3) The application must be accompanied by a resolution from the governing body of the county.

(a) The grant application resolution must be signed by the chairperson or judge of the governing body, or an appointee of the governing body that is acting under the authority of the governing body.

(b) If the chairperson or judge does not sign the resolution, the county also must submit a copy of the minutes of the meeting in which the governing body heard and approved the grant application resolution.

(c) The resolution must provide that the county agrees to appropriate the budgeted dollars in the grant application based on 100 percent of the expenditures certified by the department as provided under ORS 294.175(5).

(4) The department may reject an application that fails to meet the requirements of subsections (2) and (3).

Stat. Auth.: ORS 305.100 & 294.175
Stats. Implemented: ORS 294.175
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-294.175(2)-(B)
Estimates of Expenditures for Assessment and Taxation

(1) On or before May 1 of each year, each county must file with the Department of Revenue an estimate of expenditures for assessment and taxation as required by ORS 294.175 in order to participate in the grant program provided under ORS 294.178 for the tax year beginning on July 1.

(2) The county must file an amended estimate of expenditures no later than June 1 if it determines there is a need to increase or decrease its estimated expenditures.

(3) The amended filing must be filed in the same manner as the original application.

(4) The department will review the amended filing using the review standards and criteria for determining adequacy of resources that were applicable to the original filing.

Stat. Auth.: ORS 305.100 & 294.175
Stats. Implemented: ORS 294.175
Hist.: REV 6-2003, f. & cert. ef. 12-31-03; REV 3-2010(Temp), f. & cert. ef. 3-9-10 thru 8-31-10; Administrative correction 9-22-10; REV 17-2010, f. 12-17-10, cert. ef. 1-1-11

150-294.175(6)
Certification

(1) On or before June 15 of each year, the Department of Revenue, must mail to the governing body of each county a letter of certification or of denial of participation in the County Assessment Function Funding Assistance (CAFFA) Account.

(2) The letter of certification referred to in (1) above must include the following information:

(a) The total dollar expenditures budgeted by the county and approved by the department to be funded under the County Assessment Function Funding Program for that county.

(b) A statement that the total expenditures budgeted by the county for the assessment and equalization of property values and the collection and distribution of property taxes is adequate to maintain the county property taxation system or to comply with an approved plan to bring the county property taxation system into compliance.

(c) An estimate of the total dollars to be available for distribution to the counties from the CAFFA Account in the ensuing fiscal year.

(d) An estimate of the county's percentage distribution rate. For example, County A will receive 5 percent of the total for distribution from the CAFFA Account.

(e) An estimate of the total amount the county will receive from the grant during the ensuing fiscal year.

(3) The letter of denial referred to in (1) above must include the following information:

(a) Reason(s) for the denial.

(b) Appeal process for the county, if any.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.175
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 2-1995, f. 12-29-95, cert. ef. 12-31-95; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(B)(1)

150-294.181
Alternative Method for Certification

(1) If, at a conference held pursuant to notice under ORS 294.175, a county is unable to meet the level of expenditures required by the department for certification in the county assessment function funding assistance program for a particular year, that county may request that the department certify a lesser level of expenditures under the alternative method described in this rule.

(2) To meet the requirements of this alternative method of certification, a county must submit a plan that describes the actions the county will take to achieve adequacy of expenditures for the county assessment and taxation program. The department will not certify any plan submitted by a county that requires more than three tax years to comply with ORS 308.232 and 308.234, ORS chapter 309 and other laws requiring equality and uniformity in the system of property taxation within the county.

(3) The plan submitted by the county may include any combination of increased expenditures or increased efficiencies that will lead to adequacy within the specified duration of the plan.

(4) Acceptance of the plan described in paragraph (2) of this rule is at the discretion of the department. No plan will be accepted for which compliance is conditioned only upon the county's future receipt of funding authority not in existence at the time of submission of the plan.

Example 1: The department determines County A's assessment program is inadequate because it fails to meet the minimum requirements under ORS 294.175. The department determines that two appraisers are necessary to satisfy the minimum requirements. Pursuant to a plan submitted under ORS 294.181, County A proposes to add two appraisers beginning in December of the fiscal year, contingent on passage of a local option tax levy in November to fund the positions. Because the plan to fund the appraisers is contingent upon passing the local option tax measure, it cannot be approved by the department.

Example 2: The department determines County B's assessment program is inadequate because it fails to meet the minimum requirements under ORS 294.175.

County B submits a plan under ORS 294.181 that agrees to add two appraisers by January 1 of the first year of the plan. The department determines that this will enable County B to achieve adequacy in the assessment program by the midpoint of the second year of the plan. Accordingly, the department certifies the expenditures presented by the county under the plan. The county also proposes to add yet another appraiser (for a total of three) if a local option tax measure passes in the first year of the plan. The addition of the third appraiser is contingent upon passage of the local option tax, but the plan to add two appraisers is not so conditioned. The fact that a local option tax has been proposed to add staff or resources during the plan period will not automatically disqualify the plan submitted by the county.

(5) The department will not certify expenditures under this alternative method of certification if the expenditures for the tax year for which the filing under ORS 294.175 was made, or for any subsequent year covered by the plan, do not demonstrate the county's ability to maintain adequacy in all of the following functions:

(a) Accurate appraisal of real property in accordance with OAR 150-308.234;

(b) Assessment of new construction, subdivisions, segregations, consolidations, omitted property, and other exceptions activity described in ORS 308.146;

(c) Accurate processing of special assessment qualification applications and disqualifications, including but not limited to, farm, forest, and small tract forest programs;

(d) Accurate processing of property tax exemption and deferral applications and disqualifications;

(e) Accurate processing of personal property, real property, and combined property tax returns;

(f) Providing explanation of the process of developing real market value to a court of jurisdiction for a property tax assessment under appeal;

(g) Completing an annual ratio report and appraisal plan that meets the requirements of ORS 309.200, 308.234, and OAR 150-309.200-(A), (B), and (C);

(h) Maintaining accurate property records by timely processing deeds, including address and name changes and property transfers;

(i) Maintaining tax collection and distribution activity as prescribed by statute, including tax statement issuance, roll corrections, refunds, and processes related to delinquency notification, foreclosures, warrants, and bankruptcies;

(j) Maintaining all cadastral functions for new and existing tax lots, including lot line adjustments, consolidations, creating new maps, and updating tax code boundary changes;

(k) Maintaining accurate and current assessment and tax rolls; and

(L) Completing roll summary reports as required by ORS 309.330.

(6) The department will notify the county governing body if it determines the plan as submitted does not meet the requirements of this rule. The notice will contain an explanation of the reasons for the determination and describe specific items required to achieve adequacy.

(7) If the department determines that the plan submitted by the county or subsequently modified during conference meets the requirements of this rule, the department will certify to the county governing body the expenditures for assessment and taxation at the level contained in the county's estimate filed with the department pursuant to ORS 294.175 or as adjusted by the conference agreement.

(8) A county operating under an accepted plan must certify to the department not less than 15 days prior to the close of each fiscal quarter that the county is in compliance with the accepted plan. The certification must be in the form of a written status report that provides details demonstrating the county's compliance with the accepted plan.

(9) The department will deny grant funds pursuant to ORS 294.178(5) for any quarter in which the department determines the county has failed to demonstrate compliance with the accepted plan.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.175, 294.178, 294.181
Hist.: REV 3-2007(Temp), f. & cert. ef. 4-5-07 thru 10-1-07; REV 4-2007, f. 7-30-07, cert. ef. 7-31-07

150-294.187
Transfers from the CATF to the CAFFA Account

Each county must notify the Department of Revenue of the amount it deposits into the County Assessment Function Funding Assistance (CAFFA) account from the County Assessment and Taxation Fund (CATF) account at the time of deposit. The deposit must occur on or before the 10th working day of the month following the last day of the fiscal quarter.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.187
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(F); REV 6-2003, f. & cert. ef. 12-31-03; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

150-294.187(1)(c)
Calculation of Interest on Late Payments

The interest rate calculation must be carried out a minimum of seven places to the right of the decimal point and rounded back to six places to the right of the decimal point. When rounding back to the sixth place, all numbers five and above increase the sixth place by one; all numbers four or less have no effect on the sixth place number.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.187
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(E)

150-294.311
Definition of Taxing Authority

(1) "Permanent Tax Rate" means the tax rate calculated by the Department of Revenue for the 1997-98 tax roll or as subsequently adjusted as provided for in ORS 310.246. In the case of districts that have never levied a tax, it is the tax rate adopted by voters as set out in Section 11(3)(c), and Section 11(8), Article XI of the Oregon Constitution.

(2) "Local Option Tax" means an ad valorem property tax that exceeds the limitation of the Article XI, Section 11, of the Oregon Constitution. The tax must be adopted by voters as set out in Section 11(4) and Section 11(8), Article XI of the Oregon Constitution.

(3) "Bond levy" means a levy for payment of bond principal and interest for general obligation bonds.

(4) "GAP Bond" means obligations which have been in existence since before December 5, 1996 as set out in Section 21(7)(a)(b)(c) of Chapter 541, Oregon Laws 1997. No new "GAP Bonds" can be created.

(5) "Local government pension and disability plan obligations that commit ad valorem property taxes" has the meaning set out in Section 11(5)(c), Article XI of the Oregon Constitution.

(6) "Urban Renewal Special Levy" means the amount an urban renewal agency can collect in addition to the amount collected by applying the rates of the taxing districts in the plan area to be increment value in the plan area in order to carry out the urban renewal program as set out in Section 34 of Chapter 541, Oregon Laws 1997.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.311
Hist.: RD 5-1985, f. 12-26-85, cert. ef. 12-31-85; RD 2-1994, f. 12-15-94, cert. ef. 12-31-94; REV 4-1998 f. & cert. ef. 6-30-98

150-294.311(6)
Definition of Budget Document

(1) The complete copy of the budget document filed with the county clerk under ORS 294.458 must include the following:

(a) A copy of the two notices of the budget committee meeting showing the dates published, or an affidavit of publication, accompanying a copy of the actual publications;

(b) A copy of the notice of budget hearing showing the date published, or an affidavit of publication, accompanying a copy of the actual publications;

(c) A copy of all of the budget detail sheets;

(d) A copy of the resolution statements or ordinance that adopt the budget, and make appropriations;

(e) If the district is imposing taxes on property subject to ad valorem property taxation, a copy of the resolution statement or ordinance that imposes the tax;

(f) If the district is imposing taxes on property subject to ad valorem property taxation, a copy of the resolution statement or ordinance that categorizes the tax for purposes of Article XI, section 11(b), of the Oregon Constitution;

(g) If the district is imposing taxes on property subject to ad valorem property taxation, a copy of the Notice of Property Tax Levy form;

(h) Sample ballots of any new ad valorem tax authority approved by the voters and being used for the first time by the district.

(2) The budget document may include any other document the district chooses to include.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.311
Hist.: REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; Renumbered from 150-310.060(7), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.311(30) [Renumbered to **150-294.311(31)**]

150-294.311(31)
Definition of Organizational Unit

As used in ORS 294.305 to 294.565, an organizational unit is an administrative subdivision of a municipal corporation accountable for specific services, functions, or activities.

Example 1: Cities may allocate expenditures within the general fund to organizational units such as: City Recorder, Police Department, Fire Department, Library, etc.

Example 2: Counties may allocate expenditures within the general fund to organizational units such as: Assessor's Office, Treasurer's Office, Clerk's Office, Health Department, etc.

Example 3: For municipalities other than cities or counties, the governing body may identify organizational units within the general fund by the responsibilities assigned, e.g., General Administration, Plant Maintenance, etc.

Stat. Auth.: ORS 305.100 & 294.495
Stats. Implemented: ORS 294.311
Hist.: 12-1-77, Renumbered from 150-294.311(19); TC 18-1979, f. 12-20-79, cert. ef. 12-31-79, REV 4-1998, f. & cert. ef. 6-30-98, Renumbered from 150-294.311(23); Renumbered from 150-294.311(26) by REV 6-2003, f. & cert. ef. 12-31-03; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04; Renumbered from 150-294.311(30) by REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-294.338(2)
Budgeting Grants, Gifts, Bequests, and Devises

(1) All grants, gifts, bequests, and devises that have been partially received in a prior year must be included with the budget document. Similarly when the receipt and the amount of such items are known for the ensuing year, they also must be included although the grant, gift, bequest, or devise is for a specific purpose.

(2) Those grants, gifts, bequests, and devises for a specific purpose that have been received on a regular basis, that are expected to be received in the ensuing year, but the actual amount is uncertain, should be budgeted at an amount reasonably expected to be received. Monies received in amounts above those estimated in the budget document may be expended through the special provisions of ORS 294.338(2), after a resolution or ordinance providing the appropriation of such amounts is made. Those grants, gifts, bequests, and devises for a specific purpose that have not been received on a regular basis should also be included within the budget document where there exists a degree of certainty as to the receipt and amount for the ensuing year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.338
Hist.: f. & cert. ef. 12/31/77; REV 4-1998, f. & cert. ef. 6-30-98, Renumbered from OAR 150-294.326(2); Renumbered from OAR 150-294.336-(B); Renumbered from 150-294.326(3), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.346
Establishing a Financial Reserve Fund

Reserves funds under ORS 294.346 may be established only for those purposes set out in ORS 280.050; i.e., for the financing of a service, project, property or equipment which the municipal corporation is authorized to perform, construct or acquire and for repairs and improvements thereto and maintenance and replacement thereof. Reserves for undefined purposes or projects are not permitted.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.346
Hist.: REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-280.100; Renumbered from 150-294.525, REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.346-(A)
"Reserved for Future Expenditure" Requirement

(1) "Reserved for future expenditure" means a budget requirement which is not intended to be expended during the fiscal year or budget period in which it is budgeted. This requirement shows the amount a municipal corporation plans to "save" for future financing of a service, project, property or equipment which the municipal corporation is authorized to perform, construct or acquire.

(2) An amount reserved for future expenditure may be appropriated during the fiscal year or budget period if the situation meets the conditions for a supplemental budget outlined in ORS 294.471(1) or as otherwise authorized by law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.346
Hist.: REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-280.100(A); REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; Renumbered from 150-294.525-(A), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.358
Detail Sheets for Biennial Budgets

(1) The detail sheets containing the estimates of resources and expenditures for a biennial budget must show the total estimated expenditures for both years of the ensuing budget period.

(2) The detail sheets containing the estimates of resources and expenditures for a biennial budget must show actual expenditures for the two budget periods preceding the current period, the estimated expenditures for the current budget period, and the estimated expenditures for the ensuing budget period. For the first three budget periods after changing from a fiscal year budget period to a biennial budget period, the sheet should contain a mix of single year data and biennial data. The fiscal year data will appear in the columns that represent budget periods that occurred before changing to biennial budgeting. This fiscal year data must not be "doubled" or "interpolated" to make it comparable to the data reported in the columns that represent biennial budget periods.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.358
Hist: REV 2-2002, f. 6-26-02, cert. ef. 6-30-02); Renumbered from 150-294.376, REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.361(1)-(A)
Resources Are Not Required to Be Budgeted

Resources are not considered budget resources and are not required to be budgeted if the following three criteria are met:

(1) The municipal corporation holds the resources merely for safekeeping;

(2) Expenditure of resources is not under the control of the municipal corporation or a third party chosen by the municipal corporation; and

(3) The resources are expended for the purpose other than that for which the municipal corporation levies a tax or expends funds.

(4) In addition, resources are not budgeted resources if the criteria of ORS 294.361(3) and 294.338(2) are met.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.361
Hist.: RD 9-1986, f. & cert. ef. 12-31-86; RD 5-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-294.361(1); RD 2-1995, f. 12-29-95, cert. ef. 12-31-95; REV 4-1998, f. & cert. ef. 6-30-98

150-294.361(1)-(B)
Negative Resources

A municipal corporation when estimating its budget resources shall not show negative amounts. Resource amounts should be the net amount that the municipal corporation anticipates to receive.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.361
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89

150-294.361(2)
Budget Resources

Budget resources of a county shall not include proceeds and interest arising under ORS 275.090 to 275.310 which will be distributed to any municipal corporation. However, any proceeds and interest distributed under 275.090 to 275.310 shall be considered a budget resource for the municipal corporation receiving the distribution, including the county.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.361
Hist.: RD 5-1985, f. 12-26-85, cert. ef. 12-31-85

150-294.368(2)
Estimating Tax Revenue for Biennial Budgets

(1) When estimating the amount of tax revenue in a biennial budget, follow the procedure in ORS 294.368 for both years of the ensuing budget period and then add the two single-year amounts to get the biennial total.

(2) Each year during the biennial budget period, when certifying the tax levy for the ensuing year, use the single-year estimate for the corresponding year for the purposes of complying with ORS 310.060.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.368
Hist: REV 2-2002, f. 6-26-02, cert. ef. 6-30-02); Renumbered from 150-294.381(2), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.388
Proposed Expenditures-Required Presentation

Proposed expenditures presented within a traditional budget or a program budget must be detailed fully by object of expenditure and as a minimum, be classified by organization unit or program, and categorized into the object classifications listed in ORS 294.388(3) and (4) or according to the classification of accounts approved by the Department of Revenue under ORS 294.393. Organizational unit has the same meaning as found in OAR 150-294.311(31).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.388
Hist.: 12-31-77, Renumbered from 150.294.351; TC 18-1979, f. 12-20-79, cert. ef. 12-31-79; Renumbered from 150-294.352, REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.388(1)-(A)
Governmental Fund Definitions

(1) For the purpose of this rule “fund” means a fiscal and accounting entity with self-balancing accounts to record cash and other financial resources, related liabilities, balances and changes, all segregated for specific, regulated activities and objectives.

(2) Municipal corporations organized and operated on a fund accounting system shall prepare estimates of expenditures for the ensuing year using the following types of funds:

(a) The General Fund — To account for all financial resources except those required to be accounted for in another fund.

(b) Special Revenue Funds — To account for the proceeds of specific revenue sources (other than special assessments, expendable trusts, or for major capital projects) that are legally restricted to expenditure for specific purposes. Funds as defined in ORS 294.311(39) and 280.040(2) are examples of special revenue funds.

(c) Capital Projects Funds — To account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by Proprietary Funds, Special Assessment Funds and Trust Funds).

(d) Debt Service Funds — To account for the accumulation of resources for, and the payment of, general long-term debt principal and interest.

(e) Special Assessment Funds -- To account for the financing of public improvements or services deemed to benefit the properties against which special assessments are levied.

(f) Enterprise Funds — To account for operations:

(A) That are financed and operated in a manner similar to private business enterprises — where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or

(B) Where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

(g) Internal Service Funds — To account for the financing of goods or services provided by one department or agency to other departments or agencies of the governmental unit, or to other governmental units, on a cost-reimbursement basis.

(h) Trust and Agency Funds — To account for assets held by a governmental unit in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds. These include:

(A) Expendable Trust Funds;

(B) Nonexpendable Trust Funds;

(C) Pension Trust Funds; and

(D) Agency Funds.

(3) Estimates of expenditures and resources are not required to be budgeted if the following three criteria are met:

(a) The municipal corporation holds the resources merely for safekeeping;

(b) Expenditure of the resources is not under the control of the municipal corporation or a third party chosen by the municipal corporation; and

(c) The resources are expended for a purpose other than that for which the municipal corporation levies a tax or expends funds.

(4) Estimates of expenditures and resources are not budgeted if the criteria of ORS 294.361(3) and 294.338(2) are met.

(5) It is the intention of this administrative rule to adopt governmental fund definitions that are recognized as generally accepted governmental accounting principles.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.388
Hist.: RD 9-1986, f. & cert. ef. 12-31-86; REV 4-1998, f. & cert. ef. 6-30-98, Renumbered from 150-294.352(1); Renumbered from 150-294.352(1)-(A), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.388(7)
General Operating Contingencies

(1) An estimate for general operating contingency may be included in any operating fund. The general operating contingency is not a fund, but an appropriation within a fund. This type of appropriation is allowed on the assumption that in the operation of any municipal corporation certain expenditures will become necessary which cannot be foreseen and planned in the budget.

(a) The estimate for a general operating contingency, like other budget estimates, must be a good faith estimate. The estimate must be reasonable and based on past experience, comparable information, or through the use of risk analysis.

(b) The estimate for general operating contingencies must not be used to compensate for improper estimating practices in the preparation of the budget.

(2) A fund that finances an activity, the cost of which can be accurately estimated, must not include an appropriation for a general operating contingency.

Example 1: A debt service fund for general obligation bonds cannot include a general operating contingency. The requirements for a debt service fund are known at the time the budget is prepared. Therefore, there is no unknown or unascertainable aspect to the expenditures from the fund.

(3) A non-operating fund must not have an estimate for general operating contingencies.

Example 2: A reserve fund is used to save money for future expenditure. Since this is a type of nonoperating fund, it must not have an estimate for a general operating contingency.4) An expenditure must not be made directly from the general operating contingency appropriation. The amount must be transferred from the general operating contingency appropriation to another existing appropriation. The general operating contingency is then reduced, and the appropriation in question is increased correspondingly.

(a) The amount, in aggregate, that may be transferred by resolution of the governing body during any fiscal year or budget period is limited to 15 percent of the total appropriations budgeted in the fund, per ORS 294.463(2).

(b) Total transfers may exceed 15 percent of the total appropriation budgeted in a fund following the adoption of a supplemental budget prepared for that purpose. See ORS 294.471 for the supplemental budget process.

Example 3: The General Fund has total appropriations in the amount of $100,000, including a $20,000 appropriation for the general operating contingency. Only $15,000 of the general operating contingency may be transferred (by one or more transfers) by a resolution of the governing body. Any portion of the remaining $5,000 can be transferred only through a supplemental budget.

Stat. Auth.: ORS 305.100 & 294.495
Stats. Implemented: ORS 294.388
Hist.: 2-66; 12-67; RD 11-1984, f. 12-5-84, cert. ef. 12-31-84; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04); Renumbered from 150-294.352(8), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.398
Unappropriated Ending Fund Balance

(1) A municipal corporation may include an estimate for unappropriated ending fund balance in its budget. This estimate is intended to provide the municipal corporation with the working capital or cash balance to finance activities for the period between July 1 of the ensuing fiscal year and the time when sufficient new revenues become available to meet cash flow needs of the fund. When calculating the amount of the unappropriated ending fund balance, the municipal corporation will determine the cash requirements of the ensuing fiscal year that must be met prior to the receipt of sufficient revenues. If all other resources estimated to be received during the same period are not sufficient to meet these needs an unappropriated fund balance may be budgeted. The maximum amount of cash or net working capital that may be budgeted as an unappropriated ending fund balance is the difference between the budget requirements except the unappropriated ending fund balance and the total resources of the fund.

(2) Unless unexpected expenditures result from civil disturbance, other calamity, or natural disaster defined in ORS 294.481, expenditure cannot be made from the unappropriated ending fund balance in the year or budget period in which it is budgeted. Except for the specific conditions cited in ORS 294.481, no action may be taken through resolution, ordinance or supplemental budget to spend these monies. It is not necessary to include the unappropriated ending fund balance in the schedule of appropriations. Any amount carried over by reason of an unappropriated ending fund balance becomes a budget resource in the fiscal year or budget period following the one for which the unappropriated ending fund balance is being budgeted.

(3) For those municipal corporations that adopt a biennial budget, an unappropriated ending fund balance may be included to cover the cash requirements that must be met prior to the receipt of sufficient revenues only in the first year of the ensuing budget period. Cash requirements in the second year of a biennial budget must be estimated, budgeted, and appropriated.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.398
Hist.: 2-66; 12-67; TC 18-1979, f. 12-20-79, cert. ef. 12-31-79; RD 15-1982, f. 12-6-82, cert. ef. 12-31-82; RD 11-1984, f. 12-5-84, cert. ef. 12-31-84; REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02); Renumbered from 150-294.371, REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.414
Quorum Necessary to Hold Meeting

A budget committee must have a quorum, or majority of the total membership of the committee, present in order to hold a meeting. To take any action requires the affirmative vote of a majority of the total budget committee membership. Majority is defined as one more than half unless otherwise specified by law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.414
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89; REV 4-1998, f. & cert. ef. 6-30-98, Renumbered from OAR 150-294.336-(B); Renumbered from 150-294.336, REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.426(8)
Charging for Budget Document Copies

(1) The budget document of a municipal corporation becomes a public record as defined under ORS 192.410(4) at the time the proposed budget is filed with the office of the governing body. It remains a public record throughout the budget process and after adoption. Municipal corporation budget documents are not exempt from disclosure under Oregon law so they may be inspected by interested individuals. ORS 192.440 authorizes the custodian of any public record to give a copy of the record to a person when requested.

(2) A municipal corporation may charge a fee for a copy of any version of the budget under ORS 192.440.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.426
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89; REV 4-1998, f. & cert. ef. 6-30-98); Renumbered from 150-294.401(7), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.438
Reporting Historical Data for Published Budget Summaries

(1) For purposes of complying with ORS 294.438, the published budget summary for a biennial budget must show the total amount of estimated budget resources and expenditures for both years of the ensuing biennial budget period as approved by the budget committee.

(2) The summary of the ensuing biennial budget must be compared to the actual expenditures and budget resources of the most recent preceding budget period and to the estimates for the current budget period.

(3) When changing from a fiscal year budget to a biennial budget, there will be several budget periods in which the published budget summary contains a mix of single year data and two-year biennial data. This fiscal year data must not be “doubled” or “interpolated” to make it comparable to the data reported in the columns that represent biennial budget periods.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.438
Hist: REV 2-2002, f. 6-26-02, cert. ef. 6-30-02); Renumbered from 150-294.416, REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.453(1)
Quorum Necessary to Hold Meeting

To hold a budget hearing there must be a quorum, or majority of the total governing board membership present. To take any action requires the affirmative vote of a majority of the total governing board. Majority is defined as one more than half unless otherwise specified by law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.453
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89); Renumbered from 150-294.430(1), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.456(1)-(A)
Property Taxes Certified

(1) The amount or rate of any property tax proposed to be certified by a municipal corporation which is subject to Local Budget Law cannot exceed the amount or rate approved by the budget committee. The budget committee must approve the amount or the rate of each tax to be lawfully certified to the assessor. Any portion of the certified tax exceeding the amount or the rate approved by the budget committee that was not included in a budget summary republished as required by ORS 294.456(1)(c) will not be extended by the assessor on the assessment roll except as provided in 294.476.

(2) The budget committee of a municipal corporation which is subject to Local Budget Law that adopts a biennial budget must approve the total amount or the rate of each tax to be certified each year. Taxes must be certified in each year of the budget period. Any portion of the certified tax exceeding the amount or the rate approved by the budget committee for either year of the budget period that was not included in a republished budget summary will not be extended by the assessor on the assessment roll except as provided in ORS 294.476.

(3) The budget document must include a complete detail of proposed expenditures requiring levy of property taxes.

Stat. Auth.: ORS 305.100 & 294.495
Stats. Implemented: ORS 294.456
Hist.: 2-69; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-294.435; REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 17-2008, f. 12-26-08, cert. ef. 1-1-09; REV 4-2011, f. 12-30-11,

cert. ef. 1-1-12); Renumbered from 150-294.435(1)-(A), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.456(1)-(C)
Publishing of Amended Budget Document

When publishing an amended budget document, the governing body must include the following information using the same publishing procedures as the original summary described under ORS 294.448:

(1) The date, time, and place of the hearing on the amended budget.

(2) The place and times the amended budget document is available for inspection.

(3) A financial summary of the total budget described in ORS 294.438, as amended by the governing body.

(4) A reference to the date and publication that the budget as approved by the budget committee was originally published. For example: "To review the budget as approved by the budget committee prior to this amendment, see page 5 in the May 1, 2003, edition of the Beach Bugle."

Stat. Auth.: ORS 305.100 & 294.495
Stats. Implemented: ORS 294.456
Hist.: REV 6-2003, f. & cert. ef. 12-31-03; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; Renumbered from 150-294.435(1)-(C), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.456(3)
Manner of Appropriations

(1)(a) Except as otherwise permitted or required by statute or rule, amounts must be appropriated by organizational unit or program of each fund, with one appropriation amount for each organizational unit or program.

(b) Notwithstanding section (1)(a), municipal corporations may appropriate a separate amounts for an activity within an organizational unit or program as long as the organizational unit or program to which the separately appropriated amount is allocated is also clearly identified.

(2) Separate amounts in each fund must be appropriated for any operating expenses for personnel services, materials and services, or capital outlay that cannot be allocated to a specific organizationsl unit or program and for debt service, special payments, interfund revenue transfers, and operating contingencies.

(3) If a municipal corporation is permitted by statute to estimate expenditures in a manner other than by organizational unit or program under ORS 294.388(2) and no other statute or rule prescribes the manner for appropriation of such expenditures, then it must appropriate by personnel services, materials and services, capital outlay, debt service, special payments, interfund revenue transfers, and operating contingencies for each fund.

(4) When adopting a biennial budget the appropriated amount is the total for the fund for both years of the ensuing budget period.

(5) When adopting an annual budget the appropriated amount is the total for the ensuing fiscal year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.456
Hist.: 12-31-77; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-294.435; TC 18-1979, f. 12-20-79, cert. ef. 12-31-79; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; Renumbered from 150-294.435(3), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12; REV 3-2014, f. & cert. ef. 7-31-14

150-294.458(3)-(A)
Documents to File When Certification Cannot Be Certified By July 15

(1) In those instances where the municipal corporation cannot certify to the assessor by July 15, the municipal corporation shall submit, to the county assessor, a written request for an extension stating the reason for request.

(2) Not later than the extension date granted by the assessor, the municipal corporation shall file two copies of the following documents with the county assessor, and where required, one copy with the Tax Supervising and Conservation Commission:

(a) Notice of categorization and certification, (LB-50, UR-50 or ED-50);

(b) The final resolution or ordinance adopting the budget, making the appropriations, and declaring and categorizing the tax for each fund;

(c) Sample ballots of all local option tax levies recently approved by the voters to be imposed for the first time; and

(d) Sample ballots of all newly established permanent rates approved by the voters and to be imposed for the first time.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.458
Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-294.555; TC 18-1979, f. 12-20-79, cert. ef. 12-31-79; RD 11-1984, f. 12-5-84, cert. ef. 12-31-84; RD 5-1985, f. 12-26-85, cert. ef. 12-31-85; RD 12-1987, f. 12-18-87, cert. ef. 12-31-87; RD 9-1990, f. 12-20-90, cert. ef. 12-31-90; REV 4-1998, f. & cert. ef. 6-30-98; Renumbered from 150-294.555(2)-(A), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.458(3)-(B)
Budget Certification Document to Be Submitted

(1) Local governments imposing a tax on property shall submit two copies of the following documents to the assessor's office:

(a) The resolution statements that adopt the budget, make appropriations, categorize the tax and levy the taxes.

(b) The notice of property tax certification form (LB-50, UR-50 or ED-50).

(c) Voter approved ballot measures for new local option taxes.

(d) Voter approved ballot measure for the establishment of a permanent rate.

(2) Local governments that do not levy an ad valorem tax but are subject to Local Budget Law (ORS 294.305 to 294.565) shall file directly with the Oregon Department of Revenue a copy of the resolution adopting the budget and making appropriations.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.458
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 2-1994, f. 12-15-94, cert. ef. 12-31-94; REV 4-1998, f. & cert. ef. 6-30-98; Renumbered from 150-294.555(2)-(B), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.463(3)
Transfers of Appropriations

(1) A transfer of appropriation is a decrease of one existing appropriation and a corresponding increase of another existing appropriation category.

(2) During the fiscal year or budget period the governing body of a municipal corporation may transfer from one existing appropriation category within a fund to another existing appropriation category in the same fund when a resolution or ordinance is adopted that authorizes this transfer. The resolution or ordinance must state the purpose of the transfer, and the amount of the transfer. The appropriation reductions must equal the appropriation increases. The net effect of this change on the total appropriation in the fund must be zero.

(3) Transfer of appropriations and a like amount of budget resources may be made between funds by governing body resolution or ordinance. Transfer of appropriation and a like amount of resources to another fund is accomplished by increasing or creating, a "transfer to other funds" appropriation category in the fund from which the transfer is made. The amount of this increased or created appropriation must be offset by reductions in one or more other appropriation categories in the fund from which the transfer is made. The net effect of this change on the total appropriation in the fund from which the transfer is made must be zero. Appropriation categories in the receiving fund are increased by the amount of the transfer, and the budget resources available to that fund are increased by the amount of resources transferred from the fund from which the transfer is made.

(4) Transfers referred to in this rule apply to transfers that occur after the budget has been approved and that are made during the fiscal year or budget period for which the appropriations are made. Nothing in this rule prohibits or regulates lawful transfers that have been budgeted in accordance with local budget law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.463

Hist.: RD 5-1985, f. 12-26-85, cert. ef. 12-31-85; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2010, f. 7-23-10, cert. ef. 7-31-10; Renumbered from 150-294.450(3), REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.471
Supplemental Budget Procedures

(1) During the fiscal year or budget period, the governing body may find that an unanticipated condition requires adjustments to the budget. If the condition meets the requirements of ORS 294.471, the governing body may prepare a supplemental budget.

(2) A supplemental budget may only authorize additional expenditures during the current fiscal year or budget period. It must not authorize expenditures for a past or future fiscal year or budget period.

(3) A supplemental budget that is being prepared to create or increase an appropriation must be adopted before any expenditures are made in excess of the current annual budget appropriations.

(4) Only one supplemental budget may be prepared as a result of a single situation or condition that meets the requirements of ORS 294.471.

(5) When the estimated expenditures in the supplemental budget differ by 10 percent or less from the expenditures of the adopted annual or biennial budget for each fund being adjusted, the governing body may adopt the supplemental budget at one of its regular meetings. Fund expenditures do not include unappropriated ending fund balance, amounts reserved for future expenditure, interfund transfers, or contingency amounts.

(a) Notice of the regular meeting at which the supplemental budget will be adopted must be published by one of the methods in ORS 294,311(35) not less than 5 days before the meeting. The notice must include a statement that a supplemental budget will be considered at the meeting.

(b) The resolution adopting and appropriating the supplemental budget may take place at the same regular meeting.

(6) When a new fund is being established or when the estimated expenditures in the supplemental budget differ by more than 10 percent from the expenditures in the budget as most recently amended prior to the supplemental budget, the governing body must publish notice and hold a public hearing before adopting the supplemental budget. The notice of the hearing must include for each fund being adjusted by more than 10 percent: the name of the fund; and the new total for each resource line item or appropriation category being changed, added or deleted.

Example: (This example is of the published summary of a supplemental budget. in which the new total expenditure in the Utility Fund differs by more than 10 percent from the amount currently budgeted.) The supplemental budget transfers $20,000 in resources and appropriation authority from the General Fund to the Utility Fund Materials and Services, increasing that appropriation and the total expenditure in the Utility Fund to a new total of $40,000.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.471
Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 1-1992, f. 5-28-92, cert. ef. 6-1-92; REV 4-1998, f. & cert. ef. 6-30-98; REV 8-2000, f. & cert. ef. 8-2-00; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 5-2009, f. & cert. ef. 7-31-09; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; Renumbered from 150-294.480, REV 7-2012, f. 7-26-12, cert. ef. 8-1-12

150-294.900
Councils of Governments Subject to Certain Budgetary Requirements

(1) A group of government units is a council of governments that must comply with ORS 294.900 to 294.930 if the group:

(a) Is operating under an intergovernmental agreement authorized by ORS 190.003 to 190.110;

(b) Functions under the direction and control of more than one member government;

(c) Provides services directly to individuals.

(2) "Services Directly to Individuals" means any act performed, without working through another governmental unit, which contributes to the advantage of an individual. A service is still provided directly to the public if a Council of Governments contracts with a private entity to provide a service.

(3) The organization is subject to ORS 294.900–294.930 if the nature of the activity provided directly to individuals is similar, but is not limited to the following examples:

(a) Services to Individual Employers. Marketing, financial packaging, development of training sites.

(b) Services to Individual Trainees or Employees. Recruitment, eligibility determination, orientation, information, referral, adult and youth occupational training.

(c) Services to Individual Senior Citizens. Senior employment programs, home-delivered meals, assistance by escort, shopping or transportation services, programs for the aging.

(d) Services to Individuals by Offering Basic Needs Assistance. Food and commodities distribution, low-income relief, weatherization, family professional services (legal, medical, psychiatric, etc.), operation/maintenance of sewerage facilities.

(e) Services to Individuals by Providing Public Safety Assistance. Communicating, dispatching, relaying or call transferring in the furtherance of public safety.

(f) Services to Individuals toward Economic Development. Low-interest loans to businesses, capital for small business start-ups, assistance with expansion/diversification projects, goods and services information, grant applications.

(g) Services to Individuals by Offering a benefit through centralization. Operating public educational TV channels, photocopy services, computer applications to individual businesses, regional information system data to individuals, library services to individuals, recreational programs.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.900
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89

150-294.905(2)
Members of the Budget Committee: Governing Body and Appointees. Definition of Representatives of the Services Provided for a Council of Government

(1) Not all of the governing body members are required to participate on the budget committee. The number of governing body representatives may be determined by each council of governments.

(2) For the purpose of appointive representation on the budget committee as described in ORS 294.905(2), a "representative of services provided" means a person who is not prohibited from serving by OAR 150-294.905(4) and who is willing to be a delegate for a general classification of services provided. As an example: It is not necessary to seek a member from each senior citizen program (senior employment, home-delivered means, senior transportation, etc.). The member(s) may be appointed from the general classification of "senior citizen services" or "public safety services" or "job training services." A good faith effort should be made to obtain a number of appointive representatives equal to the number of governing body representatives.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.905
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89

150-294.905(4)
Restrictions on Appointive Budget Committee Members for a Council of Government

In order to avoid bias in favor of aservice provider or any unit of government, the following are prohibited from serving as an appointive budget committee member: Officers, agents or employees of the council of governments or of the providers of services. Appointive members shall be lay persons who represent a general service classification.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.905
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89

150-294.915
Duties of the Budget Committee of a Council of Government

The budget committee shall notify the public of the time and place of public meetings on the budget and shall make the budget available. The budget committee must approve a budget document prior to any council of government hearings on that document.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.915
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89

150-294.920
Duties the Governing Body of a Council of Government

The council of governments notifies the public of the time and place of a public hearing on a budget document asapproved by the budget committee. The council of governments must pass a resolution adopting a budget document as approved by the budget committee or as modified by the council of governments.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.920
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89

DIVISION 305

GENERAL ADMINISTRATION OF REVENUE LAWS — MULTISTATE TAX COMPACT

150-305.100
Requirement for Social Security Numbers

(1) Pursuant to the authority provided by ORS 305.100 and 42 USC §405, tax returns, refund claims, applications, registrations, records, requests for information, reports, and other items of a similar nature filed with the Department of Revenue shall state the social security number or numbers of the taxpayer or taxpayers, homeowner or renter, applicant, reporting individual, or other person making the filing, as required by the item being filed. Social security numbers are used by the Department of Revenue as a part of providing expeditious and practicable processing systems in the administration of the laws by the department, including (but not limited to) such matters as the issuance of tax refunds, allocation or application of incoming payments by program, administration of applicable payroll taxes, personnel and payroll work, and other matters of a similar nature. A social security number submitted under any provision of the laws imposing a tax upon or measured by net income is subject to the confidentiality provisions of ORS 314.835 and 314.840. Penalties for violation of such confidentiality provisions are set forth in ORS 314.991.

(2) The department may require a taxpayer to provide the department with a copy of the taxpayer's Social Security card.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.100
Hist.: 12-27-74(Temp); 12-30-74; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-305.100-(A)
Notice of Rule Making

Prior to the adoption, amendment or repeal of any rule (except temporary rules adopted under ORS 183.335(5)), the Department of Revenue shall give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Oregon Bulletin referred to in ORS 183.360, at least fifteen (15) days prior to the effective date.

(2) By mailing a copy of the Notice to persons on the Department of Revenue's mailing list established pursuant to ORS 183.335(7).

(3) By mailing or furnishing a copy of the notice to:

(a) Associated Press;

(b) The Capitol Press Room; and

(c) Persons and organizations which the department from time to time, and from its experience, knowledge and expertise, determines are interested persons under ORS 183.335(1)(a). A list of those persons and organizations, as amended from time to time, shall be maintained in the office of the Director of the Department of Revenue.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.100
Hist.: 10-20-75; 12-3-76; RD 5-1984, f. 12-5-84, cert. ef. 12-31-84; RD 4-1992, f. & cert. ef. 12-29-92; RD 2-1993, f. & cert. ef. 4-27-93

150-305.100-(B)
Applicable Dates

Administrative rules adopted by the department, unless specified otherwise by statute or by rule, shall be applicable for all periods open to examination.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.100
Hist.: RD 10-1986, f. & cert. ef. 12-31-86

150-305.100-(C)
Tax Amnesty

(1) Definitions. For purposes of Chapter 710, Oregon Laws 2009 (Senate Bill 880) and this rule:

(a) "Amnesty program" refers to the tax amnesty program created by Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) "Amnesty period" refers to the time in which the application is required to be filed (October 1 through November 19, 2009).

(c) "Amnesty return" refers to the Oregon original or amended qualified tax return filed in accordance with section (3) of this rule.

(d) "Amnesty liability" is a liability that is reported on an original amnesty return or additional liability that is reported on an amended amnesty return filed in conjunction with the amnesty program.

(e) "Application" is the department-produced form entitled "Amnesty Application" that is referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(f) "Participant" means the person, entity, or corporation taking part in the amnesty program.

(g) "Post amnesty penalty" means the 25 percent penalty established by Section 4, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(h) "Tax program" means a type of tax that is collected and administered by the Department of Revenue and that is eligible for amnesty. The following are tax programs eligible for amnesty:

(A) Personal Income Tax;

(B) Corporate Income or Excise Tax;

(C) Inheritance Tax;

(D) Fiduciary (trust/estate) Tax;

(E) Transit District (self-employment) Tax.

(2) Applications. To be eligible for amnesty, a participant must have filed an application within the amnesty period on a form prescribed by the department. Applications were due on or before November 19, 2009 and must be complete and signed by the participant(s). Applications that were not complete or that were received after November 19, 2009 will not be accepted and the participant will not qualify for the amnesty being sought on that application.

(3) Amnesty Returns. Amnesty returns must have been filed no later than January 19, 2010. Amnesty returns that were not complete or are received after January 19, 2010 will not qualify for the amnesty being sought and all amnesty-related waivers of penalty and interest will be disallowed. Disqualified amnesty returns will be processed as if there had been no amnesty program.

(4) Installment Payments.

(a) Amnesty participants may enter into an installment payment agreement with the department to satisfy an amnesty liability by making regular monthly, or more frequent, payments over a designated period of time.

(A) No agreement may extend beyond May 31, 2011 and participant(s) must satisfy all amnesty liabilities on or by May 31, 2011.

(B) If an amnesty participant fails to fully comply with the terms of an installment payment agreement, all amnesty-related waivers of penalty and interest will be disallowed. However, the participant may ask the department to find that the failure to fully comply with the terms of the installment payment agreement was due to "reasonable cause" as that term is defined in subsection (b) of this section. If the department makes such a finding, the installment payment agreement may resume, notwithstanding the failure to fully comply, subject to further conditions satisfactory to the department and provided that full payment is received no later than May 31, 2011. Upon a department finding of "reasonable cause," the participant will remain eligible for the penalty and interest waivers referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) For purposes of this section, "reasonable cause" exists when the participant exercises ordinary care and prudence in abiding by the terms of the installment agreement but was unable to comply with the agreement due to circumstances beyond the participant's control. To determine if the participant used ordinary care and prudence, the department will consider the participant's reasons for not abiding by the terms of the installment plan, and;

(A) The length of time between the event cited as a reason for the noncompliance and the missed or reduced installment payment(s); and

(B) Whether or not the participant could have reasonably anticipated the event(s) causing the noncompliance and taken reasonable steps to avoid it.

(c) The following nonexclusive list describes circumstances when reasonable cause may exist:

(A) Death or serious illness of the participant or a member of the participant's immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the participant's home, or place of business;

(C) Unavoidable and unforeseen absence of the participant from the state immediately prior to the due date of the missed or reduced installment payment;

(D) An unplanned and significant change in the participant's financial circumstances, through no fault of the participant, such that the participant demonstrates to the department's satisfaction that they are unable to meet reasonably necessary living expenses and also comply with the terms of the agreement; or

(E) Erroneous written information from the department, which caused the failure of the participant to timely pay.

(d) The following nonexclusive list describes circumstances that do not, in isolation, result in a determination of reasonable cause:

(A) Reliance on an employee or tax professional to pay on time; or

(B) Inability of, or failure of oversight by, the participant to pay the amnesty liability.

(5) The department will waive penalty and interest under Chapter 710, Oregon Laws 2009 (Senate Bill 880) only after the participant has paid all of the tax and one-half of the interest due.

(6) Closing Agreements.

(a) Policy. To assure that the amnesty program is administered efficiently and equitably, the department may waive penalties and interest for taxpayers entering into a closing agreement, under subsections (b) and (c) of this section, for the period of time immediately prior to, or during, the amnesty period. Or, if the taxpayer has filed a timely and complete application, a closing agreement may be executed through January 19, 2010.

(b) Interest waiver. Consistent with its authority under ORS 305.145(3) and notwithstanding OAR 150-305.145(3), the department may, when it determines that "good and sufficient cause" exists, based on the facts and circumstances of each case, waive up to 50% of the interest normally imposed. For purposes of this paragraph, "good and sufficient cause" exists when the department determines that entering into a closing agreement will result in an equity or efficiency by providing a streamlined alternative filing mechanism for taxpayers.

(c) Penalty waiver. Consistent with its authority under ORS 305.145(4) the department may, based on the facts and circumstances of each case and when it determines that entering into a closing agreement under this section will enhance the long-term effectiveness, efficiency or administration of the tax system, waive all, or a portion of, penalties otherwise imposed.

(7) Post amnesty penalty.

(a) The department will impose the post amnesty penalty on the total amount of unpaid tax for any tax year or reporting period for which the taxpayer meets any one of the conditions described in subparagraph (A) and either subparagraph (B) or (C):

(A) The taxpayer:

(i) Failed to file an application and amnesty return;

(ii) Filed an original or amended amnesty return that either failed to report or underreported tax liability;

(iii) Failed to file an original return where the department assesses a tax under ORS 305.265(10) or 314.400.

(B) The taxpayer could be subject to a penalty for one or more of the following (whether or not the penalty is actually imposed):

(i) ORS 314.402 (substantial understatement of income);

(ii) ORS 305.265(10) (failure to file a report or return with intent to evade the tax);

(iii) ORS 314.403, 314.404 or 314.406 (abusive tax avoidance transaction);

(iv) ORS 314.075 (evasion of any requirement of any law imposing income taxes);

(v) ORS 305.815 (false return, statement, or document);

(vi) ORS 305.265(13) (return falsely prepared and filed with intent to evade tax);

(vii) ORS 118.260, 305.992, or 314.400(2) or (3) (failure to file).

(C) The taxpayer claimed a credit on the return for which there was no reasonable basis in fact or law. "No reasonable basis in fact or law" means that the taxpayer knows or should have known that the department would disallow the credit being claimed because:

(i) The department adjusted a credit on a return previously filed by the taxpayer based on a substantially similar set of facts;

(ii) The credit being claimed is based on fraudulent substantiation;

(iii) The credit cannot be confirmed with a certifying agency, if applicable; or

(iv) The taxpayer takes a position in claiming the credit for which there is or was no substantial authority for such treatment.

(b) Exception. The post amnesty penalty will not be imposed when based upon a corresponding adjustment made to an Oregon tax return as a result of change or correction by the Internal Revenue Service (IRS) unless the IRS has also finally imposed a penalty under sections 6662, 6662A, 6663 or 7201 of the Internal Revenue Code upon the change. Nothing in this subsection precludes the department from assessing the post amnesty penalty if an adjustment is made on a return that is unrelated to an IRS change or correction.

(c) The post amnesty penalty will only be imposed on deficiencies or assessments that apply to tax years 2007 or earlier. The post amnesty penalty will not be imposed after January 1, 2014.

(d) Waiver. The department may waive the post amnesty penalty if the taxpayer demonstrates, to the department's satisfaction, that the failure to participate in the amnesty program was due to circumstances beyond their control.

[Publications: Publications referenced are available from the agency]
Stat. Auth.: ORS 305.100, 305.145, 305.229
Stats. Implemented: Ch 710, 2009 OL (SB 880)
Hist.: REV 8-2009(Temp), f. & cert. ef. 10-15-09 thru 3-31-10; REV 4-2010, f. 3-15-10, cert. ef. 3-19-10

150-305.100-(D)
Electronic Filing

(1) Any return, statement, other document or report required to be filed under any provision of the laws administered by the Department of Revenue may be filed in electronic (as defined in ORS chapter 84) form if an authorized electronic method of filing such return, statement, other document or report is made available by the department.

(2) A return, statement, other document or report that is filed in electronic form may not be denied legal effect or enforceability solely because it is in electronic form.

(3) A return, statement, other document or report that is filed in electronic form is deemed to be filed and received on the date actually received by the department, the IRS, or on the date stated in the electronic acknowledgment of receipt issued by the department.

(4) A return, statement, other document or report filed in electronic form must be verified pursuant to the rules of the department adopted under ORS 305.810.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 84.052, 305.100
Hist.: REV 2-2014, f. & cert. ef. 7-31-14

150-305.105
Declaratory Rulings

(1) Applicability of this rule. The provisions set forth in this rule shall apply to declaratory ruling requests with respect to the validity or applicability of:

(a) Tax and revenue laws of the State of Oregon to any person, property or state of facts.

(b) Any Department of Revenue administrative rule to any person, property or state of facts.

(2) Definitions for purposes of this rule.

(a) Declaratory Ruling. A declaratory ruling is an advisory opinion or order issued by the department specifying how a tax and revenue law of the State of Oregon or an administrative rule promulgated by the department is to be applied to any person, property or state of facts.

(b) Person. The term person includes an individual, a county assessor or tax collector, trust, estate, partnership, association, joint stock company, corporation, syndicate, group, pool, joint venture, or other unincorporated organization or group. Such term also includes a guardian, trustee, executor, administrator, trustee in bankruptcy, receiver, conservator, or any person acting in a fiduciary capacity.

(3) General practice. Upon petition by an interested person, the department has discretionary authority to issue declaratory rulings. This discretion shall be exercised in the light of all relevant circumstances, including the business or other reasons motivating the transaction, and with a view to issuing rulings only to the extent consistent with the proper administration of the tax laws.

(4) Examples of situations in which declaratory rulings shall not be issued. Generally, the department shall not issue declaratory rulings if:

(a) At the time the ruling is requested the identical issue is involved in a person's return for an earlier tax year and:

(A) That issue is being examined by the department or the courts;

(B) That issue has already been examined by the department and an opinion and order has been issued;

(C) That issue has been examined by the department and the statutory period of limitation for appealing the department's determination has not expired; or

(D) That issue has already been examined by the Oregon Tax Court and a decision has been issued.

(b) The person is considering alternative plans of proposed transactions or is requesting a ruling on a hypothetical situation.

(c) The administrative rule being considered is scheduled for amendment as it relates to the issue involved or, the legislature is considering, or has adopted, legislation which will necessitate revision to the rule as it applies to the tax year involved.

(d) The transaction to be ruled on will not be entered into until some indefinite future time.

(e) The legislature is considering a revision to the statute as it applies to the tax year involved.

(5) Instructions to person requesting a ruling.

(a) A request for a declaratory ruling shall be accompanied by a declaration in the following form: "Under penalties for false swearing, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested declaratory ruling are true, correct, and complete." The declaration shall be signed by the person or persons on whose behalf the request is made or by their representative. The person who signs for a corporation shall be an officer of the corporation, an authorized employee or an authorized representative of the corporation regularly employed by the corporation in tax matters who has personal knowledge of the facts. The officer or employee shall be one whose duties are not limited to obtaining a ruling from the department. The person signing for a trust, estate, or partnership shall be a fiduciary or partner who has personal knowledge of the facts.

(b) Each request for a declaratory ruling shall contain a complete statement of all of the facts relating to the transaction. Such facts include: names, addresses, telephone numbers, and personal identification numbers of all interested parties; a full and precise statement of the reasons for the transaction, and a carefully detailed description of the transaction. (The term "all interested parties" does not mean that a list is required of all shareholders of a widely-held corporation requesting a declaratory ruling or a list of employees where a larger number may be involved.) If the request deals with only one step of a larger integrated transaction, the facts, circumstances, etc. relating to the entire transaction must be submitted. In addition, true copies of all contracts, wills, deeds, agreements, instruments, and other documents in the transaction shall be submitted with the request. Original documents, such as contracts, wills, etc., should not be submitted because they become part of the department's file and will not be returned. All material facts and documents shall be included in the taxpayer's letter requesting a ruling or in supplemental letters, or attached to the letter. Material facts furnished to the department orally shall be promptly confirmed by letter to the department with a declaration in the form described in section (5)(a). This confirmation shall be furnished within 30 calendar days to be considered part of the request.

(c) The request shall contain a statement of whether, to the best of the knowledge of the person and the person's representative(s), if any, the identical issue is in a tax return of the person for an earlier tax year and, if so, whether the issue (1) is being examined by the department or (2) has been examined by the department and whether the statutory period of limitation for appealing the department's determination has expired. If, after the request is filed but before a declaratory ruling is issued, the person knows that an examination of the issue by the department has been started, the person shall notify the department of such action. If a return is filed before a ruling is received concerning the issue, a copy of the request shall be attached to the return. This alerts the department's processing center and avoids premature action on the issue.

(d) If the person advocates a particular conclusion, an explanation of the grounds for the assertion shall be furnished, together with a statement of relevant authorities in support of the person's views. The person is encouraged to inform the department and discuss the implications of any legislation, court decisions, or administrative rules that the person determines to be contrary to the position advanced. If the person determines that there are no contrary authorities, a statement to this effect would be helpful in the ruling request. Identification and discussion of contrary authorities will generally enable department personnel to arrive more quickly at a full understanding of the issue and the relevant authorities.

(e) A request for a declaratory ruling shall be sent to the Oregon Department of Revenue, Director's Office, Revenue Building, 955 Center St. N.E., Salem, OR 97301. The request shall clearly indicate what tax program is affected (i.e., personal income tax, corporate excise tax, property tax, timber tax, etc.).

(f) A person who wants to have a hearing on the issue or issues involved shall indicate this in writing when filing the request.

(6)(a) If a request for a declaratory ruling does not comply with all the provisions of this administrative rule, the request shall be acknowledged, and the requirements that have not been met shall be pointed out. If a request for a ruling lacks essential information, the person shall be notified in writing that if the information is not received within 30 calendar days, the request shall be closed. After 30 days, a letter shall be sent by the department to inform the taxpayer that a declaratory ruling will not be issued. If the information is received after the request is closed, it shall be reopened and treated as a new request as of the date the essential information is received.

(b) The department shall process requests for declaratory rulings as expeditiously as possible. Although consideration shall be given to requests for processing by a specified time, the department cannot give assurance that any ruling will be processed by the time requested.

(c) A person may obtain information regarding the status of a request by calling the department representative whose name and telephone number is shown on the acknowledgement of receipt of the request.

(d) A person who receives a declaratory ruling before filing a return about any transaction that has been consummated and that is relevant to the return being filed shall attach a copy of the ruling to the return when it is filed.

(7) Effect of declaratory rulings.

(a) A declaratory ruling issued by the department pertains only to the person, property or state of facts presented in the ruling request and is binding on the department and the requestor with respect to those facts. The ruling is not binding on the department if the facts and circumstances which the ruling addresses are different when the department is auditing a transaction once it has occurred.

(b) A change in the applicable statutory law or an amendment of administrative rules has the effect of an automatic revocation of a declaratory ruling to the extent that the declaratory ruling is inconsistent with the amended statute or administrative rule. The director may also revoke or modify a declaratory ruling by direct letter to the taxpayer.

(c) A person shall not rely on a ruling issued to another person unless that person has substantially identical facts or property as the person who received the prior declaratory ruling. If the person knows of a ruling issued to another person on a similar state of facts, such information shall be included in the declaratory ruling request. The department may use the prior declaratory ruling as a guide in issuing a subsequent declaratory ruling on a similar state of facts unless the circumstances explained at section (4)(c) of this rule exist.

(8)(a) Hearings. A person may request a department hearing on all issues to be addressed by a declaratory ruling. The request must be in writing. If tentative findings have been made by the director or the director's agents prior to the hearing, they will be made available to the petitioner for use at the hearing. At least 30 days before the declaratory ruling hearing, parties to the hearing shall be given written notice of the procedures to be followed in the hearing. The hearing procedures shall be those which the department determines are best suited for the particular issues to be decided.

(b) Oregon Tax Court. A person may appeal a declaratory ruling issued by the department in the Oregon Tax Court and Oregon Supreme Court in the manner provided by ORS 305.445.

(9) Oral advice to persons.

(a) The department shall not issue declaratory rulings from oral requests. The request must be in writing and contain the information required in Section (5). However, representatives of the department ordinarily will discuss with taxpayers or their representatives, inquiries regarding: substantive tax issues; whether the department will issue rulings on particular issues and questions relating to procedural matters about submitting ruling requests. Any discussion of substantive issues shall be at the discretion of the department and shall not be binding on the department.

(b) Oral advice from the department is advisory only and the department is not bound to recognize it in the examination of the person's return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.105
Hist.: 1-64; 12-31-77; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2000, f. & cert. ef. 8-3-00

150-305.140
Release of Tax Lien and Clouds on Title

(1) Any request made to the Department for the release of a warrant, where such warrant is not in fact a lien on the title to the real property in question but merely a cloud on the title to such real estate, shall be accompanied by a statement. This statement shall show the facts affecting the title to the real property in question that render the Department's warrant a cloud on the title to such real property, and show the reasons the warrant does not actually constitute a lien thereon. Normally, such request should be accompanied by a current title report. However, the Department may require other documentary proof showing the present condition of the title of the property in question.

(2) Any request made to the Department for the release of the lien of any warrant shall be certified to be true by the taxpayer or by his authorized representative and shall disclose fully the circumstances relative to prior liens, including an estimate of the value of the property subject to the lien, a legal description of this property, a full and complete statement of the amount of all other liens prior to the Department's warrant and the date when such prior liens were acquired, an estimate of the amount to be recovered upon the sale of said property by foreclosure, and make reference to the subsection of ORS 305.140 on which reliance is placed as giving the Department the power to execute a release.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.140
Hist.: 1-64

150-305.140(3)(d)
Release of Lien

(1) The department may issue a release of a lien against real property if the department determines there is no value in the lien or the full value of the lien is realized. This release applies to the property described in the release only, the lien remains against all of the taxpayer's other property.

(2) A release may be requested by any party in interest to a transfer of real property that is subject to a lien of the department. The request must be in writing and state the reason for the release, the circumstances of the transfer and a description of the terms of the transaction. The request must be accompanied by a preliminary title report and a complete legal description of the property to be released. An escrow statement may be included to show the distribution of funds. Other supporting documentation may be required by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.140
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85

150-305.145
How to Appeal When the Department Denies a Request for Waiver of Penalty or Interest

(1) Waivers in General. ORS 305.145 allows the department to reduce or cancel any part or all of the interest or penalties imposed by Oregon law in certain cases. If the taxpayer has requested that interest or penalty be waived and the department denies that request, the taxpayer may appeal the denial by requesting a conference with the department.

(2) Appealing a denial when the department exercised its discretionary authority. If the taxpayer agreed that the interest or penalties were lawfully imposed, but the department denied the taxpayer's request for a discretionary waiver of interest or penalties under ORS 305.145(3) or (4), the taxpayer may request a conference within 30 days of the date of the department's notice of denial. The request for conference must be filed with the department as described in OAR 150-305.265(5). If the conference results in a denial of the waiver request, that decision is final and may not be appealed to the Oregon Tax Court.

(3) Appeals based on the accuracy of penalty or interest charges. If a taxpayer believes the interest or penalties were incorrectly imposed or calculated, the taxpayer may request a conference with the department within 30 days of the date of the department's first notice assessing interest or penalty. The conference request must be filed as described in OAR 150-305.265(5). If the conference results in a denial, the taxpayer may appeal the decision to the Oregon Tax Court as provided by ORS 305.275.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.145
Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-305.145(2)
Accrual of Interest After Waiver

(1) The Department of Revenue will notify the taxpayer in writing if interest is waived under ORS 305.145(1). The taxpayer must pay the amount of the assessment within the appropriate appeal period. If the taxpayer does not pay the balance in full within the applicable appeal period, interest will accrue from that time on the balance due as provided in ORS 314.400(4).

(2) If the balance due is based on a Notice of Assessment the appeal period is 90 days from the date on the notice. If the balance

due is based on a Magistrate decision, the appeal period is 60 days from the date of thedecision. If the balance due is based on a Tax Court Judgment, the appeal period is 30 days from the date of the judgment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.145
Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; REV 8-2002, f. & cert. ef. 12-31-02

150-305.145(3)
Discretionary Waiver of Interest

(1) General Policy. The department does not generally waive interest because interest represents a charge for the use of money.

(2) Interest may be waived for good and sufficient cause upon request of the taxpayer as required in OAR 150-305.145(4) section (4).

(a) The department will waive interest charges if the department determines the taxpayer did not have the use of the money on which the interest is charged.

Example 1: Sue mailed her Oregon tax payment to the Internal Revenue Service (IRS) by mistake. The IRS cashed the check and six months later sent the money back to Sue as an overpayment. Two months later, Sue mailed payment to the department. The department will waive interest for the six-month period that Sue did not have use of the money.

(b) The department will waive interest imposed for failure to pay state tax on or before the due date if the taxpayer:

(A) Files an Oregon tax return on or before the due date of the return, excluding extensions;

(B) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-approved alternative to filing a paper return;

(C) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);

(D) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of Assessment sent to the taxpayer;

(E) Establishes to the department's satisfaction that failure to pay Oregon tax was due to a good faith, mistaken belief of the taxpayer that the state tax had been paid; and

(F) Has not received relief under this subsection before.

(c) The waiver of interest provided by subsection (2)(b) of this rule applies only to interest otherwise imposed on unpaid tax and does not include interest imposed on the underpayment of estimated tax.

(3) When interest will not be waived.

(a) The department will not waive interest on a deficiency resulting from changes made to Oregon tax based on any adjustments reported by the Internal Revenue Service (IRS) or another state's taxing authority, regardless of the time lapse between completion of the IRS or another state's taxing authority adjustment and the completion of the Oregon audit report. ORS 314.380 and 314.410 require a taxpayer to report to the department a change in the taxpayer's net income as defined under OAR 150-314.380(2)-(B) resulting from an adjustment by the IRS or another taxing authority.

(b) The department will not waive interest to the extent the taxpayer earned interest on the money from another taxing authority.

Example 2: Don mailed his Oregon tax payment with his Idaho return by mistake. Idaho cashed the check and three months later refunded the $1,000 plus $25 of interest. One month later, Don mailed his payment to Oregon and requested a waiver of Oregon's interest charge of $35. The department will waive $10, which is the excess of interest charged over what Don received from Idaho.

(c) The department will not waive interest on underpayment of tax when the taxpayer requests that a refund shown on a delinquent return be applied to a later tax year. ORS 316.583 requires that a refund from a delinquent return that is applied to the next tax year is credited as an estimated payment as of the date the delinquent return was filed.

Example 3: Scott files his 2010 return on February 19, 2012 and requests that his tax year 2010 refund be applied to his tax year 2011 tentative tax. His 2010 tax return was due April 18, 2011. Because he filed his return late, the refund is credited as an estimated payment on February 19, 2012. The interest charged on the underpayment of 2011 estimated tax will not be waived because ORS 316.583 requires that the payment be credited as of the date the delinquent return is filed.

Stat. Auth.: ORS 305.100, 305.145
Stats. Implemented: ORS 305.145, 316.583
Hist.: REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-305.145(4)
Discretionary Penalty Waivers

(1) Taxpayers who believe a penalty was imposed improperly may contest the penalty as provided in OAR 150-305.145.

(2) For rules governing the waiver of penalty imposed under ORS 314.402, 316.177 or 316.992 see OAR 150-314.402; ORS 316.177(4); OAR 150-316.177(2), or 150-316.992.

(3)(a) The following penalties are eligible for waiver under this rule:

(A) The five percent penalty under ORS 314.400(1) or 321.560(2) for failure to file a report or return by the due date (five percent failure-to-file penalty);

(B) The five percent penalty under ORS 314.400(1) or 321.560(2) for failure to pay a tax by the due date (five percent failure-to-pay penalty);

(C) The additional 20 percent penalty under ORS 314.400(2)(a) or 321.560(3) for failure to file a report or return within three months after the due date (25 percent failure-to-file penalty);

(D) The additional 25 percent penalty under ORS 314.400(2)(b) for failure to file a report or return more than three months after the due date and the taxpayer receives a Notice of Determination and Assessment (50 percent failure-to-file penalty); and

(E) The 100 percent penalty under ORS 305.992 for failure to file three consecutive reports or returns by the due date of the third year (100 percent failure-to-file penalty).

(b) The following penalties are not eligible for waiver under this rule:

(A) The 100 percent penalty imposed under ORS 305.265(13), 314.400(3), or 321.560(4);

(B) Civil or criminal penalties imposed under ORS Chapter 323 (cigarette and other tobacco products); or

(C) Any penalty if the taxpayer was involved in an "abusive tax shelter" as defined in ORS 314.402(4) for the year at issue or any penalty imposed under ORS 314.403, 314.404 or 314.406.

(4) Taxpayers, or a taxpayer's representative authorized under ORS 305.230, may request that a failure-to-file or failure-to-pay penalty listed in subsection (3)(a) of this rule be waived. A waiver request is timely filed if the department receives it any time before the tax, penalty, and interest are paid in full, or up to one year after the tax, penalty, and interest are paid in full. The department's decision will be based upon the facts and circumstances in each case. To qualify for waiver, the taxpayer must:

(a) Make a written request that explains the reason for the taxpayer's failure to file a return or failure to pay the tax as required by law;

(b) Pay the balance of the account (other than an amount equal to the penalty amount that may be waived under this rule) for the tax period for which waiver is requested; and

(c) Meet all filing requirements for the tax program that assessed the penalty. Filing requirements for the tax program that assessed the penalty may be found in forms, instructions, or other forms of media provided by the department.

(5) Penalty Waivers Due to Circumstance beyond Taxpayer Control. The department will waive all of any penalty listed in subsection (3)(a) of this rule for any tax program if there are circumstances beyond the taxpayer's control that caused the failure to file or pay. The circumstance must have existed at the time the return or payment was due. The return must be filed and the tax must be paid within a reasonable period of time depending on the facts and circumstances of each case.

(a) Circumstances that are accepted by the department as "circumstances beyond the taxpayer's control" include, but are not limited to:

(A) Death or serious illness of the taxpayer or a member of the taxpayer's immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the taxpayer's home, place of business, or records needed to prepare the returns.

(C) Unavoidable and unforeseen absence of the taxpayer from the state that began before the due date of the return;

(D) A department employee provided erroneous written information to the taxpayer that caused the taxpayer to incur the penalty if:

(i) The taxpayer's reliance on the erroneous written information caused the failure of the taxpayer to pay or file timely;

(ii) The taxpayer supplied the department with complete information connected with the erroneous written information given; and

(iii) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous written information; or

(E) The taxpayer's reliance on incorrect advice from a professional the taxpayer could reasonably assume was knowledgeable and experienced in the tax involved if:

(i) The taxpayer's reliance on the advice caused the failure of the taxpayer to pay or file timely;

(ii) The taxpayer supplied the professional with complete information connected with the advice given; and

(iii) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous advice.

(b) Circumstances that are not accepted by the department as "circumstances beyond the taxpayer's control" include, but are not limited to:

(A) Reliance on a professional to merely prepare a return on time;

(B) Reliance on an employee of the taxpayer to prepare a return on time;

(C) Inability of the taxpayer to pay the tax unless there is also a cause listed in subsection (5)(a) of this rule.

(6) One-time penalty waiver.

(a) When a taxpayer does not qualify for relief under section (5) of this rule, the department will consider for waiver all of the penalty imposed under ORS 314.400(1) (five percent failure to file or pay penalty), 314.400(2)(a)(A) (25 percent failure-to-file penalty), or 321.560 (five percent failure to file or pay penalty or the 25 percent failure-to-file penalty) for one tax period if the taxpayer has not already received relief under this section for any tax period in the tax program that assessed the penalty, or in a "closely-related" tax program defined in subsection (6)(b) of this rule; and

(A) The taxpayer did not know that the taxpayer was subject to the tax program in which the penalty was imposed; or

(B) Has a history of filing and paying on time.

(b) "Closely-related" tax programs are:

(A) Transit payroll and withholding tax programs authorized under ORS 316.162 to 316.221;

(B) Forest Products Harvest Tax and Small Tract Forestland Severance Tax programs authorized under ORS Chapter 321; or

(C) Cigarette tax and Other Tobacco Products tax programs authorized under ORS Chapter 323.

(7) Payroll Tax Penalty Waivers. Taxes due under ORS 316.162 to 316.221 are collected at the source of payment and are held in trust for eventual payment to the State of Oregon. Because failure to remit trust funds or timely file reports related to trust funds is considered a breach of fiduciary duty, the standards for waiver of penalties imposed for such failures are higher than standards for waiver of penalties for other tax programs. For penalties imposed on withholding or transit payroll taxes due under ORS 316.162 to 316.221 and that do not qualify for waiver under subsections (5) or (6) of this rule, the department will provide waiver of penalties as follows:

(a) The department will waive the entire penalty imposed under ORS 314.400(1) (five percent failure to file or pay penalty) or 314.400(2)(a)(A) (25 percent failure to file penalty) for the most recent quarter due if the taxpayer has not received a penalty in the eight quarters preceding the most recent quarter.

(b) The department will waive half of the penalties imposed under ORS 314.400(1), 314.400(2)(a)(A), and 314.400(2)(a)(B) (50 percent failure-to-file penalty) if a taxpayer files the tax return and pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of the date shown on the Notice of Determination and Tax Assessment.

(c) The department will waive part of the 100 percent failure-to-file penalty imposed under ORS 305.992 as follows:

(A) The department will waive 70 percent of the 100 percent failure-to-file penalty if the taxpayer

(i) Files a withholding or transit district return before receiving a Request to File Notice, Notice and Demand to File, Combined Failure-to-File Notice, or any combination of these notices from the department that relates to the return the taxpayer filed; and

(ii) Pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of filing the return.

(B) The department will waive 50 percent of the 100 percent failure-to-file penalty if a taxpayer:

(i) Files a withholding or transit payroll return after receiving a notice listed in section (7)(c)(A)(i) of this rule; and

(ii) Pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of the date on the most recent notice.

(C) The department will waive 25 percent of the 100 percent failure-to-file penalty if the taxpayer, after receiving a Notice of Determination and Assessment, files the tax return and pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of the date of the notice.

(8) Additional Penalty Waivers. For penalties imposed on taxes other than withholding or transit payroll taxes due under ORS 316.162 to 316.221 and that do not qualify for waiver under subsections (5) or (6) of this rule, the department will provide waiver of penalties as follows:

(a) The department will waive half of the penalties imposed under ORS 314.400(1), 314.400(2)(a)(A), and 314.400(2)(a)(B) (50 percent failure-to-file penalty) if a taxpayer files the tax return within 30 days of the date shown on the Notice of Determination and Tax Assessment. The department will not waive this penalty for the tax program or "closely-related" tax program (as defined in subsection (6)(b) of this rule) that assessed the penalty if the taxpayer:

(A) Has not filed as required by the due date of the return (including extensions) for any three of the most recent six filing periods; or

(B) Has received the 100 percent failure-to-file penalty under ORS 305.992.

(b) The department will waive part of the 100 percent failure-to-file penalty imposed under ORS 305.992 as follows:

(A) The department will waive 70 percent of the 100 percent failure-to-file penalty if the taxpayer files a return before receiving a Request to File Notice, Notice and Demand to File, Combined Failure-to-File Notice, or any combination of these notices from the department that relates to the return the taxpayer filed.

(B) The department will waive 50 percent of the 100 percent failure-to-file penalty if the taxpayer files a return after receiving a notice listed in section (8)(b)(A) of this rule.

(C) The department will waive 25 percent of the 100 percent failure-to-file penalty if the taxpayer:

(i) Received a Notice of Determination and Assessment; and

(ii) Files the return (other than transit district or withholding returns) related to the Notice of Determination and Assessment.

(9) Late payments made in connection with electronic filing. The department will waive the entire five percent failure-to-pay penalty imposed under ORS 314.400(1) if the taxpayer:

(a) Files an Oregon tax return on or before the due date of the return, excluding extensions;

(b) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-approved alternative to filing a paper return;

(c) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);

(d) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of Tax Assessment sent to the taxpayer;

(e) Proves to the department that failure to pay Oregon tax was due to a good faith, mistaken belief of the taxpayer that the state tax had been paid; and

(f) Has not received relief under this section before.

(10) The provisions of this rule apply to discretionary waiver requests received on or after July 31, 2007.

Stat. Auth.: ORS 305.100, 305.145
Stats. Implemented: ORS 305.145
Hist.: REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-305.145(5)
Discretionary Penalty Waivers for Information Returns

(1) An employer or other payer, or a representative authorized under ORS 305.230, may request that a penalty assessed under ORS 314.360(4)(a) or 316.202(5)(a) be waived. The department's decision will be based upon the facts and circumstances in each case. To qualify for consideration of a waiver for penalties in this rule, the employer or other payer must:

(a) Submit a written waiver request that explains the reason(s) for:

(A) Filing an information return or W-2 after the due date for that return, or

(B) Filing an incorrect or incomplete information return or W-2.

(b) Meet all filing requirements under ORS 314.360 and 316.202.

(2) The waiver request must be received by the department within one year of the date of the department's written notice of assessment of the penalty.

(3) Penalties assessed under ORS 314.360(4)(b) or 316.202(5)(b) are not eligible for waiver consideration.

(4) Where applicable, the department will consider waiving penalties under ORS 314.360(4)(a) or 316.202(5)(a) for circumstances beyond the control of an employer or other payer, as described in OAR 150-305.145(4)(5).

(5) One-time penalty waiver for information returns or W-2s. When an employer or other payer does not qualify for relief under any other section of this rule, the department will consider waiver of the penalty under ORS 314.360(4)(a) or 316.202(5)(a) for one tax period if the employer or other payer has not already received relief under this section for any tax period; and

(a) The employer or other payer did not know they were subject to reporting requirements under ORS 314.360(4)(a) or 316.202(5)(a) for which the penalty was imposed; or

(b) The employer or other payer has a history of timely filing the type of return or form for which the penalty was imposed.

(6) The provisions of this rule apply to discretionary waiver requests received by the department after April 1, 2015.

Stat. Auth.: ORS 305.100, 305.145
Stats. Implemented: ORS 314.360, 316.202
Hist.: REV 2-2014, f. & cert. ef. 7-31-14

150-305.150
Closing Agreements

A closing agreement may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ended prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer, or it may relate to one or more separate items affecting the tax liability of the taxpayer. With respect to any taxable period ending subsequent to the date of the closing agreement, such agreement is subject to any change in or modification of the law enacted subsequent to the date of execution and applicable to such taxable period and each such agreement shall so recite.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.150
Hist.: 1-64

150-305.155
Settlement Offer

(1) As used in this rule:

(a) "Settlement offer" means an offer made by a taxpayer or an authorized representative to satisfy a self-assessed tax liability or tax liability on which appeal rights have expired.

(b) "Completed settlement offer" means a settlement offer that has been accepted by the department and for which final payment of the offered amount has been made.

(c) "Tax liability" means one or more tax years and programs.

(2) A settlement offer must be made in good faith. Fraud or misrepresentation on the part of the taxpayer or authorized representative may invalidate a settlement offer or a completed settlement offer.

(3) Prior to making a settlement offer, a taxpayer must be in compliance with filing requirements for all tax years and tax programs administered by the department. A taxpayer is "in compliance" when all required returns or reports have been filed, whether or not timely, or when, in the absence of a return, an assessment issued by the department under ORS 305.265(10) is considered correct and final by the taxpayer and the department.

(4) For settlement offers submitted on or after October 1, 2001, a taxpayer will only be allowed one completed settlement offer for which the 3-year future compliance requirement under subsection 10 has been satisfied.

(5) The settlement offer must be accompanied by a cashier's check or bankable funds in an amount equal to 5 percent of the total offer. This 5 percent payment will be deposited to the credit of the taxpayer's liability as part of the offer. This payment will not be refunded, even if the offer is not accepted. The taxpayer or authorized representative may withdraw their offer prior to the department's acceptance or rejection of the offer. The 5 percent payment will be refunded in such cases.

(6) The offer must be made by completing the "Application for Settlement Offer" form provided by the department. This form includes a calculation of an acceptable settlement offer, based upon a standard formula determined by the department.

(7) A settlement offer will be reviewed by the department and accepted or rejected based on the department's evaluation of the taxpayer's ability to pay and the anticipated costs of further collection work. Examples of facts and circumstances that may indicate the lack of an "ability to pay" include but are not limited to:

(a) The taxpayer's sources of income or assets are negligible in comparison to the outstanding liability.

(b) The taxpayer owns assets that, in total, are worth less than the settlement offer.

(c) The taxpayer demonstrates an inability to pay the account within two years.

(d) The taxpayer qualifies under "hardship" guidelines based on the financial statement.

(e) The taxpayer verifies an inability to borrow sufficient funds to pay the liability in full. Verification may be made by providing denial letters from lenders, providing a work history and by credit references.

(f) The taxpayer has little or no equity in personal assets, such as stocks, bonds or dividends; retirement funds; automobiles, truck, trailers or other vehicles; or equipment.

(g) The taxpayer has little or no equity in real property, such as a personal residence, farm, houseboat or bare land.

(8) A settlement offer will be deemed accepted when the department sends its written notification to the taxpayer or authorized representative. In the event an offer is rejected, the taxpayer or authorized representative will be promptly notified in writing.

(9) If the settlement offer is accepted, the taxpayer must pay the balance of the offered amount within 10 days of the date of the letter notifying the taxpayer of the acceptance. An election can be made to pay the balance in no more than six equal monthly installments. Payment must be in bankable funds.

(10) The terms of the settlement offer include but are not limited to:

(a) The taxpayer agrees to waive any appeal of the assessment of the tax liabilities that are the subject of the settlement offer under the provisions of ORS 305.280(3); and

(b) There is a 3-year future compliance period during which the taxpayer must file all tax returns that are due and must pay all amounts that have been assessed. The taxpayer must pay the amounts that have been assessed within 90 days of the date of the assessment unless paragraph (c) of this subsection applies. This compliance requirement includes all tax programs administered by the Oregon Department of Revenue. This 3-year compliance period begins when the taxpayer makes final payment of the amount offered.

(c) The taxpayer is not required to pay all amounts due within 90 days of the date they are assessed if the taxpayer files an appeal within 90 days of the assessment date. A taxpayer who files an appeal within 90 days of the assessment date must pay all amounts that are determined to be due within 90 days after the taxpayer's appeal rights have been exhausted or have expired and the liability has become final.

(d) An amount determined to be due under paragraph (c) of this subsection must be paid within 90 days after it has become final even if the appeal is finally resolved after the 3-year compliance period has expired.

(11) In the event that any of the requirements set forth in subsection (10) are violated, collection action may be reinstated on the full amount of the liabilities that were the subject of the settlement offer. *See* OAR 150-305.265(1) for settlement of disputed tax liabilities.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.155
Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 4-2001, f. 9-28-01, cert. ef. 10-1-01

150-305.155(1)(d)
Cancellation of Liabilities Discharged in Bankruptcy

(1) Generally, all tax liabilities which are discharged in a bankruptcy proceeding under the Bankruptcy Reform Act of 1978 shall be cancelled upon the Department's records. The Department shall issue an order cancelling the tax, penalty and interest on such liabilities and all liens of record shall be released.

(2) An exception to this general policy will be made when the department has a recorded lien on real property retained by the taxpayer after the bankruptcy proceeding is closed. Although the department is stayed from taking collection action on the account, nothing prevents the department from receiving payment, as one of the property lienholders, at the time the taxpayer disposes of the property. If the department determines a sufficient opportunity exists to collect state debt at some point in the future, the account will not be canceled nor will the lien be released.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.155
Hist.: RD 16-1982, f. 12-6-82, cert.ef. 12-31-82; RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-305.190
Subpoena Issued by the Department

(1) Definitions:

(a) As used in this rule "books and papers" shall mean and include any kind of written, printed, typed, or recorded matter of any kind or nature, however produced or reproduced, including but not limited to: all mechanical, electronic, sound or video recordings or their transcripts; microfilm and microfiche records; papers; service orders; repair orders; agreements; contracts; notes; memoranda; correspondence; letters; telegrams; statements; books; reports; studies; minutes; records; accounting books; maps; plans; drawings; diagrams; photographs; analyses or studies; and all drafts prepared in connection with such items. "Books and papers" also include electronic files and computer stored data.

(b) As used in this rule, "person" shall mean any individual, company, corporation, or other legal entity.

(c) As used in this rule, "director" shall mean the Director of the Oregon Department of Revenue or a designee as provided in ORS 305.057.

(d) As used in this rule, "third party" shall mean a person who is a stranger to a transaction, contract, or proceeding, but is in possession of books and papers or knowledge pertinent to the particular investigation.

(2) The director may issue subpoenas whenever necessary to fulfill the department's statutory responsibilities. ORS 305.190, 314.425.

(a) A subpoena may be issued to any person who: is an Oregon resident or domiciliary; earns income in this state; owns or has an interest in any real or personal property in Oregon; conducts business in Oregon; or has a registered agent in Oregon. A subpoena may also be issued to an officer, employee, or agent who has custody, possession, or control of the books and papers of such a person even if the officer, employee, or agent does not satisfy the conditions of this subsection.

(b) A subpoena issued by the director shall be limited to the needs of the particular investigation, including but not limited to, determining the correct fee or tax liability, collecting or resolving an account, or establishing an appropriate valuation or assessment. A subpoena is also subject to limitations found in ORS 192.550 through 192.590 referring to financial institutions.

(c) Generally, the director will issue a subpoena only after the department has made a written request, and the person has failed to comply within the time specified by the department. Exceptions to making prior written requests will be made if the director deems it necessary to protect the books and papers from destruction, or the department has an immediate need for the information being subpoenaed.

(d) The subpoenaed books and papers shall be produced at the location, time, and date required by the director.

(e) Within five business days from the date of service, the person subpoenaed may request from the director an extension of the time within which to comply with the subpoena.

(f) The department may compensate third parties for the cost of reproducing the books and records subpoenaed at the same rate per page as the department charges the public for reproducing department records (*see* OAR 150-192.440). The person may comply with the subpoena by providing the originals of the documents subpoenaed to the director. Copies will be made and the originals shall be returned to the person.

(g) At the director's option, electronic files and computer stored data shall be produced in printout form.

(h) The director has designated the department's division administrators as authorized to issue subpoenas.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.190
Hist.: RD 8-1990, f. 12-20-90, cert. ef. 12-31-90

150-305.192
Disclosure of Confidential Information Provided to the Department of Revenue

(1) The definitions in OAR 150-305.190 shall apply to this rule.

(2) The department must notify the provider of the "books and papers" of an intended disclosure more than 33 days in advance of the intended disclosure.

(3) The notice will include a description identifying the documents intended to be disclosed. The taxpayer shall also be advised that any "books and papers" may be disclosed if requested in the judicial process.

(4) The disclosure will not occur until:

(a) Thirty-three days after the notice; or

(b) The date of the final decision of the Tax Court or Supreme Court on a request for an order limiting disclosure.

(5) A notice under this section shall be sent to the provider at its last known address by certified mail. The period for requesting a court order shall start from the date of the mailing of the notice.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.192
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-305.190-(A); RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-305.193
Implied Consent

(1) A "designee" as used in this rule is a person, firm, organization, or agency authorized by a taxpayer to receive the taxpayer's confidential information. Taxpayer consent for the department to disclose to a designee may be in writing, oral, or implied. See OAR 150-314.840.

(2) Without evidence of the filing of written consent to disclose the taxpayer's information, the department may determine that a person is authorized to receive confidential information with respect to a particular tax matter by that person representing to the department that they are authorized to receive the information and revealing to the department knowledge of tax information that is:

(a) Related to the tax matter that is the subject of the inquiry or communication;

(b) Of a nature that is generally known only to the taxpayer; and

(c) Of a nature that taxpayers ordinarily do not share with others except for the purpose of empowering the person to participate in the taxpayer's tax matters. Information disclosed by the department will be limited based on the nature of information a person presents.

(3) The following examples illustrate how the department may conclude that a taxpayer has given implied consent to the department to disclose confidential information.

Example 1: A Certified Public Accountant (CPA) calls the department, states that he is authorized to receive confidential tax information and reveals knowledge of Mary's private tax information from a department billing or notice. The department concludes that Mary has given the department implied consent to disclose information to the CPA relating to that issue since she presumably gave a copy of her billing or notice to the CPA.

Example 2: A Licensed Tax Consultant (LTC) calls the department while preparing Tom and Sue's tax return to confirm estimated tax payments made during the tax year. The practitioner, after representing that Tom and Sue have authorized disclosure, is able to provide the date and amount of each scheduled payment. The department concludes that Tom and Sue have given the department implied consent to confirm the payment information provided since they presumably gave the LTC their tax information.

Example 3: A lawyer qualified to practice in Oregon calls the department wanting to set up a payment arrangement for her client, Ashley. She states that she is representing Ashley and presents knowledge of the tax debt and Ashley's personal financial situation. The department concludes that Ashley has given implied consent to discuss and negotiate a payment plan with the lawyer.

Example 4: While speaking on the telephone with a department customer service representative, Margaret asks if she may have her daughter listen and participate in the conversation on another telephone extension or a speaker phone. The department concludes that Margaret has given consent to disclose her confidential information to her daughter during the telephone call.

Example 5: Carlos comes to the department's walk-in assistance center and brings a friend to help interpret his questions. The department concludes that Carlos has given implied consent to disclose his confidential tax information to his friend during that visit.

Example 6: Jerry, age 19, is stationed overseas with the U.S. Army. His mother calls the department indicating that she is authorized to receive Jerry's confidential tax information and with information from a billing notice issued to Jerry three months previously, along with a copy of Jerry's return. She offers to make full payment on the debt using her credit card, if the department will provide the payoff balance. The department concludes that Jerry has given the department implied consent to provide the balance due to his mother.

Example 7: Jim and Julie file Oregon personal income tax returns jointly, but Jim files a Lane Transit District Self-Employment Tax return in his name only for his Schedule C business. Julie calls the department to discuss a billing notice issued on the LTD return. She tells the department that she performs all bookkeeping services for his business and has the return, notices and knowledge of all business transactions. The department concludes that Jim has given implied consent for the department to disclose information to Julie to resolve the billing notice.

Example 8: Martin, representing that he is an employee in the tax section of XYZ, Inc. authorized to discuss the business's tax matters, calls the department with information from a department billing notice requesting a payoff amount. The department concludes that XYZ, Inc. has given the department implied consent to provide Martin with the payoff amount.

Example 9: ZYX Corporation contracts with Advent Payroll Service to perform all of its payroll functions, including remittance of payroll withholding deposits and quarterly payroll reports. Advent registers with the department to remit ZYX's payments via electronic funds transfer by filing required tax information. The department concludes that ZYX has given the department implied consent to disclose payment-related confidential information to Advent in order to process payments received.

Example 10: Connie, an Elderly Rental Assistance recipient, asks her caseworker from Senior and Disabled Services to contact the department regarding benefits she received from that agency. The caseworker indicates that Connie has authorized her to receive confidential information and demonstrates full knowledge of Connie's ERA claim. The department concludes that Connie has given implied consent for the department to discuss her claim with the caseworker.

Example 11: Joseph electronically filed his individual income tax return. Joseph's tax return information is sent to an electronic return transmitter (e-file transmitter). The e-file transmitter in turn, sends it to the Internal Revenue Service (IRS) who then forwards it to the department. By receiving Joseph's tax return information from the e-file transmitter (via the IRS), the department concludes that the taxpayer has provided implied consent for the department to discuss information about Joseph's return with the transmitter. The types of disclosures the department may make to e-file transmitters about Joseph's information include, but are not limited to: acknowledgement of the receipt of his e-filed return, the reason for any delay in processing, refund payment dates or delays, and any other information the taxpayer has given to the e-file transmitter for purposes of transmitting such information to the department.

(4) If the department is unable to sufficiently determine that a taxpayer has given express or implied consent to disclose confidential information, written consent will be required.

Example 12: Donna calls the department inquiring as to whether Avis, her mother, received tax refunds during the past two years. Donna indicates that Avis has authorized her to receive confidential information. Although Donna provides Avis' full name, address, and social security number, she does not demonstrate any knowledge of Avis' tax returns or filing history. She does not have any notices or department letters to Avis in her possession. The department concludes that Avis has not given the department implied consent to disclose her confidential tax information to Donna. To receive the information, Donna will need to provide the department with written consent to disclose from Avis.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.193
Hist.: REV 4-2003, f. & cert. ef. 12-31-03; Renumbered from 150-OL 2003, Ch. 541, Sec. 3, REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 6-2008, f. 8-29-08, cert. ef. 8-31-08

150-305.217
When Deduction for Amounts Paid as Wages or Remuneration Permitted

(1) An employer will not be allowed a deduction for wages or payments to individuals for personal services rendered if:

(a) The employer does not file any information returns, such as 1099's or W-2's, as required by federal law, ORS 314.360 or 316.202; or

(b) The employer files information returns for payments made to an individual as if the individual was an independent contractor and upon examination the individual is determined to have actually been an employee.

Example 1: Brian owns a convenience store. Brian hired Elmer to help stock shelves in the evenings. Brian did not issue W-2's for Elmer. Brian's expense for payments made to Elmer for services rendered are not deductible.

Example 2: Assume the same facts in Example 1, except that Brian issued a Form 1099 to Elmer. Upon examination of Brian's return it was determined that Elmer was actually an employee, subject to withholding. Brian's expense for the payments made to Elmer for services rendered are not deductible.

(2) In the case of a failure to file as described in subsection (1)(a) of this rule, the expense will be allowed if the employer can show there was a circumstance beyond the employer's control that caused the failure to file returns as required by law. Refer to OAR 150-305.145(4) for examples of situations that are accepted by the department as a circumstance beyond the employer's control.

(3) In the case of a misclassification as described under subsection (1)(b) of this rule, the expense will be allowed if the employer can show reasonable cause as to why the appropriate returns were not filed. Reasonable cause will be considered if the employer had relied on information from:

(a) Judicial precedents;

(b) Published rulings;

(c) Technical advice memorandums or letter rulings;

(d) Past IRS audits in which there were no assessments of employment tax for amount paid to other individuals who held a similar position;

(e) A recognized practice of the industry;

(f) Advice from someone who would be considered knowledgeable in tax matters; or

(g) Written advice from an employee of the Department of Revenue.

(4) The preceding are factors that would influence the department's decision regarding the existence of reasonable cause. It is not intended to be an exclusive list.

Example 3: Martha owns a hair salon employing Sam as an independent contractor. She issues Sam a Form 1099 at the end of each year showing the amount paid to Sam that year for services rendered. The Internal Revenue Service had examined Martha's payroll in a prior year and no changes or assessments were made to Martha's return regarding her wage expense. Martha produces the audit reports that show the Internal Revenue Service accepted her characterization of Sam as an independent contractor. Therefore, Martha had reasonable cause to classify Sam as an independent contractor.

(5) For the purposes of section (3) of this rule, the evidence of reasonable cause must be clear and convincing.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.217
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-305.220(1)
Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2013, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of 0.3333 percent per month (4 percent annually). For a fraction of a month, interest will be computed at 0.0110 percent per day. For historic interest rates, see section (4) of this rule.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies.

Percentage Rates

Effective date	Annual rate	Monthly rate	Daily rate
Prior to January 1, 1969	6	0.5	—
January 1, 1969	8	0.6667	—
September 13, 1975	12	1.0	—
June 1, 1982	18	1.5	0.0493
August 1, 1986	17	1.4167	0.0466
January 1, 1987	16	1.3333	0.0438
January 1, 1988	11	0.9167	0.0301
January 1, 1993	8	0.6667	0.0219
January 1, 1995	10	0.8333	0.0274
January 1, 1999	9	0.75	0.0247
January 1, 2001	10	0.8333	0.0274
February 1, 200	8	0.6667	0.0219
February 1, 2003	7	0.5833	0.0192
January 1, 2004	6	0.5	0.0164
January 1, 2005	5	0.4167	0.0137
January 1, 2006	7	0.5833	0.0192
January 1, 2007	9	0.75	0.0247
January 1, 2009	6	0.5	0.0164
January 1, 2010	5	0.4167	0.0137
January 1, 2013	4	0.3333	0.0110

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

Example A: A 2002 return is filed and a tax of $500 is paid on February 25, 2006. Interest is computed as follows:
4/16/2003–1/15/2004 9 mos. @ .5833% = $ 26.25
1/16/2004–1/15/2005 12 mos. @ .5% = 30.00
1/16/2005–1/15/2006 12 mos. @ .4167% = 25.00
1/16/2006–2/15/2006 1 month @ .5833% = 2.92
2/16/2006–2/25/2006 10 days @ .0192% = .96
Total interest $ 85.13
The new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 16th of the month.

Stat. Auth.: ORS 305.100 & 305.220
Stats. Implemented: ORS 305.220
Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

150-305.220(2)
Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2013, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of 0.3333 percent per month (4 percent annually). For a fraction of a month, interest will be computed at 0.0110 percent per day. For historic rates, see section (6) of this rule.

(2) Interest starting date.

(a) As provided in OAR 150-314.415, the interest starting date for refunds of individual income tax, corporate excise tax, or corporate income tax, is 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is latest.

(b) The interest starting date for refunds not described in (2)(a) is 45 days after the return was due or 45 days after the date the tax was paid, whichever is later.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate paid on refunds will be the same as the interest rate charged on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds.

Percentage Rates

Effective date	Annual rate	Monthly rate	Daily rate
January 1, 1969	8	0.6667	—
September 13, 1975	6	0.5	—
June 1, 1982	12	1.0	0.0329
June 1, 1983	18	1.5	0.0493
August 1, 1986	17	1.4167	0.0466
January 1, 1987	16	1.3333	0.0438
January 1, 1988	11	0.9167	0.0301
January 1, 1993	8	0.6667	0.0219
January 1, 1995	10	0.8333	0.0274
January 1, 1999	9	0.75	0.0247
January 1, 2001	10	0.8333	0.0274
February 1, 2002	8	0.6667	0.0219
February 1, 2003	7	0.5833	0.0192
January 1, 2004	6	0.5	0.0164
January 1, 2005	5	0.4167	0.0137
January 1, 2006	7	0.5833	0.0192
January 1, 2007	9	0.75	0.0247
January 1, 2009	6	0.5	0.0164
January 1, 2010	5	0.4167	0.0137
January 1, 2013	4	0.3333	0.0110

Example 1: Debby files her 2002 return on April 15, 2003. Debby later files a 2002 amended return on May 15, 2005, asking for a refund of $500. The refund is paid on July 22, 2005. The interest is computed as follows:
5/30/2003–1/29/2004 8 mos. @ .5833% = $23.33
1/30/2004–1/29/2005 12 mos. @ .5% = 30.00
1/30/2005–6/29/2005 5 mos. @ .4167% = 10.42
6/30/2005–7/22/2005 23 days @ .0137% = 1.58
Total interest $65.33
The new interest rate, even though effective on the first day of a month, does not apply until the first day of the first interest period that begins after the effective date. In this example, the first interest period begins on the 30th of the month.

Example 2: Tom filed his 2004 return and paid the tax due on April 6, 2005.

On November 1, 2006, Tom filed a 2004 amended return to claim a refund of $1,000. The refund was paid on December 11, 2006. The interest starting date is May 30, 2005, the 45th day after the return was due. The interest is computed as follows:
5/30/2005–01/29/2006 8 mos. @ .4167% = 33.34
1/30/2006–11/29/2006 10 mos. @ .5833% = 58.33
11/30/2006–12/11/2006 12 days @ .0192% = 2.30
Total interest $ 93.97
Stat. Auth.: ORS 305.100 & 305.220
Stats. Implemented: ORS 305.220
Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16. Or Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 9-2009, f. 12-21-09, cert. ef. 1-1-10; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

150-305.220(3)
Interest Rate Formula Rule

(1) Once a year the director will compare the Oregon interest rate used for deficiencies, delinquencies, and refunds with the interest rate charged by the Internal Revenue Service for deficiencies and delinquencies to which one percent has been added. If the Oregon rate is one percent or more different from the modified federal rate, the director will revise the Oregon rate to the federal rate plus one percent. The comparison will be conducted in July and will use the rates charged by the Internal Revenue Service for the 3rd calendar quarter.

(2) Interest rates established under section (1) will be effective for interest periods beginning on or after January 1, 2004 and for interest periods beginning on or after January 1 of each year thereafter.

Stat. Auth.: ORS 305.100 & 305.220(3)(a)
Stats. Implemented: ORS 305.220
Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 2-1989, f. 12-18-89, cert. ef. 12-31-89; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 2-2003, f. & cert. ef. 7-31-03

150-305.222
Defines Order for Purposes of Interest Rate Increase

(1) If tax is not paid within 60 days after the date an individual is notified of a tax delinquency, the interest rate imposed by ORS 305.220 is increased by one-third of one percent per month (4% annually.) The interest is also increased after 60 days for tax due, if not paid or appealed, on a notice of assessment following a deficiency, or a final order issued by the Tax Court or Supreme Court that affirms the deficiency.

(2) For purposes of ORS 305.222, an order is defined as:

(a) A Decision and Judgment issued under a small claims procedure in the Magistrate Division of the Oregon Tax Court,

(b) Any Decision or Stipulated Judgment issued by the Magistrate Division of the Oregon Tax Court,

(c) A Judgment issued by the Regular Division of the Oregon Tax Court, or

(d) A Judgment issued by the Oregon Supreme Court.

Example 1: Clyde timely files his current year return on April 15, but does not pay the tax shown as due. The department processes the return and sends a notice of tax due on April 28. Additional interest is charged beginning on the 61st day (June 28) after the department issues the notice.

Example 2: Assume the same facts as Example 1, except the return is adjusted in processing and Clyde receives a notice of deficiency for additional tax due. No payment is received and a notice of assessment is issued 30 days later. The interest rate is increased beginning 61 days from the assessment date if the tax is not paid or appealed.

Example 3: Assume the same facts as Example 2, except that Clyde appeals the assessment to the Magistrate Division of the Oregon Tax Court and chooses a small claims procedure. The Decision and Judgment issued by the Magistrate affirms the tax due. If payment of the tax is not made within 60 days of the Decision and Judgment, interest is increased on the 61st day.

Example 4: Assume the same facts as Example 3, except that Clyde appeals to the Magistrate Division of the Oregon Tax Court and chooses a standard case. The Magistrate Division issues a Decision that upholds the assessment. Additional interest is charged beginning 61 days after the date of the Decision, if the tax is not paid and no appeal is filed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.222
Hist.: REV 8-2002 f. & cert. ef. 12-31-02

150-305.222(3)
Interest Rate Increase — Jurisdictional Only Appeals

For purposes of ORS 305.222(3), an appeal to the Oregon Tax Court must be one in which there is jurisdiction to consider the merits of the issue. In an appeal where the court must first determine whether it has jurisdiction to consider the issues, the increased rate of interest will commence on the 61st day after the date of the assessment. If it is determined that the court has jurisdiction to consider the merits of the issue, the rate of interest will be retroactively adjusted to the lower rate until a final decision is made.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.222
Hist.: RD 7-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99

150-305.228
Penalty for Dishonored Checks

(1) A penalty on dishonored checks will be assessed in the amount of $25.00 or three times the amount of the check, whichever is greater, but not to exceed $500.00. This is in addition to all other penalties provided by statute.

(2) This penalty will be imposed on a dishonored check if a prior dishonored has been tendered by any individual, firm, corporation, company, association, copartnership, estate, trust, trustee, receiver syndicate or any group or combination acting as a unit to the Department of Revenue within the immediately preceding two years. Checks tendered in the same envelope will be considered a single occurrence for the purpose of determining if a prior dishonored check has been received.

(3) This penalty will be assessed on all dishonored checks to the department including, but not limited to:

(a) Advance deposits on withholding accounts.

(b) Estimated tax payments for personal income and corporate excise tax.

(c) Payments to the department for transfer to other agencies or governmental units.

(4) For the purposes of this rule, “check” includes checks, drafts, orders and electronic funds transfers.

(5) The department may waive all of the penalty if reasonable basis exists. “Reasonable basis” means any situation in which circumstances beyond the taxpayer’s reasonable ability to control resulted in the refusal to honor the check. In determining reasonable basis for waiving the penalty the department will examine all facts and circumstances. Examples of reasonable basis for waiver include, but are not limited to:

(a) The bank returns the check to the payee in error.

(b) The taxpayer issues a stop payment order for presumably lost or stolen checks that are later located and processed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.228
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; REV 6-1998, f. 11-13-98, cert. ef. 12-31-98; REV 8-2001, f. & cert. ef. 12-31-01

150-305.230
Representation of Taxpayers before the Department of Revenue

(1) Application of ORS 305.230. The provisions of ORS 305.230 apply to all administrative proceedings before the Department of Revenue. Only those individuals who qualify under ORS 305.230 and this rule may represent the taxpayer.

(2) Individuals Authorized to Represent by Department Rule. The following individuals may represent the taxpayer before the department unless the individual is prohibited from representing the taxpayer by other Oregon law:

(a) An adult immediate family member of the taxpayer may represent the taxpayer.

(b) The taxpayer's registered domestic partner may represent the taxpayer.

(c) A regular full-time employee of an individual employer may represent the employer.

(d) A general partner or a regular full-time employee of a partnership may represent the partnership. For general representation rules for partnerships see OAR 150-305.242(2) and 150-305.242(5).

(e) An officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(f) Any shareholder in an S corporation may be designated to represent that S corporation as the tax matters shareholder.

(g) Any tax matters shareholder or any shareholder of an S corporation may represent another shareholder or group of shareholders of that S corporation in matters related to adjustments of items that flow through from the S corporation to the shareholder's return.

(h) Limited Liability Company (LLC) classified as a corporation. A member-manager, a non-member manager, or a regular full-time employee of the LLC may represent the LLC.

(i) Limited Liability Company classified as a partnership. Any member with management authority may represent the LLC (including a member in a member-managed LLC). Any regular, full-time employee of the LLC may represent the LLC. If the LLC has no members with management authority, then any member may represent the LLC (see ORS 63.130 and Treas. Reg. § 301.6231(a)(7)-2).

(j) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(k) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(l) An individual may represent any individual or entity that is outside the United States before department personnel when such representation takes place outside the United States.

(m) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or by rule) to sign the tax return, may represent the taxpayer during an examination of the tax year or period covered by that tax return. This provision does not permit such individuals to represent taxpayers, regardless of the circumstances, before conference officers, revenue agents, legal counsel or similar department employees.

(n) A taxpayer's authorized agent may represent the taxpayer in proceedings relating to the property tax assessment of designated utilities and companies by the Oregon Department of Revenue under ORS 308.505 through 308.665 and 308.805 through 308.820. For purposes of this rule, an "authorized agent" means a person who is authorized by a company assessed under ORS 308.505 to 308.665 and 308.805 to 308.820 to transact all business related to the filing or processing of an annual statement filed as required by ORS 308.525 or all business related to the filing of a request for a director's conference under ORS 308.595.

(o) Persons authorized to represent in an ad valorem property tax conference or proceeding under ORS 305.230(1)(d), any person licensed by the Oregon State Board of Tax Practitioners, and consulting foresters may represent a taxpayer in any proceeding with respect to taxes imposed under ORS Chapter 321. For purposes of this rule, "consulting forester" means a person who is engaged by the taxpayer to render expert or professional advice in forest management related matters.

(p) The director may, subject to restrictions imposed under other Oregon law, authorize an individual who is not otherwise eligible under this rule to represent a taxpayer before the department. The sole fact that an individual does not qualify under another section of this rule is not an adequate reason to request special permission to represent a taxpayer.

(3) Revocation of Authorization. The department, in its discretion, may revoke the authority to represent a taxpayer granted under section (2) of this rule.

(4) Representation by a Tax Matters Shareholder.

(a) A tax matters shareholder may be designated to represent an S corporation before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(b) An S corporation that elects to designate a tax matters shareholder as its authorized representative in proceedings before the department for issues relating to the S corporation adjustments on a Notice of Deficiency must make the designation as provided in this rule.

(c) The tax matters shareholder designated for Oregon purposes may be the federal tax matters shareholder or may be another shareholder, and must be a shareholder who is:

(A) A shareholder in the S corporation at some time during the taxable year to which the Notice of Deficiency pertains; or

(B) A shareholder in the S corporation at the time the designation is made.

(d) In order to designate a tax matters shareholder, an S corporation must file a signed statement with the department. The statement must:

(A) Identify the shareholders making the designation by name, address, and social security number;

(B) Identify the S corporation and the designated shareholder by name, address, and taxpayer identification number;

(C) Declare that the statement is a designation of a tax matters shareholder for the taxable year to which the Notice of Deficiency relates; and

(D) Authorize the tax matters shareholder as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization.

(e) Only one tax matters shareholder may be designated and authorized to represent the corporation for each examination at the S corporation level which results in a Notice of Deficiency to the corporation.

(f) If a notice explaining the S corporation adjustments is mailed by the department to the tax matters shareholder with respect to any S corporation taxable year, the tax matters shareholder must supply the department with the name, address, ownership percentage and taxpayer identification number of each person who was a shareholder in the S corporation at any time during the taxable year, unless that information was provided in the S corporation return for that year.

(g) The tax matters shareholder for Oregon will bind the S corporation with respect to the proceedings between the department and the S corporation whose tax liability is in dispute. When appealing on behalf of the S corporation, the tax matters shareholder may exercise any administrative remedy before the department allowed by Oregon law.

(h) Other actions of the tax matters shareholder that are binding on the S corporation include, but are not limited to:

(A) Consent to the extension of the statute of limitations regarding an S corporation return.

(B) Making a settlement offer to the department.

(C) Acceptance of a closing agreement with the department.

(D) Consent to time and place of any appeals proceedings.

(5) S corporation Shareholder Representation.

(a) When the treatment of S corporation items on a shareholder's return is consistent with the treatment of that item on the S corporation return and results in a deficiency, a tax matters shareholder or any shareholder of that S corporation may be designated to represent a shareholder or group of shareholders of that S corporation before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income. All shareholders or groups of shareholders are not required to designate the same representative.

(b) A shareholder or group of shareholders that elect to designate an authorized representative in proceedings before the department for issues relating to the S corporation adjustments on a Notice of Deficiency must make the designation as provided in this rule.

(c) If the representative designated for Oregon purposes is a shareholder, the representative may be the tax matters shareholder or another shareholder, and must be a shareholder who is:

(A) A shareholder in the S corporation at some time during the taxable year to which the Notice of Deficiency pertains; or

(B) A shareholder in the S corporation at the time the designation is made.

(d) In order to designate a representative, a shareholder or group of shareholders of an S corporation must file a signed statement with the department. The statement must be signed by each shareholder electing that representative and:

(A) Identify the name, address, and social security number of each shareholder electing the representative;

(B) Identify the S corporation and the representative by name, address, and taxpayer identification number;

(C) Declare that the statement is a designation for the taxable year to which the Notice of Deficiency relates; and

(D) Authorize the representative as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization. The shareholder or group of shareholders may authorize the representative to represent the shareholders for issues other than S corporation issues that are heard during the same appeal with any S corporation adjustments.

(e) A shareholder or group of shareholders may not designate more than one representative for an appeal. While different shareholders can designate different representatives, each cannot not have more than one representative.

(f) If a group of shareholders has the same representative and has filed an appeal requesting a conference for the same S corporation adjustment the appeal will be resolved in a single conference.

(g) Shareholders who do not designate a representative as provided in this rule may appeal their Notice of Deficiency by following the administrative remedies under ORS 305.265 and the related rules.

(h) The representative will bind all shareholders who have made the designation under this section to all actions with respect to the proceedings between the department and the shareholder whose tax liability is in dispute. Any shareholder who has designated a representative may participate in any level of the administrative proceedings.

Example: Assume an S corporation with 10 shareholders has been examined and each shareholder receives a Notice of Deficiency. If 8 shareholders designate the same representative, their appeal will be heard collectively. If the representative requests a conference, the conference decision will apply to all 8 shareholders (all 8 shareholders may participate). The other 2 shareholders may appeal their cases individually because they did not make the election to be represented by the same representative.

(i) Other actions of the representative that are binding on the shareholders who have made the designation include, but are not limited to:

(A) Consent to the extension of the statute of limitations regarding S corporation items with respect to all electing shareholders.

(B) Making a settlement offer to the department.

(C) Acceptance of a closing agreement with the department.

(D) Consent to time and place of any appeals proceedings.

(6) Limited Liability Companies. When a limited liability company (LLC) has elected to be classified as a corporation and has made an S corporation election, section (4) applies to the LLC. When applying section (4) to an LLC, LLC members are treated as shareholders.

Stat. Auth.: ORS 305.100, 305.230

Stats. Implemented: ORS 305.230; ORS 63.810

Hist.: 12-31-88; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 5-1986, f. & cert. ef. 12-31-86; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-305.242(2)
Designation of Oregon Tax Matters Partner

(1) A partner who elects to designate a tax matters partner as their authorized representative in proceedings before the Department of Revenue for issues relating to the partnership adjustments on a notice of deficiency shall make the designation as provided in this rule.

(2) The tax matters partner designated for Oregon purposes may be the federal tax matters partner or may be another partner, but the designation for Oregon shall only be made in accordance with ORS 305.242(2) and this rule. The tax matters partner shall be a partner who is:

(a) A general partner in the partnership at some time during the taxable year to which the notice of deficiency pertains; or

(b) A general partner in the partnership at the time the designation is made.

(3) Information required. The partner shall designate a tax matters partner by filing with the Department of Revenue within 30 days of the date on the Notice of Deficiency a signed statement. The statement shall:

(a) Identify the partner making the designation by name, address, and social security number.

(b) Identify the partnership and the designated partner by name, address, and taxpayer identification number.

(c) Declare that the statement is a designation of a tax matters partner for the taxable year to which the notice of deficiency relates.

(d) Authorize the tax matters partner as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization. The partner may authorize the tax matters partner to represent the partner for issues other than partnership issues only by making the election with this authorization.

(4) Only one tax matters partner shall be designated and authorized to represent the partners for each examination at the partnership level which results in a notice of deficiency to the partners.

(5) Partners who do not designate a tax matters partner as provided in this rule may appeal their notice of deficiency by following the administrative remedies under ORS 305.265 and the rules pertaining thereto.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.242

Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-305.242(5)
Binding Actions of the Tax Matters Partner

The provisions of this rule dealing with hearings apply to hearing requests filed with the Department of Revenue prior to September 1, 1997. See OAR 150-305.525 for information about hearing requests filed on or after September 1, 1997.

(1) The tax matters partner for Oregon shall bind all partners who have made the designation under ORS 305.242(1) to all actions of the tax matters partner with respect to the proceedings between the Department of Revenue and the partner whose tax liability is in dispute. When appealing on behalf of the partners, the tax matters partner may exercise any administrative remedy before the department allowed by Oregon law except that all electing partners are considered to have appealed under the same action. Any partner who has designated a tax matters partner may participate in any level of the administrative proceedings.

Example: Assume a partnership with 100 partners has been examined and each partner receives a notice of deficiency. If 90 partners designate a tax matters partner, their appeal will be heard collectively. If the tax matters partner chooses a conference, the conference decision will apply to all 90 partners (all 90 partners may participate). If the partners want to appeal the conference decision, they must appeal at a partnership level proceeding. If the tax matters partner requests a hearing, the hearing decision will apply to all 90 partners. The other 10 partners must appeal their cases individually because they did not make the election to be represented by the tax matters partner within 30 days of the notice.

(2) Other actions of the tax matters partner that are binding on the partners who have made the designation include, but are not limited to:

(a) Consent to the extension of the statute of limitations with respect to all electing partners;

(b) Making a settlement offer to the Department of Revenue;

(c) Acceptance of a closing agreement with the Department of Revenue;

(d) Consent to time and place of any appeals proceedings.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.242
Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-305.265(1)
Compromise of a Disputed Liability

(1) A disputed liability is one where the taxpayer sends written objection to a notice of deficiency, appeals a notice of assessment, or appeals a determination by the director of the Department of Revenue.

(2) Compromise of a disputed liability cannot be accomplished by submitting a conditional partial payment. If a partial conditional payment is made in an attempt to compromise a disputed liability prior to a written compromise having been agreed upon, and the payment is inadvertently processed by the Department, the amount of the conditional partial payment shall be refunded with interest. A partial payment that is submitted without conditions and that does not purport to be in full satisfaction of the disputed liability may be retained by the department and applied against the disputed liability pending resolution of the dispute.

(3) This rule doesn't preclude settlement by negotiation and signing of a closing agreement. For compromise of an undisputed liability, see OAR 150-305.155. See ORS 305.150 for closing agreements.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 10-1986, f. & cert. ef. 12-31-86; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99

150-305.265(1)-(B)
Appeals of Interest Charged on the Underpayment of Estimated Tax

(1) Appeals based on accuracy. Interest on underpayment of estimated tax imposed under the provisions of ORS 316.587 or 314.525 must be appealed as if it were a deficiency, as defined in OAR 305.265(2)-(A). A taxpayer who disagrees with either the correctness of the imposition or the calculation of interest may request a conference or file a written objection with the department. The conference request or written objection must be made in the manner prescribed under OAR 150-305.265(5). If the taxpayer does not agree with the result of the conference or the written objection, the taxpayer may appeal the decision to the Oregon Tax Court as provided by ORS 305.275.

(2) Discretionary waiver. A taxpayer who agrees that interest on underpayment of estimated tax was correctly imposed, but who believes there is good and sufficient cause for a waiver of all or part of the interest, may file a request for waiver of interest under OAR 150-305.145(3). A denial by the department of a discretionary waiver request under that provision is final and may not be appealed to the Oregon Tax Court.

(3) Effective date: The provisions of this rule apply to appeals of interest on underpayment of estimated tax filed with the department on or after January 1, 1998.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: Rev 5-1998, f. 7-14-98, cert. ef. 7-15-98; REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-305.265(2)-(A)
"Deficiency" Defined

A deficiency is the amount by which the tax as correctly computed exceeds the tax, if any, reported by the taxpayer. If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: 12-31-77; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 150-305.265(2)?

150-305.265(2)-(B)
Notices of Deficiency and Assessment Mailed When Authorization to Represent Signed

(1) If a written authorization to represent the taxpayer is filed with the department, original Notices of Deficiency (as referred to by ORS 305.265(2)) and original Notices of Assessment (as referred to by 305.265(7)) shall be sent directly to the taxpayer at the last-known address as required by 305.265(11). Where the taxpayer has a guardian or conservator, Notices of Deficiency and Assessment shall be sent to the guardian or conservator.

(2) If the authorized representative has a fiduciary relationship to the taxpayer, original Notices of Deficiency and original Notices of Assessment will be sent to the personal representative as defined in ORS 111.005.

(3) For trusts, original Notices of Deficiency and original Notices of Assessment shall be sent directly to the trustee.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87

150-305.265(2)-(C)
Reopening an Audit

(1) Policy. When an issue has been audited, a position taken, and the case closed, that issue may be reopened for audit if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the tax payer or by the taxpayer and a representative of the department. If income or expenses are claimed on a return from an outside entity, those items of income or expenses may be adjusted if the entity is later audited and adjustments are made.

(2) Definitions. Audited. An issue is not considered to have been "audited" unless the department has examined the issue and verified supporting documentation. Requesting a copy of a federal schedule is not an audit.

Example 1: A taxpayer reports $18,000 income from self-employment on a 1987 return. The department examines the return and reconstructs income using a T-account analysis. An adjustment of $5,000 is made to the return for underreported income.
In 1989, the department receives a federal audit report (RAR). The IRS discovered $15,000 of unreported income. Because the case involves omitted income, that issue may be reaudited by the department.

Example 2: A taxpayer claims a credit for household and dependent care expenses on a 1987 Oregon return. The taxpayer did not attach a copy of the required federal form 2441 to the return. The return suspends in processing and the department denies the credit and adjusts the return. The taxpayer submits the required form in response to a department notice and the credit is allowed.
In 1989, the department receives a federal audit report (RAR). The IRS disallowed the household and dependent care credit because the taxpayer could not document expenses claimed in computing the credit. This issue was not previously "audited" by the department since dependent care expenses had not been examined or verified. The household and dependent care credit may be audited by the department.

Example 3: A taxpayer claims a $14,000 casualty loss on a 1987 return. Upon request by the department, the taxpayer provides substantiation of the loss in the form of written records, insurance documents, etc. After an examination and review of documentation, the department allows the casualty loss in full. No adjustments are made to the return.
In 1989, the department receives a federal audit report (RAR) in which the IRS has allowed a casualty loss of only $10,000 on the 1987 return. Additionally, $3,000 of employee business expenses have been disallowed by the IRS. Because the department has previously audited the casualty loss, and there is not evidence of fraud, malfeasance, collusion, concealment, misrepresentation, or omission of income, the department will not reaudit that issue. The employee business expenses may be audited by the department.

Example 4: In 1990, the department audits the taxpayer's 1988 personal income tax return. As a shareholder in an S corporation, the taxpayer claimed a loss from the S corporation return. As part of the audit, the auditor looks at the S corporation return and verifies that the taxpayer has sufficient basis to deduct the loss. The auditor does not audit the S corporation return nor is the loss from the S corporation audited.
In November, 1990 the S corporation return for tax year 1988 is audited by the department. Due to the adjustments to the S corporation return, the taxpayer no longer has sufficient basis to deduct the 1988 loss. The taxpayer's 1988 return will be adjusted to disallow the loss. Even though the taxpayer's return has previously been audited, the S corporation return had not been audited. The adjustments made to the S corporation return will flow through and be made on the individual shareholder's return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-305.265(4)(a)
Adjustments Included in Deficiency Notice When Federal Audit Report Received

See OAR 150-314.410(4) which explains what adjustments can be included in a Notice of Deficiency when a federal audit report is received.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-305.265(5)
Language Used to Request a Conference or File Written Objections

(1) Requesting a Conference. A conference request shall be in writing, and shall be mailed to the department within 30 days of the date on the Notice of Deficiency. It shall be addressed to the Oregon Department of Revenue, 955 Center Street NE, Salem, OR 97301, and shall state the reason for the protest as well as stating in what respect the determination is erroneous. Any language indicating that a taxpayer is requesting an opportunity to meet with a department representative to discuss an adjustment shall be considered a conference request.

(2) Filing Written Objections.

(a) If a taxpayer disagrees with a deficiency notice, and does not want a conference, the taxpayer may file written objections with the department.

(b) To file a written objection, the taxpayer shall write to the department within 30 days of the date on the deficiency notice. This protest shall be addressed to the Oregon Department of Revenue, 955 Center Street NE, Salem, OR 97301, and shall explain the reason for the disagreement.

(c) Any language indicating that a taxpayer disagrees with an adjustment but which doesn't convey an intent to meet with a department representative shall be construed as written objections.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86, Renumbered from 150-305.265(5)-(B); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 5-2000, f. & cert. ef. 8-3-00

150-305.265(6)-(A)
Conferences: Purpose and Procedure

(1) A conference is a meeting with a department conference officer who reviews the reasons for the adjustment with the taxpayer. The purpose of a conference is to allow a person to obtain an informal department review of a deficiency notice or other department action if the person believes the notice or action is incorrect. Assessments related to personal income tax, corporate excise tax, or corporate income tax, including assessments issued under ORS 305.265(10) for failure to file a report or return, generally cannot be appealed using the conference process but must instead be appealed to the Oregon Tax Court. This provision does not prohibit use to the conference process for assessments issued for failure to file a withholding tax report. See ORS 316.207(4)(a).

(2) A conference may be requested by a taxpayer in any of the following instances:

(a) From a determination of tax deficiency, interest, or penalty arising under ORS Chapters 118, 119, 314, 316, 317, 318, or 321.

(b) From a denial in whole or in part of a refund requested under ORS 305.270 or of an elderly rental assistance claim under 310.657.

(c) From a determination of cigarette tax under ORS Chapter 323.

(d) From a department action concerning any program administered by the department.

(3) Payment of a deficiency to stop the accumulation of interest will not affect a conference request or decision. If a conference decision favors the taxpayer, the amount of the payment determined to be owed to the taxpayer is refunded with interest.

(4) Conferences are informal. The taxpayer may raise any point of fact or law that has a bearing on the matter. The taxpayer may use witnesses. Any competent person with relevant information may be allowed to testify. A witness qualified as an expert by knowledge, skill, experience, training, or education may give an opinion.

(5) A taxpayer may be represented by himself or herself, an attorney-at-law, certified public accountant, licensed tax consultant, public accountant, or other person authorized under ORS 305.230.

(6) For purposes of ORS 305.265(6), the department employee who made the adjustment to the taxpayer's return may not also conduct a conference related to the adjustment. However, the employee may attend the conference if so requested by the conference officer.

(7) Conferences are held in person in Salem or such other place as may be designated by the department or by telephone. The conference officer directs the conference proceedings. The person requesting the conference is given an opportunity to explain the facts, as the individual knows them, and to ask relevant questions of any conference participant. In all cases involving a conference granted under this rule, a written decision will be sent to the taxpayer. The decision will generally be sent by regular mail unless the taxpayer requests that the letter be sent by certified mail.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: 12-31-77; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 150-305.265(6); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 5-2000, f. & cert. ef. 8-3-00

150-305.265(6)-(B)
Written Objections: Procedures

(1) When the department receives written objections, a department representative shall review the objections and try to resolve the disagreement. The representative shall then reach a decision regarding the written objections.

(2) Once a decision has been reached the department shall advise the taxpayer of the decision by letter.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-305.265(10)
Assessing Tax on Failure to File

(1) The law places an affirmative duty on the taxpayer to file a timely and correct return and directs the department to take steps to require compliance.

(2) General. In the case of a failure by the taxpayer to file a return, the department shall determine the tax liability of the taxpayer according to the best of its information and belief. "Best of its information and belief" means that the department shall use evidence on which a reasonable person would rely in determining the tax to be assessed by the department because of the taxpayer's failure to file a return. Sources of information include but are not limited to the taxpayer's federal return for the year in question, state returns filed by the taxpayer, any partnership return naming the taxpayer as a partner, information returns, the income of returns of taxpayers similarly situated, or withholding returns (in the case of individual taxpayers).

(3) Personal Income Tax.

(a) The determination of income, exemptions, and other provisions shall be made in accordance with Internal Revenue Code rules for the year in question. When the department has knowledge of a federal return having been filed jointly for the year in question, a joint assessment shall be made. When the department's best information indicates the taxpayer is married, and a joint federal return has not been filed, the filing status shall be married filing separate. In all other cases the filing status shall be single.

(b) The standard deduction shall be allowed unless itemized deductions are claimed on the taxpayer's federal return. Also, a deduction shall be allowed for the amount of federal tax computed on the federal return, or in absence of such a return, the allowable federal tax shall be calculated by the department to provide an automatic deduction for the proper amount of accrued federal tax, whether paid or not.

(c) An exemption credit(s) shall be allowed based on the filing status determined under this rule. No other credit shall be allowed in determining an assessment unless specific information that the taxpayer is entitled to a credit is available.

(4) Withholding Tax. When an employer fails to file a combined tax report, the department shall determine the withholding tax liability of the employer using information from Employment Department records, federal tax returns, returns filed by the employer for prior reporting periods and any other information available.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: 12-31-77; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85, Renumbered from 150-305.265(9)?; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-305.265(11)
Last Known Address

(1) Notices of Deficiency and Notices of Assessment are required to be mailed to the last-known address or via other means as agreed upon by the taxpayer. Pursuant to ORS 305.127, the department may provide notice to a person by means other than regular mail if a notification agreement exists between the department and the person affirmatively indicates that the department may use means other than regular mail for any required notice to the person.

(2) The department will use the address on the most recently filed return as the last-known address unless the taxpayer has notified the department in writing, electronically, or through a documented phone call that this address is incorrect.

(a) "In writing" means a letter written to the department, a completed Form 150-800-738 Change of Address/Name, or a completed Form 150-211-156 Oregon Combined Payroll Tax Business Change in Status submitted to the department by the taxpayer or the taxpayer's authorized representative.

(b) "Electronically" means a taxpayer provides the department with a new address or other contact information via their online taxpayer account.

(c) "Documented phone call" means a call that is noted or described in a contemporaneous record of the substance of the phone call, made by the taxpayer, the taxpayer's authorized representative or an employee of the department and must include the date and time of the call and the names of the parties involved in the conversation.

(3) When the department receives information indicating that the last-known address is incorrect or outdated, the department may use the following methods to determine the last-known address:

(a) An Address Information Request, which is a letter sent to the United States Postal Service by the Department of Revenue requesting verification of the taxpayer's address.

(b) Address information received from the United States Postal Service or from a service using an address-updating method approved by the United States Postal Service.

(c) Address information received from other third-parties, except that other third party information will be accepted only after contact is made with the taxpayer and the taxpayer has verified that the address is a permanent address.

Example 1: The department sends a letter to X Company to obtain employment information regarding Alice, a taxpayer that is employed by X Company. When X Company responds, they indicate a new address for Alice. The department must contact Alice to verify that the new address is correct before Alice's last-known address is changed.

(4) If a taxpayer has never filed an income tax return with the department, or if the most recently filed income tax return was filed more than two years prior to the date the notice is mailed, the department may, in addition to those procedures described in section (3) of this rule, use address information received from another government agency to determine last-known address. That agency must follow strict policies regarding address verification, such as:

(a) Address documentation must be in writing and be signed by the taxpayer.

(b) The agency must use at least one method from section (3) of this rule to verify address changes.

Example 2: Tom has not filed income tax returns with Oregon for the last two years. He holds a business license regulated by a governmental agency that meets the criteria above. The department may use an address provided by the other agency as Tom's last-known address. The department may send notices of deficiency and notices of assessment to Tom at this address.

(5) If a clear typographical error has been made on the taxpayer's most recently filed return, the department may take the following actions:

(a) If the address on the return is the same address on the taxpayer's account except for a typographical error, the department will revert back to the current account address. A change in street number or apartment number is not to be considered a typographical error.

Example 3: Carl's account is 1234 Main Street, Salem, OR 97301, but the return indicates 1234 Main Street, Salem, OR 97301. The department will retain the current account address.

(b) If the address on the return is wholly different than the address on the taxpayer's account, which includes a typographical error, the department will use the procedures described in sections (3) and (4) of this rule to determine a taxpayer's last-known address.

Example 4: Linda's account shows an address of 1234 Main Street, Salem, OR 97301, but Linda's return has an address of 5678 1st Street, Salem, OR 97301, the department will first attempt to contact Linda before attempting other methods of verification.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2014, f. 12-23-14, cert. ef. 1-1-15

150-305.265(12)-(B)
Interest on Deficiency

If a refund is allowed due to a net operating loss carryback and subsequently it is determined that the amount of the net operating loss was in error, interest shall be computed on the amount of the incorrectly received refund (tax and interest) beginning on the day after the date the refund was issued.

Example: A taxpayer carried a 1983 net operating loss of $10,000 back to the 1980 return and received a refund of $1,000 tax plus $200 interest. During an audit of the 1983 return it was determined that the correct loss to carryback was $4,000 resulting in a corrected refund of $400 plus interest. The taxpayer will need to repay $600 of the refund and $120 (60 percent) of the interest for a total of $720. Interest shall be computed on this amount beginning the day after the date the refund was issued by the Department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84

150-305.265(13)
Penalties

(1) A fraud penalty imposed pursuant to ORS 305.265(13) is separate and distinct from delinquency penalties as it relates to the nature of the deficiency itself. Such penalty normally will be imposed with the issuance of the initial notice of deficiency. Thereafter, if the deficiency is not paid when due, a delinquency penalty may also be imposed.

(2) The penalties provided under ORS 305.265(13) and 314.400(6)(b) shall not be combined. Only one 100% penalty may be assessed on a particular report or return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: 12-31-77, Renumbered from 305.265(12); TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85, Renumbered from 150-305.265(12)-(A)?; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-305.265(14)
Appeal from a Notice of Deficiency: Periods of Limitation

(1) Date of assessment if taxpayer does not file a timely appeal with the department. If a taxpayer pays a deficiency in full before the department issues a notice of assessment and does not send a timely written objection or request for a conference, the deficiency is considered assessed on the date the deficiency is paid or 30 days from the date of the notice, whichever is later. A taxpayer has 90 days from the date of assessment in which to appeal to the Magistrate Division of the Oregon Tax Court. If a taxpayer does not appeal to the Magistrate Division of the Oregon Tax Court within the 90-day period, the assessment is final, unless the taxpayer appeals under ORS 305.280(3) following payment of the tax.

(2) Date of assessment if taxpayer files a timely appeal with the department. If a taxpayer files a timely request for a conference or written objections, the deficiency is not considered assessed until the department sends a written determination of the issues to the taxpayer. Also, if a timely conference request or written objections accompany or follow the payment of a deficiency, the department will not assess the deficiency until it sends a written determination of the issues to the taxpayer. Payment of the deficiency is a credit to the taxpayer's account. If the balance is zero, the written determination of the issues is considered the notice of assessment.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: 12-31-77; 12-31-79; 12-31-84, Renumbered from 150-305.265(13); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-305.265(14); RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2000, f. & cert. ef. 8-3-00; Renumbered from 150.305.265(14)-(A) by REV 9-2012, f. 12-18-12, cert. ef. 1-1-13; Renumbered from 150.305.265(14)-(A) by REV 2-2013, f. & cert. ef. 3-28-13

150-305.265(15)
Waiver of a Conference or Written Objection; Direct Appeal of Deficiency

(1) A taxpayer may waive a conference or written objection and request immediate assessment of a deficiency for purposes of filing a direct appeal with the Magistrate Division of the Oregon Tax Court.

(2) In general. Any request for a direct appeal from a notice of deficiency must meet general requirements. The request must:

(a) Be in writing and be filed with the department within 30 days of the date on the notice of deficiency.

(b) Contain language that requests a waiver of a conference or written objection.

(c) Contain language that requests the department to assess the deficiency.

(d) Inform the department of the taxpayer's intent to appeal to the Magistrate Division of the Oregon Tax Court.

(3) The department will assess the deficiency with any applicable penalty and interest. Payment of the deficiency is a credit to the taxpayer's account; only the balance of the account will be assessed.

(4) A request for assessment and appeal from a notice of deficiency that does not satisfy the requirements of this rule is considered a request for a conference or written objection, whichever is applicable, and the corresponding administrative remedies under ORS 305.265 apply.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-305.270(3)-(A)
Claim for Refund

A claim for refund is not required to be submitted on a particular form. A claim for refund may be submitted as an original return or report claiming a refund, an amended return or report claiming a refund, or any other refund computation setting forth a claim for refund. A claim for refund shall include the taxpayer's name, address, social security number or other identifying number, the tax year(s) or period(s) involved, the basis for the claim for refund and the amount of refund asserted to be due the taxpayer.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.265
Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 150-305.270(3)

150-305.270(3)-(B)
Notices of Proposed Refund Adjustment Mailed When Authorization to Represent Signed

(1) If a written authorization to represent the taxpayer is filed with the department, the original Notice of Proposed Refund Adjustment (as referred to by ORS 305.270(3)) shall be sent directly to the taxpayer at the last-known address as required by ORS 305.265(11). Where the taxpayer has a guardian or conservator, Notices of Proposed Refund Adjustment shall be sent to the guardian or conservator.

(2) If the authorized representative has a fiduciary relationship to the taxpayer, original Notices of Proposed Refund Adjustment will be sent to the personal representative as defined in ORS 111.005.

(3) For trusts, original Notices of Proposed Refund Adjustment shall be sent directly to the trustee.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.270
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87

150-305.270(4)-(A)
Written Objections to a Proposed Refund Adjustment

(1) Written Objection Procedures.

(a) If a taxpayer disagrees with a notice of proposed refund adjustment, and does not want a conference, the taxpayer may file written objections with the department.

(b) The taxpayer must write to the department within 30 days from the date on the notice of proposed refund adjustment and explain the reasons for any objections in the letter.

(c) When the department receives the written objections, a department representative will review the objections to try to resolve the disagreement. The department representative will then reach a decision regarding the written objections and either:

(A) Send the refund originally requested;

(B) Send an adjusted refund;

(C) Issue a notice of refund denial; or

(D) Issue a notice of deficiency.

(d) The department must send the taxpayer a letter explaining the decision. The letter must also explain the taxpayer's appeal rights. If the taxpayer receives a notice of refund denial or notice of an adjusted refund, the taxpayer may appeal the department's decision as described below. If the taxpayer receives a notice of deficiency, the taxpayer must follow the remedies as set forth in ORS 305.265 and the corresponding rules.

(2) Appeal to the Magistrate Division of the Oregon Tax Court. An appeal to the Magistrate Division must be in writing and filed with the Oregon Tax Court within 90 days of the date of the notice of refund denial or notice of an adjusted refund.

(3) Direct Appeals. If the taxpayer disagrees with a notice of proposed refund adjustment and submits a written request for a direct appeal to the Magistrate Division in lieu of a conference or written objection, OAR 150-305.270(10) applies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.270
Hist.: RD 4-1985(Temp), f. & cert. ef. 9-20-85; RD 8-1985, f. 12-26-85, cert. ef. 12-31-85, Renumbered from 150-305.270(4); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2000, f. & cert. ef. 8-3-00; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-305.270(4)-(B)
Date of Notice

(1) For purposes of ORS 305.270(4), the term "date of the notice of proposed adjustment" means the date the notice was mailed.

(2) The date the notice was mailed shall be deemed to be the date printed on the notice unless the addressee can establish by proof satisfactory to the department that such notice was mailed on a date other than the date printed on the notice.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.270
Hist.: RD 10-1986, f. & cert. ef. 12-31-86

150-305.270(8)
Audit Period for Refunds Issued without Examination

The department shall have the periods of limitation as provided in ORS 314.410 or one year from the date the refund check is issued, whichever period expires the later, to examine or audit the refund claim and issue a notice of deficiency. The refund claim can be adjusted to -0- but a deficiency in excess of the refund previously issued or requested cannot be asserted if the statute of limitations has expired. This subsection applies to amended returns filed on or after September 20, 1985 (the effective date of Chapter 266, OR Laws 1985).

Example 1: Benjamin files a timely 1982 income tax return on April 15, 1983. He later files an amended return on August 30, 1985. The department issues the refund check two months later. Because the amended return is filed before September 20, 1985, ORS 305.270(8) doesn't apply.

Example 2: Use the same facts that appear in Example 1, except that Benjamin files his amended return on September 30, 1985. The department issues the refund check on January 15, 1986, without having audited or examined the refund claim. Because the amended return is filed after September 20, 1985, ORS 305.270(8) applies. The department may examine or audit Benjamin's return until January 15, 1987, one year after the refund check is issued. The audit period is open until January 15, 1987 because it is later than the expiration of the three-year period in ORS 314.410(1). If Benjamin's return is adjusted prior to April 16, 1986, a deficiency may be asserted in excess of the refund previously issued. If the return is adjusted after April 15, 1986, a deficiency shall not exceed the refund previously issued.

Example 3: Rob files a timely 1984 income tax return on April 15, 1985. He later files an amended return on January 15, 1987 and the department issues a refund check on March 15, 1987, without having audited or examined the refund claim. The department may examine or audit Rob's return until April 15, 1988, the expiration of the three-year period in ORS 314.410(1). The audit period is open until April 15, 1988, because it expires later than one year after the refund check date. A deficiency may be asserted during this period in excess of the refund previously issued.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.270
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-305.270(10)
Proposed Refund Adjustment

(1) A taxpayer may waive a conference or written objection and appeal a notice of proposed refund adjustment as provided in this rule.

(2) In general. Any request for a direct appeal from a notice of proposed refund adjustment must meet general requirements. The request must:

(a) Be in writing;

(b) Be filed with the department within 30 days of the date on the notice of proposed refund adjustment;

(c) Contain language that requests a waiver of a conference or written objection; and.

(d) Contain language that requests the department to issue a refund denial.

(3) Direct Appeal to the Magistrate of the Oregon Tax Court. For the purpose of direct appeal under this rule, the taxpayer must first file a request as described in section (2) before an appeal can be taken to the Magistrate Division. If the requirements of this section are met, the department will send the taxpayer a notice of refund denial, which constitutes the department's final administrative appeal action. The taxpayer then has 90 days from the date on the notice of refund denial to appeal to the Magistrate Division.

(4) A written appeal from a notice of proposed refund adjustment that does not satisfy the requirements of this rule is considered a request for a conference or a written objection, whichever is applicable, and the corresponding administrative remedies under ORS 305.270 apply.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.270
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 5-2000, f. & cert. ef. 8-3-00; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-305.285
Relief for Subsequent Tax Years

(1) ORS 305.285 provides an additional procedural remedy for a taxpayer. It precludes the need for filing a protective petition during the pendency of petition for a previous year. While ORS 305.285 extends the period for filing petition it does not automatically entitle the taxpayer to the substantive relief requested.

(2) The taxpayer shall make his or her request for relief in a subsequent year to the department on or before December 15 of the year in which the final determination was made, or within six months of the mailing date of the final determination, whichever is later. Subsequent year is defined as any tax year following the tax year that is the subject of the final determination.

(3) The request shall state the name of the taxpayer, the property's account number and the county in which it is located, the year or years for which relief is requested, and the mailing date of the final determination. For purposes of this section, a final determination includes only those cases where there has been a decision on the merits (including stipulations). A copy of this final determination shall be attached to the request.

Stat. Auth.: 305.100
Stat. Implemented: 305.285
Hist.: RD 9-1985, f. 12-26-85, cert. ef. 12-31-85; RD 5-1986, f. & cert. ef. 12-31-86; RD 10-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-305.285; REV 1-2003, f. & cert. ef. 7-31-03, Renumbered from 150-306.115-(B); REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-305.295(1)(c)
Beneficial Ownership

(1) An employer is any business entity which has employees.

(2) A business entity's activity shall not be considered to have ceased doing business if the employer has changed its name and still the business activity continues under the same beneficial ownership. Listed below are examples of business entity changes that do not change the beneficial ownership:

(a) A sole proprietorship becomes a partnership.

(b) A partnership becomes a corporation.

(c) The remaining part of a corporation after a corporation split.

(d) A corporation becomes a partnership.

(e) A partnership becomes a sole proprietorship.

(f) A sole proprietorship changes its name.

(g) There is a change in corporate officers.

(h) A corporation is sold.

(i) Corporation stock is sold.

(j) A corporation changes its name.

(k) The remaining part of a business after a portion is sold.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.295
Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87

150-305.295(1)(d)
Cancellation of Doubtful Liabilities

(1) This procedure is intended for those cases where the tax assessment set up by the department exceeds the taxpayer's correct tax liability by at least $100.

(2) For purposes of this rule, the correct tax is the amount of tax determined by the department as supported by facts and documentation.

(3) It shall be the policy of the Department to provide a means for cancellation of all or a portion of tax, penalty, or interest for a specific tax year in cases where all other statutory appeal periods have expired, and where all of the following provisions are met:

(a) After an objective review of the facts and documentation, the department representative concludes that the department would have reduced or canceled the assessment if the taxpayer had objected to the assessment within the statutory time period.

(b) Taxpayer has a completed return or a report computing tax that supports cancellation or reduction of an assessment which could include:

(A) Written documentation made at the time income was received or expense was incurred;

(B) Records maintained by independent third parties; or

(C) Any documentation that the department representative considers reliable.

(c) The department representative determines the taxpayer:

(A) Has filed returns and reports as required for all tax programs administered by the department; and

(B) Has submitted full payment of the amount of tax, interest and penalty determined to be correct by the department, or has entered into and fulfilled an acceptable installment agreement for payment of such amounts.

(4) If relief is denied under these provisions, the taxpayer's only right of appeal is directly to the Director of the Department of Rev-

enue. The decision of the Director shall be final and may not be appealed further under this statute or any other statute pertaining to appeals of department assessments.

(5) In cases where the taxpayer has appealed an assessment to either the department or a court of this state, and a decision that determines the liability of the taxpayer has been issued, no relief shall be granted under the provisions of this section.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.295
Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 2-1999(Temp), f. & cert. ef. 7-6-99 thru 12-31-99; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-305.295

150-305.295(4)
Refund of Penalty and Interest

(1) The department shall refund penalty and interest when it has been determined that it has been paid but was not legally due. Interest shall be computed on the amount of tax plus penalty and interest not legally due. The interest starting date shall be 45 days after the date the deficiency was paid or 45 days after the return was filed, whichever is later.

Example 1: The taxpayer files a delinquent return and pays the tax, penalty and interest due. Subsequently, it is determined that the taxpayer is not required to file an Oregon income tax return. The amount of tax, penalty and interest paid shall be refunded and interest computed on the entire amount beginning 45 days after the date the return was filed.

Example 2: The taxpayer pays the tax, penalty and interest based on a Notice of Assessment. The assessment is subsequently determined to be erroneous. The amount of tax, penalty and interest paid shall be refunded and interest computed on the entire amount beginning 45 days after the date the assessment was paid.

Example 3: The taxpayer files a delinquent return and pays the tax, penalty and interest due. Subsequently, the taxpayer amends the return to claim a refund from a net operating loss carryback. The penalty and interest paid with the delinquent return shall not be refunded since this amount was legally due.

(2) For deficiencies on refunds issued under ORS 310.630 to 310.690, the department shall refund any penalty and interest when it has been determined that it has been paid but was not legally due. Interest shall be computed on the amount of refund paid plus penalty and interest not legally due. The interest starting date shall be 45 days after the date the deficiency was paid or the date 45 days after the return or claim was filed, whichever is later.

Example 4: The taxpayer files a homeowner and renter refund claim and a check is issued. One year later the department audits the refund claim and issues a notice of deficiency. The taxpayer pays the deficiency plus interest. The deficiency is later determined to be erroneous. The amount the taxpayer paid shall be refunded and interest shall be computed on the entire amount beginning 45 days after the date the deficiency was paid.

Example 5: Same facts as Example 4 except that the notice of deficiency is assessed and a 5 percent penalty is imposed. The amount of refund, penalty and interest paid by the taxpayer shall be refunded. Interest is computed on the entire amount beginning 45 days after the date the assessment was paid.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.295
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-305.295(6)
Appeal Time Frame

If a taxpayer wishes to appeal denial of a request for cancellation of assessment or refund, the appeal shall be made within 90 days of notice of denial.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.295
Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87

150-305.305
Concurrent Appeals

(1) *Applicability of ORS 305.305*.

(a) Any reference in this rule to the appeal provisions in ORS 305.305 refers to deficiencies of Oregon tax based on:

(A) A federal revenue agent's report; or

(B) The audit report of another state's taxing authority.

(b) The appeal provisions in ORS 305.305 apply to and constitute the exclusive remedy for appealing an Oregon tax deficiency based on adjustments contained in a federal revenue agent's report or the audit report of another state that also asserts a deficiency. These provisions do not apply to a taxpayer when adjustments contained in the federal revenue agent's report or the audit report of another state result in:

(A) A refund of federal or other state's tax; or

(B) No change in federal tax liability or the tax liability to the other state. See ORS 314.380 and corresponding administrative rules for procedures to claim a refund based upon a federal adjustment or adjustment of another state.

(c) The appeal provisions in ORS 305.305 apply to and constitute the exclusive remedy of a taxpayer who timely appeals a federal adjustment or the adjustment of another state. These provisions do not apply to a taxpayer who, by choice or default, does not file a timely appeal.

(d) The appeal provisions in ORS 305.305 are the exclusive remedy of a taxpayer who appeals a department billing based on a federal or other state audit adjustment that:

(A) Asserts a deficiency, and

(B) Is timely appealed at the federal level or the other state level by the taxpayer.

Example 1: Taxpayer is audited by IRS and receives a federal revenue agent's report showing tax due, interest and a penalty for substantial understatement of income. Taxpayer agrees with the tax and interest due but appeals the penalty. Oregon does not automatically impose the same penalties as federal but may assert the penalty for substantial understatement of income under ORS 314.402. The Oregon deficiency does not include the federal penalty for substantial understatement of income. Since the Oregon deficiency is not asserted based on an adjustment timely appealed by the taxpayer for federal purposes, the appeal provisions of ORS 305.305 do not apply. The taxpayer must follow the appeal procedures in ORS 305.265.

Example 2: Taxpayer is audited by IRS and receives a federal revenue agent's report showing two adjustments to income—an increase to interest income from U.S. government obligations and a decrease to the charitable contributions deduction. Taxpayer agrees with the adjustment to charitable contributions but appeals the adjustment to interest income. The notice of deficiency issued by the department will contain only the adjustment to charitable contributions since under ORS 316.680 interest from U.S. government obligations is not taxable. Since the Oregon deficiency is not asserted based on an adjustment timely appealed by the taxpayer at the federal level, the appeal provisions of ORS 305.305 do not apply. The taxpayer must follow the appeal procedures in ORS 305.265.

(e) The taxpayer may not elect to follow other appeal procedures in ORS Ch. 305 instead of those described above.

(2) *Oregon Deficiency based on Federal Report or Audit Report of Another State*.

(a) The appeal provisions in ORS 305.305 apply only to an Oregon deficiency based upon a federal revenue agent's report or the audit report of another state. A deficiency is based on such a report if it refers to the federal report or the report of the other state for its authority or justification. An Oregon deficiency which does not refer to the federal report or the report of the other state in this way is not based on the federal or other state's audit report, even if both the Oregon and federal or other state adjustments are based on the same tax items.

(b) If the Oregon deficiency results from adjustments that are based both on a federal or other state adjustment, and adjustments independently determined by the department, the department will allow the taxpayer to follow the appeal procedures in ORS 305.265 in appealing the deficiency based on the independently determined adjustments.

(3) *Method of Department Assessment*. As used in ORS 305.305, the phrase "department assesses the deficiency" includes assessments initiated by full payment of the Oregon deficiency under ORS 305.265(14).

(4) *IRS Settlement*. In some cases, the IRS may reach a settlement agreement with a taxpayer during the federal appeal process. If this occurs, the department is not required to accept a settlement agreement also. The department may still resolve the appeal case based on its merits.

(5) *Proof of IRS Appeal and Assessment*.

(a) Proof of IRS Appeal. Proof of a timely request for a federal appeal may be demonstrated by:

(A) Submission of a copy of the IRS letter notifying the taxpayer of the time allowed for administrative appeal, together with a copy of the taxpayer's written request for appeal and the IRS acknowledgment, or

(B) If the correspondence in (A) is unavailable, submission of any other materials that demonstrate that a timely filed appeal is pending before the IRS or a federal court.

(b) *Proof of IRS Assessment*. Proof of an IRS assessment may be demonstrated by:

(A) Submission of a copy of the IRS 10-day letter; or

(B) If the billing described in (A) is unavailable, submission of any other materials that demonstrate that the federal adjustment is final and can no longer be appealed.

(6) A taxpayer must notify the department within 30 days after the taxpayer's federal appeal has been resolved. The department will review the issues in the appeal and issue a refund, a notice of denial of a refund, or a notice of additional amounts due. A taxpayer that disagrees with a decision issued before October 6, 2001, must file an appeal with the Magistrate Division of the Oregon Tax Court within 60 days of the department's decision. A taxpayer that disagrees with a decision issued on or after October 6, 2001, must file an appeal with the Magistrate Division of the Oregon Tax Court within 90 days of the department's decision.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.305
Hist.: 9-20-85(Temp); 12-31-85, Renumbered from 150-305.265(5)-(A); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01

150-305.385(4)(a)-(A)
"Methods of Collection" Defined

Methods of collection include but are not limited to seizure of wages, bank accounts, personal property, business property, stocks, bonds, dividends and real property to the extent it is determined to be cost effective by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.305
Hist.: RD 7-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-305.385(4)(a)

150-305.385(6)-(A)
Contracts Requiring Certificate of Compliance with Oregon Tax Laws

(1) An agency must obtain a certificate of compliance with Oregon tax laws from providers before entering into certain contracts. Those contracts or agreements under which goods, services, or real estate space will be provided directly to such agencies in the future require certification.

(a) For purposes of this rule, "agency" means any department, board, commission, division or authority of the State of Oregon, or any political subdivision of this state which imposes a local tax administered by the Department of Revenue under ORS 305.620. See 305.380(1).

(b) For purposes of this rule, "tax" means those programs listed in ORS 305.380(4). Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self-Employment Tax).

(c) For purposes of this rule, "provider" means any individual, corporation, association, firm, partnership, or joint stock company who contracts to supply goods, services, or real estate space to an agency. See ORS 305.380(3). Out of state and nonprofit entities are included in this definition. The term provider shall not include the United States, its territories or possessions, state, local, or foreign governments, and the political subdivisions and agencies thereof.

(2) The following contracts do not require contractor certification:

(a) Purchase orders and contract release orders issued by state agencies to vendors or providers.

(b) Credit card purchases. The contract requiring a certificate of compliance with Oregon tax laws is between the agency in whose name the credit card is issued and the issuer of the credit card; not the agency and the vendor of goods and services purchased with the credit card.

(c) Third party contracts and purchases. Many agencies pay for goods or services that are provided to third parties. Some examples are:

(A) Adult and Family Services (AFS) pays physicians directly for service provided to AFS clients.

(B) Senior Services Division (SSD) enters into "provider agreements" with nursing homes for the benefit of elderly residents of those nursing homes. Payment is made directly by SSD to the nursing home.

(C) Reimbursement of travel expenses. State agencies make payments to their employees to reimburse travel expenses such as meals, lodging, airfare, and automobile expenses. The costs have been incurred by the employee directly.

(d) Emergency contracts as provided in ORS 279.015(3) and OAR 125-310-0030.

(e) Contracts with a consideration of no more than $1,000.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.385
Hist.: RD 1-1990, f. & cert. ef. 3-15-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96

150-305.385(6)-(B)
Certificate of Compliance With Oregon Tax Laws

(1) Each certificate of compliance with Oregon tax laws and local taxes administered by the department shall contain the following elements:

(a) For individuals, including sole proprietors, a statement certifying under penalty of perjury that the individual is, to the best of the individual's knowledge, in compliance with Oregon tax laws.

(b) For corporations, partnerships, estates and trusts, a statement by an authorized individual certifying under penalty of perjury that the vendor is, to the best of the representative's knowledge, in compliance with Oregon tax laws.

(c) A list of the Oregon tax laws referred to in ORS 305.380(4).

(2) Notarization by a notary public is **not** required.

(3) An example of an acceptable format for the certificate is: [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.385
Hist.: RD 1-1990, f. & cert. ef. 3-15-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99

150-305.385(6)-(C)
Circumstances Not in Violation of Oregon Tax Laws

(1) For purposes of ORS 305.385(6), a taxpayer complying with an acceptable payment arrangement for satisfaction of an unpaid tax obligation is not in violation of the tax laws as they relate to that unpaid tax. Any taxpayer complying with an acceptable payment arrangement may sign the certificate of compliance in good faith if no other Oregon tax laws have been violated. A provisional certificate of good standing, provided by ORS 305.385(5), is not necessary.

(2) A taxpayer is not in violation of the tax laws as they relate to an unpaid tax, if that unpaid tax is under appeal as provided under ORS Chapter 305.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.385
Hist.: RD 1-1990, f. & cert. ef. 3-15-90

150-305.385(7)
Annual Certification Requirement

(1) An agency shall obtain a written certification of compliance with the tax laws listed in ORS 305.380(4) from each provider of goods, services, or real estate space. The written certification may be obtained either:

(a) Annually; or

(b) With each contract or other agreement entered into, renewed or extended if the agency does not anticipate contracting with the provider frequently (i.e., one time only or less than once a year).

(2) A certificate shall be obtained prior to entering into a price agreement with a provider. Certificates do not need to be obtained

with individual contract release orders executed under the price agreement.

Example: The Department of General Services enters into a price agreement with the Tree Paper Company for the purchase of paper and obtains a written certification of compliance with the tax laws. During the next two years the Department of Revenue executes contract release orders (CROs) with Tree Paper Company for additional paper. The Department of Revenue does not need to obtain a certificate for any CRO delivered to Tree Paper Company that is under the original price agreement.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.385
Hist.: RD 1-1990, f. & cert. ef. 3-15-90

150-305.501
Mediation

Any statements made during mediation will be confidential except as provided for in ORS 314.840.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.501
Hist.: REV 1-2001, f. 7-31-01, cert. ef. 8-1-01

150-305.525
Appeal Procedures

(1) The Department of Revenue shall give notice to the taxpayer to reflect that final department actions may only be appealed to the Magistrate Division of the Oregon Tax Court.

(2) Time for Filing Appeals:

(a) Under ORS 305.280(2), an appeal from a notice of assessment or refund denial with respect to a tax imposed under ORS Chapter 118, 305, 308, 310, 314, 316, 317, 318 or 321 shall be filed within 90 days after the date of the notice.

(b) Under ORS 305.280(3), an appeal from a notice of assessment with respect to a tax assessed under Chapters 314, 316, 317 or 318 may also be filed within two years of the date of payment of the tax, penalty and interest shown on the Notice of Assessment.

(c) Under ORS 305.280(2), an appeal from a proposed refund adjustment made under ORS 305.270 shall be filed within 90 days after the date on which the adjustment is final (i.e., within 30 days after the date of the notice of proposed adjustment, as provided in ORS 305.270(5)(b)).

(d) Under ORS 305.280(4), an appeal from an order of the county board of property tax appeals, must be filed with the Tax Court within 30 days after the order is mailed to the appellant. If, pursuant to ORS 309.110(1), the order is personally delivered to the appellant, then the appeal must be filed with the Tax Court within 30 days after the date the order is personally delivered.

(3) Federal Appeals or Appeals of Audit Adjustments Made by Other States: Providing proof of a timely federal appeal or appeal of another state's audit adjustment will extend the time the taxpayer can appeal to Tax Court. The taxpayer must notify the department in writing within 30 days after the appeal is resolved. The department shall review the issues raised by the appeal and make a determination of the effect on the taxpayer's Oregon tax liability. If there is a disagreement, the taxpayer has 60 days from the department's determination to appeal to the Tax Court.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.525
Hist.: RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99

150-305.565(2)(a)
Stay of Collection: When Collection Action Won't Be Stayed

(1) The department may continue to collect delinquent taxes during the pendency of an appeal if it becomes known the taxpayer is preparing to depart from the state or move assets out of the state to avoid paying taxes. In addition, the department may continue collection if the taxpayer does any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect tax. These acts include but are not limited to:

(a) Communication has been received that acts of the taxpayer indicate the taxpayer will cease employment or change jobs to avoid paying the taxes.

(b) Communication has been received that acts of the taxpayer indicate the taxpayer will sell, convey, give away, hide, or destroy an asset rather than having it seized.

(c) The taxpayer actually begins to sell, convey, give away, hide, or destroy real or personal property subsequent to taking of an appeal to the director.

(2) Also, if there exists documented evidence the taxpayer has changed jobs or has sold, conveyed, given away, hidden, or destroyed assets in the past to avoid garnishment or seizure, collection action may be continued.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.565
Hist.: RD 7-1992, f. & cert. ef. 12-29-92

150-305.612
Offset of State Debt Through U.S. Treasury Offset Program

(1) The Department of Revenue may submit liquidated state income tax debt for offset against federal tax refunds through the "Treasury Offset Program" under 26 USC 6402(e) and 31 CFR 285.8. For purposes of this rule, liquidated means legally enforceable because:

(a) The liability is assessed, either self-assessed by the taxpayer or department-assessed;

(b) The department has made written demand for payment of the liability and issued a warrant as provided for in ORS 305.895 and 314.430;

(c) The taxpayer is not in bankruptcy; and

(d) All relevant appeal periods for contesting the liability have expired.

(2) Notice of intent to offset. Before submitting an Oregon tax debt to Financial Management Service, U.S. Treasury for offset against a federal refund, the Department of Revenue must send written notice of intent to offset to the taxpayer by certified mail.

(3) Disagreement procedures. If a taxpayer disagrees with the notice of intent to offset and wants reconsideration, the taxpayer must submit a letter of disagreement within 60 days of the date shown on the notice of intent to offset. The taxpayer must provide, and the department will limit consideration to, evidence that the tax debt scheduled for offset is not:

(a) Past due; or

(b) Legally enforceable.

(4) If the taxpayer claims that the debt is not legally enforceable because the taxpayer is an enrolled member of an Indian tribe whose income is not subject to Oregon tax under ORS 316.777 or 316.785, the department will consider the merits of such a claim unless the issue has already been finally adjudicated by a court in a proceeding to which the department is a party.

(5) Review of disagreement. For each letter of disagreement, the department will:

(a) Review all evidence provided by the taxpayer, and

(b) Remove taxpayer's name from the federal refund offset list for this debt if evidence supports the taxpayer's position that the debt is not past due or legally enforceable.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.612
Hist.: REV 5-2002(Temp), f. & cert. ef. 9-23-02 thru 3-1-03; REV 8-2002 f. & cert. ef. 12-31-02

150-305.620(1)-(A)
Rules Application

Unless the context requires otherwise, the department will apply the same rules to administer transit district payroll tax programs as are used in the administration of the withholding tax program. See rules adopted under ORS 316.162 to 316.212. In addition, the provisions of rules adopted pursuant to ORS Chapters 305 and 314 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals, and the procedures relating thereto, shall apply to the determination of taxes, penalty and interest, imposed under transit district payroll tax programs.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.620

Hist.: RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-305.620(4)
Appearance Procedure — Local Taxes Administered by the Department of Revenue

A political subdivision may intervene in any conference held by the department in connection with a local tax administered by the department under an agreement with that political subdivision.

(1) The department will notify a political subdivision of each significant conference request arising from the department's administration of that subdivision's local tax. Whether a conference request is "significant" is determined by the program manager's evaluation of the possible impact on the tax program.

(2) If appropriate under subsection (1), the department will notify the political subdivision of the conference request by letter. A copy of the conference request will be provided with the letter subject to the limitations imposed by ORS 314.840.

(3) A political subdivision desiring to intervene must notify the department by letter of its intent to intervene within 14 days of the date the department mails the copy of the conference request. The political subdivision must serve a petition of intervention upon all the parties and the department not more than 30 days after notifying the department of its intent to intervene. The petition must state the grounds for intervention, the political subdivision's position on each issue raised in the appeal, and whether or not the political subdivision desires to be represented at the conference.

(4) The conference officer will serve the political subdivision with a copy of any conference decision in a case where the political subdivision has intervened. Service will be made at the same time and in the same manner that the decision is served upon the petitioner.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.620
Hist.: RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00

Multistate Tax Compact

150-305.720(1)(a)
Use of Checkoff Resources

Entities receiving checkoff resources are restricted in the manner in which the resources may be used by the organization.

(1) Checkoff resources received by an entity may only be used to fund:

(a) Existing programs. Checkoff resources may only be used to fund existing programs to the extent that the checkoff funds serve to augment the existing program. Checkoff resources may not be used to replace existing funding that would allow a shift of entity resources to another unrelated purpose.

(b) New programs. Checkoff resources may be used to fund new programs, but only if the new program has a close connection to an existing program. The existing program after which the new program is patterned must have a proven record of success in providing substantial and direct benefit to the state.

(2) Checkoff resources may not be used to meet the administrative expenses of the entity. Included in this prohibition are any increased fixed or variable administrative expenses that are a direct result of the new or augmented program funded by the checkoff resources.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.702
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-305.725(1)
Application and Signature Due Dates

Completed applications and completed signature petitions for tax instruction booklet listing must be received by the Charitable Checkoff Commission by June 1 of the tax year for which the entity seeks listing.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.725
Hist.: REV 1-2000, f. & cert. ef. 2-1-00; REV 13-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-305.725

150-305.727
Certification of Nonprofit Entities for Instruction Listing

For purposes of Section 2, Chapter 1032, Oregon Laws 1999, the date the instructions for the forms must be prepared shall be September 1 of each calendar year. Entities that are certified to the department by the commission on or before that date shall be listed in the instruction material of the Oregon income tax returns for that tax year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.727
Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99

150-305.727(3)(a)
Definitions of the Terms "Affiliated and "Central Office"

For purposes of the statutes and rules relating to the charitable checkoff system:

(1) The term "central office" means an organization that the Internal Revenue Service recognizes to be an exempt organization under Internal Revenue Code §501(c)(3). It must have written bylaws or other written provisions that describe its structure and purpose. It must also have the same primary purpose as that of its affiliates. It must be located in Oregon and a substantial proportion of the funds that it collects must remain in Oregon, benefiting the state and its residents, as required by ORS 305.720(1)(b).

(2) The phrase "affiliated entities" means entities with a relationship documented in writing. Each affiliate must share a specific primary purpose and that purpose must be charitable. Each affiliated entity must be recognized by the Internal Revenue Service to be an exempt organization under Internal Revenue Code §501(c)(3). Affiliated entities must be located in Oregon and a substantial proportion of the funds that they collect must remain in Oregon, benefiting the state and its residents, as required by ORS 305.720(1)(b).

Stat. Auth.: ORS 305.100 & 305.751
Stats. Implemented: ORS 305.725 & 305.727
Hist.: REV 1-2000, f. & cert. ef. 2-1-00; REV 13-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-305.727-(A)

150-305.727(3)(b)
Signatures Must Be on Department's Form

(1) For purposes of meeting the requirement that an entity gather the signatures of 10,000 registered Oregon voters, signatures must be collected and submitted on the department's designated form. The signatures must include all the information requested on that form.

(2) The submitter of such signatures must swear that, to the best of the submitter's knowledge and belief, all the signatures that the submitter is presenting to the commission on behalf of the organization are those of registered Oregon voters.

(3) If an entity fails to meet any of the requirements listed within this rule, commission may reject the entity's application or may deem the applying entity unqualified to receive a charitable checkoff listing.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.727
Hist.: REV 1-2000, f. & cert. ef. 2-1-00; REV 13-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-305.727-(B)

150-305.727(3)(b)-(B)
Signature Gathering Period

The signature gathering period for any tax year for which an entity seeks listing begins June 1 of the tax year prior to the year in which listing is sought and extends through May 31 of the tax year listing is sought. For example: if an entity seeks listing for tax year 2001, the signature gathering period is from June 1, 2000, through May 31, 2001.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.727
Hist.: REV 13-2000, f. 12-29-00, cert. ef. 12-31-00; REV 2-2001, f. 7-31-01, cert. ef. 8-1-01

150-305.730
Charitable Checkoff Financial Reporting Requirements

It is the commission's responsibility to properly consider all applicants to the checkoff program and participants in the program approved by the commission. In order to carry out this responsibility, the commission finds that it is necessary to receive additional financial information. This information will also be used to determine the use of any funds received through the checkoff program.

(1) Financial statements and budget documents shall be required.

(a) The financial statements and budget documents must cover the most recent three years or the length of time the entity has been in existence.

(b) The financial statements and budget documents must be submitted by July 1 of each even numbered year.

(2) All documents shall be verified as provided in ORS 305.810 by a principal of the entity, a principal in the solicitation activities of the entity, or the executive officer of the entity.

(3) If the documents submitted by July 1 do not contain the necessary information, documentation, or verification the commission shall notify the applicant of the deficiency within 15 days. The commission will provide a reasonable opportunity after the notification to submit the necessary materials. Failure to submit the necessary materials when requested may result in disqualification.

(4) The provisions of this administrative rule will be effective for applications received on or after January 1, 1992.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.730
Hist.: RD 7-1990, f. 12-20-90, cert. ef. 12-31-90

150-305.747
Costs of Administration

(1) The department shall estimate the fixed and variable costs to administer each of the personal income tax checkoff programs which have been approved by the Oregon Legislature or the Oregon Charitable Checkoff Commission for each biennium. The department shall set aside in an administrative expense reserve account 10 percent of the monthly contributions for each program until the fund balance equals the estimated fixed and variable costs for each checkoff program. No further charges to that program shall be made for the year.

(2) For purposes of this rule, examples of fixed costs include accounting time, programming time, and tax booklet revision. An example of a variable cost is data entry charges, which are dependent upon the number of returns filed contributing to the checkoff.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.747
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-305.749(3)
Method of Distribution from Check-off Contributions and Reimbursement of Administrative Expenses

For programs which have been approved for charitable contribution checkoff for each biennium by the Oregon Legislature or the Oregon Charitable Checkoff Commission, the department will maintain a record of contributions received and distribute the respective amounts, minus administrative expenses to each entity at the beginning of each month.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.749
Hist.: RD 7-1988, f. 12-19-88, cert. ef. 12-31-88; Renumbered from 305.835(1), RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; Renumbered from 150-305.749(2), RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-305.796
Depositing Refunds into College Savings Account

A taxpayer electing to make contributions authorized by ORS 305.796 to one or more accounts established under 348.857:

(1) May contribute to a maximum of four accounts;

(2) Must contribute at least $25 per account; and

(3) May deduct contributions made under this section on the subsequent year's tax return in accordance with ORS 316.699.

Stat. Auth.: ORS 305.100 & 305.796
Stats. Implemented: ORS 305.796
Hist.: REV 9-2012, f. 12-18-12, cert. ef. 1-1-13; REV 2-2013, f. & cert. ef. 3-28-13

150-305.810
Verification of Returns, Statements, or Documents Filed Under Tax Law

(1) The declaration under ORS 305.810 that a return, statement, other document or report is made under penalties for false swearing and is true, complete, and correct must be verified by the taxpayer, an authorized agent, or declarant, and in the case of a joint personal income tax return, by each taxpayer or authorized agent for such taxpayer.

(2) Returns, statements, other documents and reports are verified by:

(a) Hand signing the return, statement, other document or report.

(b) An electronic signature (as defined in ORS chapter 84) associated with an electronically filed return, statement, other document or report, by the taxpayer, tax preparer, authorized representative of the taxpayer, or declarant.

(c) Any verification method allowed by the IRS when electronically filing the federal return with the Oregon return, such as a federal personal identification number.

(d) A hand signed statement, such as Oregon Form EF, submitted to the department if requested.

(e) A hand signed and scanned Corporation E-file Signature Form included with the electronically filed corporate income and excise tax return for tax year 2011 and earlier, without the use of a federal signature method or when the Oregon filer is different than the federal filer.

(f) Transmitting a payroll tax return using the state's online payroll reporting method. The return is considered signed when the return is transmitted to the state by a person certified by the employer and the Oregon Employment Department as allowed to file the return using the state's reporting system.

Stat. Auth.: ORS 305.100 & 305.810
Stats. Implemented: ORS 305.810
Hist.: REV 1-2005, f. 6-27-05, cert. ef. 6-30-05; REV 1-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-29-12; REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13; REV 2-2014, f. & cert. ef. 7-31-14

150-305.820
Date When Writing or Remittance Deemed Received by Department of Revenue

(1) The term "due date" means the last date or the last day of the period prescribed for filing the writing or remittance and includes any extension of time granted for such filing.

(2) Any writing or remittance received after the due date bearing a legible postmark dated on or before the due date will be considered timely filed if properly mailed and the postmark is that of the United States Postal Service. If the postmark is other than that of the United States Postal Service, the writing or remittance will be considered timely filed if it has been properly mailed and is received not later than the time a writing or remittance postmarked by the United States Postal Service at the same point of origin on the due date would ordinarily be received. If the writing or remittance is not received within the period of time, it must be shown by satisfactory proof to the Department that the writing or remittance was placed in the hands of the United States Postal Service or in the hands of a private express carrier on or before the due date.

(a) Satisfactory proof will consist of one or more of the following:

(A) If sent by United States registered mail, the date of registration shall be treated as the postmark date.

(B) If sent by United States certified mail and the sender's receipt is postmarked by a postal employee, the date of the United States postmark on such receipt shall be treated as the postmark date of the writing or remittance.

(C) If sent by private express carrier, the date recorded on the transmittal receipt shall be treated as the postmark date.

(D) If the writing or remittance bears a postmark date that is not legible or bears a postmark date dated later than the due date, it will be treated as having been mailed on or before the due date provided the person who is required to file the writing or remittance establishes by sworn affidavit that it was actually deposited on or before the due date in the hands of a private express carrier or in a government mail receptacle before the last collection of mail for the place in which it was deposited.

(E) Any writing or remittance having a legible postmark other than that of the United States Postal Service and bearing a proper due date is considered timely filed although not received by the Department within the ordinary delivery time for such class mail if it is established that the delay was due to a delay in the transmission of the mail.

(b) If the department has no record of receiving a return, the taxpayer may be able to establish satisfactory proof of timely mailing. Examples of evidence the department will consider include:

(A) A history of timely filing returns with the department;

(B) Proof of timely filed federal returns;

(C) Written documentation from the taxpayer which would indicate that the taxpayer had timely filed. Such documentation may include correspondence to the department about refunds not received, or about checks for payment of tax which remain uncashed.

(3) If the person required to file the document has reason to believe that the mailing of the writing or remittance is so close to the deadline that it could possibly fail to meet the requirements of timely filing, the writing or remittance should be mailed by registered or certified mail so that the sender will be able to obtain an official receipt in verification of the date the document was mailed.

(4) In order for a writing or remittance to be considered "properly mailed" it must have been placed in a properly addressed envelope or other appropriate wrapper, postage duly prepaid, and placed in the hands of a private express carrier or deposited in a government mail receptacle.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.820
Hist.: 11-71; 12-19-75; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-305.992
Returns Not Filed for Three Consecutive Years; 100 Percent Penalty

(1) General requirements. The 100 percent penalty under ORS 305.992 may be imposed if:

(a) The taxpayer was required to file returns for each tax year of three or more consecutive years including returns for tax periods of less than 12 months; and

(b) All returns due during the three-year period are not filed by the due date (including extensions) of the return required for the third consecutive year. Assessments under ORS 305.265(10) are not returns for the purpose of the penalty under ORS 305.992.

Example 1: On July 1, 2008, Mary filed her Oregon individual income tax returns for 2004, 2005, and 2007. In 2006, Mary was a nonresident and had no Oregon source income. Mary was not required to file an Oregon return for each of three or more consecutive taxable years because she had no Oregon source income in 2006. The 100 percent penalty will not be imposed on the 2004, 2005, or 2007 returns.

Example 2: Assume the same facts as Example 1 except that Mary had income from Oregon sources in 2006 and was required to file a return for 2006 but did not. The requirement that tax returns for three consecutive years were not filed by the due date of the third consecutive year was met and the 100 percent penalty will be imposed on the 2004, 2005, 2006, and 2007 returns.

(2) Under authority granted in ORS 305.229, the department will not impose the 100 percent penalty under ORS 305.992 for returns filed or a Notice of Tax Determination and Assessment (NTDA) that have been assessed a lower failure-to-file penalty.

Example 3: Laurie did not file returns for tax years 2003, 2004, or 2005. In 2005, the department issued NTDAs for tax years 2003 and 2004. The 2003 and 2004 NTDAs reflect a 50 percent failure-to-file penalty under ORS 314.400. In 2006, the department issues a NTDA for tax year 2005. The 2005 NTDA reflects the 100 percent failure-to-file penalty under ORS 305.992. The department will not assess a 100 percent penalty for the NTDAs issued for tax years 2003 and 2004 because a penalty was previously assessed. Thus, the penalty would remain at 50 percent for tax years 2003 and 2004.

Example 4: In November 2007, Hilda filed her 2003 and 2004 tax returns. The department asserted a 25 percent failure-to-file penalty on both the 2003 and 2004 returns. In January 2008, she filed her 2005 and 2006 tax returns. The department asserted the 100 percent failure-to-file penalty on both the 2005 and 2006 returns because the 2003, 2004, and 2005 returns were all filed after the due date for the 2005 return and the 2004, 2005, and 2006 returns were all filed after the due date for the 2006 return. Even though the 2003 and 2004 returns were subject to the 100 percent penalty, the department will not increase the penalty to 100 percent because a lower penalty was previously assessed. Thus, the penalty would remain at 25 percent for tax years 2003 and 2004.

(3) Net tax liability. The penalty is 100 percent of the net tax liability determined for each taxable year. The net tax liability is the tax remaining after subtracting credits, withholding, and other prepayments from the tax required to be shown on the return. A net tax liability may be determined by the taxpayer, an assessment under ORS 305.265(10), an examination, or audit of a return by the department.

Example 5: On September 27, 2007, Jack filed Oregon income tax returns for 2005 and 2006. The 2006 return showed Oregon tax of $450, state withholding of $700 and a refund of $250. The 2005 return has a net tax liability of $325. Jack was required to file a return for 2004 but did not file a return. Because Jack did not file all returns due during the three-year period by the due date of the 2006 return, the penalty may be assessed on 100 percent of the net tax liability for 2005.

Example 6: Assume the same facts as in Example 4 except that upon examination, the department adjusted the refund claim for 2006 and asserted a deficiency. The penalty may be assessed on 100 percent of the net tax liability for taxable years 2005 and 2006.

Example 7: Assume the same facts as in Example 5 except that the department assessed a tax under ORS 305.265(10) for 2004. The penalty may be imposed on 100 percent of the net tax liability for each taxable year: 2004, 2005, and 2006.

Example 8: Assume the same facts as in Example 4 except that the department asserted a deficiency one year later for tax year 2006 as the result of an audit. The auditor recomputed Oregon tax to be $1,017. After application of withholding and refunds already received, the taxpayer owed an additional $567 of tax. The 100 percent penalty may be assessed on the net tax liability of $317 for tax year 2006 (the corrected tax of $1,017 less the $700 of withholding) and on the net tax liability of $325 for tax year 2005.

Example 9: Assume the same facts as in Example 4 except that Jack was granted a federal extension to file the 2006 return until October 15, 2007. The 100 percent penalty does not apply. The returns for 2005 and 2006 were filed before the due date of the return required for the third year (October 15, 2007).

(4) Timber tax returns. Timber tax returns are those required to be filed under ORS 321.045 and 321.733 (2003) and 321.322 and 321.435 (2001). A timber tax return is required to be filed if a taxpayer:

(a) Harvested timber; or

(b) Obtained a Notification of Operations (permit) indicating the taxpayer would harvest. Obtaining a permit will cause the department to generate returns. There does not need to be a harvest to meet the filing qualification because non-harvests require a "NO HARVEST" filing.

Example 10: A taxpayer was required to file returns for 2003, 2004 and 2005 after harvesting timber in each of those years. If all three returns are not filed by January 31, 2006, the 100 percent penalty may be applied to any net tax liability for each of the three years.

Example 11: In 2003 and 2004 a taxpayer obtained permits to harvest; no harvest occurred for either year and the taxpayer did not file returns. In 2005 the taxpayer did not obtain a permit, but harvested timber. If a return is not filed by January 31, 2006, the 100 percent penalty may be applied to the 2005 net tax liability.

(5) Oregon withholding tax payment due dates are determined by the corresponding federal due dates. Generally, withholding tax reports are filed for four quarters per year. The 100 percent penalty will apply if the taxpayer failed to file 12 consecutive quarters representing three consecutive years.

Example 12: After February 1, 2006, an employer filed withholding tax reports for first through fourth quarter 2005, first through fourth quarter 2004 and first through fourth quarter 2003. The taxpayer is subject to the 100 percent penalty on all of the late reports.

Example 13: On May 30, 2007, an employer files withholding tax reports for first quarter 2007, fourth quarter 2006, and second quarter 2005. All other quarters have been filed timely. The 100 percent penalty is not assessed because the taxpayer was not delinquent for 12 consecutive quarters (three years).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.992
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

DIVISION 306

SUPERVISION OF PROPERTY

150-306.115
Supervisory Authority

(1) ORS 306.115 is an extraordinary remedy that gives the Department of Revenue authority to order a change or correction to a separate assessment of property. An assessor or taxpayer may request a change or correction by filing a petition with the department. A petition must meet the requirements of OAR 150-306.115-(A).

(2) The department may correct any errors or omissions in the assessment or tax roll under ORS 306.115(2) through (4), including but not limited to clerical errors and errors in property value, classification, or exemption.

(3) Before the department will consider the substantive issue in a petition (for example, value of the property, qualification for exemption, etc.), the petitioner has the burden of showing that the requirements for supervisory jurisdiction, as stated in ORS 306.115 and section (4) of this rule, have been met. The department will base its determination on the record before it.

(a) The department may request supplemental information from the petitioner if it determines the petition is inadequate. The department may dismiss the petition if the petitioner does not provide the requested information within the time specified.

(b) If a determination can be made from the written information, a supervisory conference will not be held.

(c) If a determination cannot be made from the written information, a supervisory conference will be held. At a supervisory conference, the department will consider only whether the requirements of ORS 306.115 and this rule have been met. The substantive issue in the petition will not be considered.

(d) If the department determines that it has the authority under ORS 306.115(3) to consider the substantive issue in the petition, it will hold a merits conference, if necessary, to consider the substantive issue. If the department determines that it does not have the authority to consider the substantive issue in the petition, the petition will be denied.

(4) The department will consider the substantive issue in the petition only when:

(a) The assessor or taxpayer has no remaining statutory right of appeal; and

(b) The department determines that an error on the roll is likely as indicated by at least one of the following standards:

(A) The parties to the petition agree to facts indicating likely error; or

(B) There is an extraordinary circumstance indicating a likely error. Extraordinary circumstances under this provision are:

(i) The taxation of nonexistent property, property that is exempt as a matter of law without an application, or property outside the taxing jurisdiction;

(ii) Taxpayers' computational or clerical errors in reporting the value of personal property pursuant to ORS 308.290;

(iii) Instances in which a bona fide purchaser had no notice of a real property roll correction made under ORS Chapter 311 during the appeal period set forth in 305.280;

(iv) A clerical or jurisdictional error exists in an order from a county Board of Property Tax Appeals;

(v) An increase in maximum assessed value above the 3% limitation during the years for which the department has supervisory jurisdiction where there has been no change to the property that qualifies as an exception under ORS 308.146(3), and there is no dispute involving valuation judgment, the identification of activity as general ongoing maintenance and repair, or an account modification under 308.162; or

(vi) Instances in which a question of fact exists which is of interest to the department, does not fall within any other provision of ORS 306.115 or this rule and does not involve an error in valuation judgment.

(5) The department may correct the assessment or tax roll with respect to a separate assessment of property for the current tax year, for either or both of the tax years immediately preceding the current tax year, or for any combination of such years. The requirements of ORS 306.115 and this rule must be met for each year that a correction is to be made. The department may make a correction under 306.115(3) only when:

(a) The requirements of subsections (4)(a) and (4)(b) of this rule have been met and the department determines that an error exists on the roll; or

(b) The requirements of section (6) of this rule have been met.

(6) Notwithstanding the requirements of section (4) of this rule, the department may correct the roll when:

(a) The assessor requests a reduction in value; or

(b) The taxpayer and assessor stipulate to an assessment change.

(7) The remedies provided by ORS 306.115 should not be viewed as substitutes for the ordinary appeal remedies provided by other sections or the provisions of 305.288.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.115
Hist.: RD 4-1984(Temp), f. & cert. ef. 8-6-84; RD 7-1984, f. 12-5-84, cert. ef. 12-31-84; RD 9-1985, f. 12-26-85, cert. ef. 12-31-85; RD 10-1987(Temp), f. & cert. ef. 11-1-87; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1992, f. & cert. ef. 12-29-92; RD 10-1992, f. 12-30-92, cert. ef. 12-31-92, Renumbered from 306.115-(B); RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97; REV 1-1999(Temp), f. 3-2-99, cert. ef. 3-3-99 thru 8-3-99; REV 3-1999, f. & cert. ef. 9-1-99; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2003, f. & cert. ef. 12-31-03; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

150-306.115-(A)
Sufficiency of a Petition

(1) A petitioner must be one of the following for each of the years that supervisory jurisdiction is requested:

(a) An owner of the property;

(b) A person holding an interest in the property that obligates the person to pay taxes imposed on the property. An interest that obligates the person to pay taxes includes a contract, lease, or other intervening instrumentality;

(c) The assessor of the county in which the property is located; or

(d) The clerk or tax collector of the county in which the property affected by the petition is located, if the petition involves a clerical or jurisdictional error in an order from a county Board of Property Tax Appeals.

(2) The purpose of a petition is to inform the department and the nonpetitioning participant of the nature of the claim for relief. For this reason, petitions to the department must include the following information:

(a) Specific facts asserted that satisfy the conditions of OAR 150-306.115(4);

(b) A statement of the specific result requested by the petitioner;

(c) Petitioner's address and phone number;

(d) The signature of the petitioner or authorized representative, verified by a written declaration that the contents of the petition are true and made subject to the statutory penalties for false swearing;

(e) The assessor's tax account number or identification number of the property in question;

(f) In a petition regarding an act or omission by a county tax official or the department, a copy of the written notice of the act or omission that is the subject of the petition must be attached.

(A) The department will review all petitions filed (except those filed pursuant to ORS 308.584, relating to properties centrally assessed by the department) and determine their compliance with this rule. If the department finds a petition to be deficient in any material respect, the department will provide written notice of the deficiency to the petitioner by a letter mailed to the address appearing on the filing. The petitioner has 30 days from the mailing date of the notice to provide the information requested by the department. If the deficiency is not cured within the 30-day period, the petition may be dismissed without further proceedings.

(B) Any petition which is filed by someone who does not appear to be a proper petitioner, or authorized representative pursuant to ORS 305.230, will not be considered a valid petition. The petition will be returned to the sender. The petition may be refiled at a later time with the appropriate authorization. However, the filing date is the day the petition from a proper petitioner or an authorized representative is deemed to be filed or received pursuant to 305.820.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.115
Hist.: 12-31-77; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83, Renumbered from 150-305.275; RD 10-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-305.275-(A); REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

150-306.115-(C)
Property Tax Conference Procedures

This rule applies only to conferences conducted in the Property Tax Division.

(1) The department will hold a conference if it determines that the written record is insufficient to make a decision. If a conference is necessary, it will be held by telephone unless the department finds it more appropriate to hold the conference in person. The department will record the conferences.

(2) When the department schedules a conference, it will send written notice to the participants 30 to 90 days in advance.

(a) The department may grant postponement requests for good cause. The department may require that a participant requesting a postponement obtain the approval of the other participants prior to granting a postponement.

(b) The department may dismiss the petition if the petitioner or authorized representative fails to appear or be available at the time of the conference.

(3) Conferences will be conducted by a conference officer who is in charge of the conference proceedings.

(4) Conference participants may authorize any person to be a witness on their behalf; however, only those persons qualified under ORS 305.230 may be authorized to act as a taxpayer's representative. The department will not require any particular person to testify. The conference officer will administer an oath to all persons giving testimony.

(5) The burden of proof in all conferences is on the person seeking relief. A preponderance of the evidence is sufficient to sustain the burden of proof.

(6) Any evidence to be considered during the conference must have been mailed to the department and all participants at least ten business days prior to the conference, or it must have been actually received by the department and all participants at least five business days prior to the conference.

(7) No information will be accepted after the conference unless the conference officer determines that more information is needed to clarify an issue raised during the conference.

(8) Conference participants must not communicate privately with the conference officer concerning the substantive issue in a petition. If such a communication occurs, the conference officer will inform the other participants of the communication and give them a reasonable opportunity to respond.

(9) The conference decision is an order for purposes of ORS 309.115.

(a) Conference decisions may be appealed to the Oregon Tax Court within 90 days of the mailing date, as provided in ORS 305.275 and 305.280.

(b) The department may correct or amend a conference decision if a written request is received within 90 days of the date the conference decision was issued. The department will not amend a conference decision that has been appealed to the Tax Court.

(c) The department may issue a preliminary ruling when an intermediate decision is required prior to making the final decision. A preliminary ruling is not a final decision for purposes of appeal.

(10) Participants to a conference may request a copy of the recording of the proceeding and shall pay reasonable costs. See OAR 150-192-440. No written transcripts will be provided.

(11) Any exhibit introduced at the conference may be destroyed by the department anytime after 90 days following the issuance of an order, unless, prior to the end of the 90-day period, the person who presented the exhibit makes a written request for the return of the exhibit.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.115
Hist.: 11-73; 12-31-77; TC 16-1979, f. 12-20-79, cert. ef. 12-31-79; TC 6, 1981, f. 12-7-81, cert. ef. 12-31-81; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 5-1986, f. & cert. ef. 12-31-86; RD 10-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 4-1999, f. 12-1-99, cert. ef. 12-31-99, Renumbered from 150-305.115-(A); REV 1-2003, f. & cert. ef. 7-31-03; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

150-306.125
Computer Data Transfer

(1) The counties shall send county assessment and taxation data in standard magnetic Department of Revenue data exchange formats, as required by ORS 308.027, 308.215, 308.219, 309.310, 309.400, and 311.105.

(2) The detailed description on each field and the formats to be used are in the Data Exchange Manual.

(3) Each county shall convert to the magnetic data formats on a schedule to be established by the Department of Revenue after consultation with the individual county.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.125
Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88

150-306.125(1)
Electronic Data Transfer

Any data required to be delivered incompliance with property taxation law may be sent and received electronically by agreement of the parties. All required data fields must be included in the transmission.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.125
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-306.126
Confidentiality of Appraisals of Industrial Property Made by and Contained in Department of Revenue Files

The files of industrial property, appraised by the Department of Revenue and contained in DOR files, will be safeguarded in the manner stated in OAR 150-308.290.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.126
Hist.: TC 7-1980, f. 11-28-80, cert. ef. 12-31-80

150-306.126(1)
Determination of Responsibility for the Appraisal of Industrial Property

The purpose of this rule is to determine the responsibility for the appraisal of industrial property between the Oregon Department of Revenue and the thirty-six Oregon county assessors' offices. Property classification for all purposes other than assigning appraisal responsibility is determined by OAR 150-308.215(1)-(A).

(1) Definitions for purposes of this rule:

(a) "Industrial property" means a facility or property engaged in manufacturing or processing which includes, but is not limited to sawmills, plywood and veneer plants, paper and pulp mills, food processing facilities, bakeries, flour mills, chemical processing operations refineries, breweries, wineries bottling operations, machine shops, metal rolling mills, metal fabrication facilities, smelters, printing and publishing operations, seed processing operations, permanent sand and gravel operations, and electronic and high technology manufacturing operations.

(b) "State Responsibility Industrial Property" means industrial property that had real market value for improvements of more than $1 million for the preceding year. This includes all principal and secondary industrial property as defined in ORS 306.126(1).

(c) "Improvements" or "real property improvements", for determining responsibility for property of more than $1 million, means improvements erected upon, above or affixed to the land but not the land itself. Improvements include, but are not limited to: yard improvements, buildings, structures, and real property machinery and equipment. Improvements do not include site development and personal property.

(A) "Yard improvements" include but are not limited to on-site: paving, exterior lighting, log ponds, underground fire systems, fences, access roads and roadways and railroad sidings.

(B) "Site developments" are defined in OAR 150-307.010(1).

(d) "Integrated" and "integral" means directly involved in the production of a new product.

(e) "Processing" means the treatment of materials to produce a new product.

(f) "Unit of industrial property" means, for appraisal purposes, a single facility or an integrated complex currently engaged in manufacturing or processing operations and may include one or more accounts.

(2) The department is responsible for the appraisal of industrial property that meets the definition of "state responsibility industrial property". The county is responsible for the appraisal of all land, including that for state responsibility industrial accounts.

(3) Property other than industrial property that is at the same location as the manufacturing or processing operation may be appraised as part of the unit of industrial property.

(4) The procedure for determining the appraisal responsibility for industrial property is as follows:

(a) On or before August 1 of each year, the department will provide each county a list of all industrial property accounts within their jurisdiction for which the state was responsible for appraising in the preceding year. The list will include the owner's name, the account number, and the real market value.

(b) The county will review the list, and all other industrial property accounts, to determine if there are any units of industrial property that have moved above or below the $1 million threshold.

(A) Units of industrial property that have gone below the threshold will be placed on a list to be transferred to the county.

(B) Units of industrial property that have gone above the threshold will be placed on a list to be transferred to the department.

(C) Construction of a new industrial facility that will result in a real market value of more than $1 million for the real property improvements will be placed on a list of properties recommended for transfer to the department. If construction has begun or is expected to begin by January 1 of the current tax year it will also be placed on the list to be transferred.

(c) By October 1, the county will submit a list of accounts recommended to become state responsibility.

(d) By November 15, the department will make a final determination of appraisal responsibility for all industrial property and provide this information to the county.

(5) For state responsibility industrial property in which the real property improvements are not all at the same location, the department and the county will evaluate each account to determine if the account should be appraised by the department. The criteria that will be used are:

(a) The combined value of the real property improvements from all locations is more then $1 million, and

(b) The real property improvements are integral to the same manufacturing or processing operation.

(6) The party that valued the property will be responsible for defending any appeals. In all cases, the county is responsible for the defense of the land valuation.

(7) The department may return to the county the appraisal responsibility for any property that no longer qualifies as state responsibility industrial property. The department will forward to the county a copy of all appraisal material on file at the department and a copy of all industrial property returns filed by the taxpayer.

Stat. Auth.: ORS 305.100, 306.126
Stats. Implemented: ORS 306.126
Hist.: 12-55; 3-58; 11-59; 8-65; 1-66; 3-70; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97, Renumbered from 150-306.126(1)-(A); REV 8-1998, f. 11-13-98, & cert. ef. 12-31-98; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-306.126(2)
Transmission of the Values for Principal and Secondary Industrial Properties

(1) The department will transmit the real market values of principal and secondary industrial accounts to the assessor prior to July 1 of each year.

(2) For each real property account, the real market value transmitted to the assessor by the department will include:

(a) The total real market value of all improvements as of January 1; and

(b) The real market value of all additions minus retirements as of January 1 for purposes of calculating maximum assessed value for the current assessment year.

(3) For each personal property account, the real market value transmitted to the assessor by the department will include the total real market value of all personal property assets as of January 1 for the current assessment year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.126
Hist.: Repealed by RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 306.126(2)-(A); RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

150-306.126(3)-(A)
Delegation of Responsibility for Industrial Property

(1) If the assessor requests the delegation of responsibility for a principal or secondary industrial property, the request shall be in writing to the department prior to October 1. The request shall include: the name of the property owner, the account number, the district code, the amount budgeted for appraisals of principal and secondary industrial properties by account number, the name and qualifications of the person to appraise the property, and the reason for the request.

(2) On or before November 15, the department shall either approve or deny the assessor's request for delegation of responsibility. The county must meet the following criteria:

(a) The county industrial appraisal staff must be qualified to perform the appraisals of these industrial properties and adhere to department industrial appraisal standards.

(b) The county must maintain and achieve compliance with all the locally appraised property for which they currently have responsibility.

(c) The county must commit to provide all necessary resources for the appraisal, maintenance, and legal defense of the value of the delegated properties for a regular appraisal cycle with no shift of resources from the county's other assessment and taxation programs.

(3) The assessor will advise the county governing body of the request and the budget requirements. The assessor shall ask for the county governing body to sign an agreement committing to funding for the assessor's request.

(4) When the department delegates the responsibility for a principal or secondary industrial property to the county assessor, the assessor shall be responsible for this property for the regular appraisal cycle, including the original appraisal, annual updates to value, and appeals. At the beginning of the next appraisal cycle, the responsibility shall revert to the department if the property still qualifies as a principal or secondary industrial property as defined by OAR 150-306.126(1), (2), and (3). The assessor may make a new request for the department to delegate its responsibility.

(5) Appraisals of principal or secondary industrial property by the county under this section are subject to audit and review under the procedures established by OAR 150-294.005(Note)-(D). If the department finds an appraisal of principal or secondary industrial property made by the county assessor to be defective, the department shall take corrective action.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.126
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97

150-306.132
Oregon Land Information System Fund and the Oregon Map Project

(1) Definitions. For the purpose of this rule:

(a) "County" is the agency, approved by the County Assessor, requesting funds from the Oregon Map Project (ORMAP).

(b) "Department" means the Oregon Department of Revenue.

(c) "Director" means the director of the Oregon Department of Revenue.

(d) "Fund" means the Oregon Land Information System (OLIS) Fund. The fund provides financial support for ORMAP. The fund is separate from the state's General Fund. The fund's source is an allocated dollar amount received quarterly from each county's collected document-recording fees, as provided by ORS 205.323(3)(a).

(e) "Grant" means a money award from the OLIS Fund.

(f) "Oregon Map Project" (ORMAP) means the program implemented and authorized by the department to establish a statewide base map for facilitating and improving Oregon's property tax mapping system and for providing other Geographic Information System (GIS) benefits, pursuant to ORS 306.132 and 306.135.

(g) "ORMAP Project Coordinator" is the department employee tasked with administering the ORMAP project.

(h) "Oregon Land Information System Advisory Committee" (Advisory Committee) is a team of individuals appointed by the department's director. The committee is comprised of ORMAP stakeholders in private industry, and in federal, state, or local government who have an interest in the success of the program (OAR 150-306.135).

(i) "ORMAP Funding Criteria" (Funding Criteria) are listed in the document used for the administrative review, technical review, and priority scoring for grant applications. The criteria is part of the grant application and on the ORMAP web site (www.ormap.net).

(j) "ORMAP Goals" are the project goals approved by the advisory committee. The goals are identified on the ORMAP web site.

(k) "ORMAP Policies" are administrative policies approved by the advisory committee. The policies are identified on the ORMAP web site.

(l) "ORMAP Technical Group" (Tech Group) is comprised of volunteers who have education or experience in surveying, cadastral cartography, legal descriptions, mapping software, database software, or other GIS technology. The group evaluates and provides recommendations on individual county project grant applications and ORMAP policies to the department and the advisory committee.

(m) "ORMAP Technical Specifications" (Tech Specs) is a minimum standard used to determine if taxlots and tax maps remapped with ORMAP funds have been completed and meet ORMAP goals.

(n) "ORMAP Tools Group" (Tools Group) is comprised of volunteers who have education or experience in surveying, cadastral cartography, legal descriptions, mapping software, database software, or other GIS technology. This group develops and provides support for map editing tools used in the construction of Oregon assessor's maps.

(o) "Project" means a mapping activity that is eligible for a grant from the fund.

(2) The department administers the fund to fulfill the ORMAP goals. The department adopts priorities for funding specific projects, goals, or geographic areas in support of ORMAP. The grant is intended to assist the counties in the development of a statewide base map system. The department makes the following disbursements from the fund:

(a) Quarterly payments for ORMAP administrative costs to the department. Administrative costs include but are not limited to, personnel, equipment, and other services and supplies required in completing the ORMAP goals.

(b) Tools group funding. The tools group is eligible for funding at 3 percent of the total annual available funds, up to $25,000 per year.

(c) Grants to the counties. Counties are eligible for grants to support eligible ORMAP projects and for the purchase of approved equipment or software.

(3) Counties applying for a grant to fund an ORMAP project must complete an ORMAP Grant Application; Form No. 150-304-101-9. The application is available upon request to the department or on the ORMAP web site.

(a) Completed project grant applications must be submitted to the department's ORMAP Project Coordinator no later than the due date for that funding cycle, which is posted on the ORMAP web site. The department accepts grant applications for the purchase of approved equipment or software at any time.

(b) A county's grant request must adhere to the ORMAP goals, tech specs, and the county's business plan for achieving ORMAP goals.

(c) A county that submits a grant application must have a representative available during the tech group meeting to respond to questions related to the application.

(d) If requested by the department, a county must provide a reduction package by completing the Alternative Funding Request form developed by the department and attached to the grant application. The county must describe the modified deliverable in the event full funding is not possible.

(4) The ORMAP Project Coordinator reviews applications using the current version of the ORMAP policies and the funding criteria's section titled, Administrative Review Criteria.

(a) Administrative review criteria are all pass/fail and include:

(A) The county maintains a current online ORMAP business plan and provides the department with a status map of the county's ORMAP project phases,

(B) The county has no more than two outstanding ORMAP grant contracts,

(C) The county agrees to share data with the department for its internal use,

(D) The county has proposed a project directed at meeting one of the ORMAP goals,

(E) The county has provided the department with the most current calendar year's countywide cadastral data, which meets the Cadastral Data Exchange Standard,

(F) At the department's discretion, the county provides an alternative funding request for the grant application outlining funding reductions of varying percentages defined by the department, and

(G) Final remapping grant application. If a county grant application proposes to bring the entire county to meeting ORMAP Goal 6 (100% of county tax maps meeting the technical specifications) and the application meets other criteria for approval, it may receive priority for a one-time full funding to the 20% funding limitation for that funding cycle. If more than one county submits a final remapping grant request for a funding cycle, the tech group and advisory committee may review final grant applications and make recommendations for prioritizing and funding final remapping grant requests.

(b) The ORMAP Project Coordinator will notify the county applicant if any of the criteria are not met. The applicant may resubmit an amended grant application prior to the grant cycle deadline.

(c) An application that does not pass all the department's administrative review criteria referenced in section (4) of this rule will be denied.

(d) Applications for approved equipment and software may be awarded at the discretion of the department without review by the tech group. A list of approved equipment and software is attached to the grant application form.

(5) A project grant request that passes the department's administrative review process will be submitted to the tech group for review at its first scheduled meeting for that funding cycle. Each grant application will be reviewed using the current version of the funding criteria section titled, Technical Review Criteria.

(a) Technical review criteria are pass/fail and include:

(A) The project demonstrates a successful process,

(B) The project has a completion time frame that does not exceed one year, and

(C) The project has reasonable and measurable deliverables.

(b) If additional information is requested by the tech group, the county must submit a written addendum to the ORMAP Project Coordinator by the date specified.

(c) The tech group may review any information submitted at its next scheduled meeting. The department will determine if more meetings are required to complete the application review process.

(6) The department will determine if there are sufficient funds to provide full funding to all grant requests that pass the technical review. The department will provide funding to as many counties as possible as its first priority. If full funding is not available, grant applications will then be scored using the current Priority Scoring section of the funding criteria.

(a) The Priority Scoring criteria will each be assigned points, and include:

(A) The project is identified as a county edge matching project,

(B) The project is part of an ongoing process,

(C) The county currently has a low completion percentage of taxlots that meet the ORMAP Technical Specifications,

(D) The project shows a multi-county effort to encourage collaboration,

(E) The project shows funding partnerships,

(F) The project demonstrates significantly greater costs if not funded in the current cycle,

(G) The county has had significant contribution of non-department resources in completing ORMAP Goal 6,

(H) The county has signed a statewide data sharing agreement to share its taxlot data, and

(I) The County voluntary withdraws the application from the current funding cycle.

(b) The department will rank each grant application in point total order, with the higher scoring projects receiving preference, using the Priority Scoring methodology.

(c) The tech group will evaluate the department's ranking and make findings and recommendations as to the department's application of that methodology.

(d) The department will take account of each of the tech group's findings and recommendations in the course of recommending approval, denial, or partial funding of the grant based on the Priority Scoring and, if applicable, the quality and quantity of the deliverable in the event of insufficient overall funds.

(7) The department may make changes to the criteria listed in sections (4), (5) and (6) of this rule and notice will be given in the grant application prior to the funding cycle.

(8) The department will provide a written recommendation on grant awards to the advisory committee.

(a) The advisory committee will review the written recommendation of the department and may provide suggestions and input during each funding cycle.

(b) The department will consider any suggestions and input from the advisory committee, and in its discretion, may modify the original written recommendation on grant awards.

(c) The department will notify each grant requestor of its final grant determination and award by letter within two weeks of notifying the advisory committee of grant determinations.

(9) The department will consider appeals of grant decisions.

(a) Appeals must be submitted in writing to the department within 30 days from the action that is being appealed.

(b) If an appellant is successful and additional funds are granted, the additional funding will be deducted from the next quarterly fund deposit.

(10) The department and the grant award recipient must execute an intergovernmental service agreement prior to the disbursement from the fund.

(11) The department must review and approve all documentation of completed project deliverables before approving the payment from the fund to grant recipients.

(12) The department may approve modifications to awarded ORMAP contracts. These modifications may be adjustments to the timeline, deliverables, or amount awarded. The modifications are granted at the discretion of the department based on the availability of funds or the circumstances that required the modification of the contract.

(a) To be granted a contract modification, the county assessor must send, by letter or e-mail, to the ORMAP Project Coordinator the completed ORMAP Contract Modification Request form attached to the grant application. The form is also available upon request to the department's ORMAP Project Coordinator.

(b) The department must receive contract modification requests one month prior to the contract expiration date.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.132, 306.135
Hist.: REV 7-2005, f. 12-30-05, cert. ef. 1-1-06; REV 6-2009, f. & cert. ef. 7-31-09; REV 3-2014, f. & cert. ef. 7-31-14

150-306.135
Statewide Base Map System and the Oregon Land Information System Advisory Committee Role, Membership and Meetings

(1) The department is responsible to establish and deliver the Oregon Map (ORMAP) project pursuant to ORS 306.132 and 306.135. The ORMAP project creates an accessible statewide base map system to assist with and improve the administration of Oregon's property tax system.

(2) The role of the Oregon Land Information System (OLIS) Advisory Committee is to provide advice and support to the department in the development and implementation of ORMAP's administrative and technical needs. The committee has the authority to submit recommendations to the department concerning ORMAP and related project proposals. The advice and support that the committee provides to the department includes, but is not limited to:

(a) Assisting the department in developing the statewide goals and priorities for ORMAP.

(b) Assisting and providing advice to the department in setting statewide mapping and Geographical Information System (GIS) standards for ORMAP.

(c) Providing review of the Oregon Land Information System Fund and giving assistance in the development of fair and equitable fund distribution processes and policies for ORMAP projects.

(d) Support by communicating ORMAP information and goals to citizens and interested groups within the state and local communities.

(3) The Advisory Committee is composed of not more than 15 individuals appointed by the department's director. Members of the committee include ORMAP stakeholders from private industry, and federal, state, or local government leaders with an interest in the success of the project.

(a) Committee members serve at the pleasure of the director. Each Advisory Committee member serves a two-year term with an opportunity to continue for multiple terms. Committee member terms are staggered to allow for sufficient committee membership coverage; terms begin July 1 and end June 30.

(b) In the event of a vacancy, the director appoints another member to serve the duration of the term.

(c) Upon expiration of a term, a committee member may serve until the appointment of a successor. Members reaching the end of their two-year term may remain on the committee, if they request and receive approval from the director.

(d) Advisory Committee members serve without compensation for travel or per diem.

(4) The Advisory Committee meetings must adhere to the Oregon Public Meetings Laws, ORS 192.610–192.690.

(a) The Advisory Committee meets at the request of the department to review ORMAP policies, proposals, funding, and practices.

(b) A department employee designated by the director, presides as the Advisory Committee chair at all meetings.

(c) Advisory Committee members and any other organization or person who expresses interest in Advisory Committee meetings will receive agendas and study notes prepared by the department's ORMAP staff before the meeting date.

(d) Advisory Committee members or other interested parties with additional agenda items must request an agenda revision from the ORMAP staff to add the item and receive meeting time in which to present the item.

(e) Decisions are made by a consensus of the committee members.

(5) After each funding cycle, the department will post project update information to the publicly-accessible ORMAP website.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.135
Hist.: REV 7-2005, f. 12-30-05, cert. ef. 1-1-06; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-306.265
Application Filing by Telephonic Facsimile (FAX)

Application Filing by Electronic Means

The Department of Revenue or any county may accept any application for property tax exemption or special assessment by telephonic facsimile (FAX) or other electronic means according to the policies and procedures of the receiving agency.

Stat. Auth.: ORS 305.100 & 306.265
Stats. Implemented: ORS 306.265
Hist.: REV 10-2002, f. & cert. ef. 12-31-02; REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

DIVISON 307

PROPERTY SUBJECT TO TAXATION

150-307.010(1)
Real Property

(1) For purposes of ad valorem taxation, the determination of real and personal property is controlled by the statutory definitions of real property, whether or not they conform to definitions used for other purposes.

(2) Real property includes:

(a) Land. “Land” may be either the raw undeveloped land, or improved to the extent a site is created. A “site” exists when land has been improved by site developments to the point that it is, or is ready to be, used for the purpose intended.

(A) Site developments are improvements to the land that become so intertwined with the land as to become inseparable. Examples are: fill, grading and leveling, utility facilities (sewer, water, etc.), cost of developer’s activities and profit that accrues to the land, including but not limited to: permits, advertising, sales commissions, developer’s profit and overhead, insurance coverage, and any other improvements to the land necessary to improve it to become a site. Site developments are synonymous with site improvements, land improvements, and site preparation. Site developments consist of both “offsite developments” and “onsite developments.”

(i) Offsite developments are land improvements provided to the site. These include but are not limited to items such as streets, curbs, sidewalks, street lighting, storm drains, and utility services such as electricity, water, gas, sewer and telephone lines.

(ii) Onsite developments (OSD) are land improvements within the site which support the buildings or other property uses. These include but are not limited to items such as grading, fill, drainage, wells, water supply systems, septic systems, utility connections, extension of utilities to any structure(s), retaining walls, landscaping, graveled driveway area. Onsite development is synonymous with onsite improvement.

(B) For all specially assessed farm and forest land appraisals the value of onsite developments included as part of the land value will be listed as a separate item on the land record. An exception to this procedure is the appraisal of taxable improvements on exempt federal land. In this situation, the onsite development value shall be carried as a separate item on the improvement record.

(C) The value of site development may be higher or lower than the total cost of its components and is determined by the contribution of the site developments to the market value of the site.

(b) Buildings, structures, improvements, machinery and equipment. These are improvements on the land and are real property when erected upon or affixed to the land.

(A) Erected Upon. “Erected upon” means assembled, built or constructed and permanently situated on real property and adapted to use in place. For example, a large piece of machinery or equipment is set upon a foundation without being fastened thereto, but is integrated with the building by the use of special foundations, special wiring, electrical panels and switches, plumbing, venting, access ramps, openings and other forms of construction.

(B) Affixed To. “Affixed to” means being annexed or attached to the real property by bolts, screws, nails or by being built into the structure. Also, items may be constructively affixed to the land or building and considered real property by virtue of their weight or size. Some examples include but are not limited to: pipeline milking equipment, milk bulk tanks, seed cleaning equipment, bowling alley lanes, pin setters, and scoring equipment, rock crushing plants, foundries, smelters, paper machines, newspaper presses, sawmills, plywood machinery and presses, aluminum reduction machinery and cannery equipment.

(C) When machinery, equipment or fixtures are affixed to or erected upon real property and owned separately from real property, they are assessable as real property to the owner as provided in ORS 308.115(2).

Stat. Auth: ORS 305.100
Stats. Implemented: ORS 307.010
Hist.: 1-54; 3-58; 11-59; 1-66; 3-70; 11-71; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93

150-307.020
Personal Property Definitions

(1) Goodwill. “Goodwill” is a saleable business asset based on reputation, not physical assets.

(2) Customer list. “Customer list” is a proprietary list containing information regarding a business enterprises’s clients and is part of the business records for that business.

(3) Contracts and contract rights. “Contracts and contract rights” refers to agreements between two or more parties, which establish mutual rights and responsibilities for a stated consideration, and rights created under such agreements. Examples of contracts include but are not limited to:

(a) Contracts for sale of goods;
(b) Covenants not to compete;
(c) Contracts for purchase of supplies;
(d) Contracts to rent or lease property;
(e) Contracts to provide financing;
(f) Contracts for services by employees or others;
(g) Contracts for permission to use property or processes.

(4) When appraising property utilizing the income approach, the rent attributable to the property shall be based on market rent. “Market rent” is the rental income that the property would most probably command in the open market as of the assessment date. Market rent shall be used for both owner occupied and rented or leased property regardless of the terms of any particular rental or lease agreement encumbering the property.

(5) Trade secret. “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value from not being generally known by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.020
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-307.020(3)
Personal Property

Property classified as personal property is: (This list is not exclusive.)

(1) Boats and vessels includes all floatable craft. See also ORS 308.260.

(2) Merchandise and stock in trade, commonly referred to as inventories, include the following categories:

(a) Merchandise includes all classes of commodities which are obtained in a salable condition and held for sale in the ordinary course of business.

(b) Materials consist of goods purchased for use in manufacturing and upon which further work is necessary before they are available for disposal. Such goods may be raw materials or they may be partially fabricated commodities secured from others. Thus, things which are finished stock or merchandise for one establishment may be raw materials for another. However, when parts are manufactured and held for future use in manufacturing, they may be classed as finished parts but included in raw materials inventory.

(c) Supplies fall within two categories:

(A) Inventory Supplies consist of personal property owned by or in possession of the taxpayer, that are expended in the production of finished goods or will be consumed in the sale of the stock in trade of the taxpayer held for sale in the ordinary course of his business.

(B) Noninventory Supplies include those items which are not to be expended in the production of finished goods or not to be sold to customers.

(d) Work in process applies to all goods to which manufacturing services have been applied and on which further operation will be necessary before the product is normally ready for disposition. The value of work in process includes material and any labor and factory service (overhead) which have been exerted in bringing the work to the present state of completion.

(e) Finished stock consists of completed products which are available for disposal, comparable to a dealer's merchandise. See ORS 308.250 — Processor's Exemptions, and ORS 311.211 — Omitted Property Statutes.

(3) Livestock consisting of all domesticated or confined animals, birds, bees, fish and reptiles.

(4) Movable machinery, movable tools and movable equipment include items readily movable as opposed to apparently stationary or fixed items. See paragraph (2)(b) of OAR 150-307.010(1).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.020
Hist.: 1-54; 3-58; 11-59; 12-61; 12-65; 1-66; 12-66; 3-70; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92

150-307.080
Taxation of Property Associated with Mining Claims on Federal Land

(1) A mining claim filed with the United States Bureau of Land Management (BLM) conveys a right of possession and right to extract minerals under conditions set forth by those agencies. BLM issues an identification number to recognize unpatented mining claims.

(2) An unpatented mining claim allows the claimant limited use of land owned by the United States government.

(a) The unpatented mining claim including the land and minerals is exempt from property tax as required by ORS 307.080. Land includes site developments that are so intertwined as to be inseparable from the land as defined in OAR 150-307.010(1) and roads as described in ORS 308.236.

(b) All rights and interests associated with an unpatented mining claim, including but not limited to the right to possess, use, or access the land, are exempt from property tax.

(c) Improvements, machinery and buildings on an unpatented mining claim are subject to property tax.

(d) Annual filing fees, maintenance payment fees, maintenance payment fee waiver certification (small miner's waiver), a notice of intent to hold, or assessment work notices (proof of labor) are also exempt from property tax unless such labor or fees increase the real market value of taxable improvements to the property.

(3) A patented mining claim issued by the United States government confers ownership, rights, privileges, immunities and appurtenances to the claimant. A patented mining claim is subject to property tax as described in ORS 308.115.

(4) Taxable personal property must be reported to the assessor in the county in which the property is located each year. This requirement is further described in ORS 307.190, 308.105, 308.210, 308.250, 308.285 and 308.290.

(a) Except as otherwise specifically provided, all taxable personal property must be reported for taxation in the county where it is located (situs) as of 1:00 am on the first day of January each year.

Example 1: A taxpayer resides in County A and has a mining claim in County B. The mining equipment is kept at taxpayer's residence when not in use on the claim during the winter months. It is located in the taxpayer's garage on January 1st at 1:00 am. The taxpayer must report the mining equipment in County A.

(b) The assessor will provide a Confidential Personal Property Return for purposes of reporting taxable personal property. The return is due in the office of the assessor by March 1 each year.

(c) Personal property may be assessed in the name of the owner or of any person having possession or control of the property.

(d) The assessor must cancel the personal property assessment for any taxpayer whose taxable personal property in the county has a total assessed value (AV) below a threshold value. The Department of Revenue re-computes the threshold value annually under ORS 308.250(4). Canceling the assessed tax in one year does not relieve the taxpayer from the annual filing requirement for any other tax year.

Example 2: A taxpayer garages movable machinery used on a mining claim at her residence in County A but leaves tools and small equipment in a shed at the mining claim located in County B. The value of taxable personal property in County A on January 1 is $12,000 and the value of taxable personal property in County B is $1,600. The taxpayer must report the personal property in both County A and County B. The Department calculated the threshold value at $13,000 for this assessment year. The assessor in each county will cancel the tax owing for the year since the value of the property in the assessor's respective county is under the threshold value.

(e) Pursuant to ORS 307.190(1), personal property mining equipment owned or held by an individual solely for personal use, benefit, and enjoyment is exempt from taxation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.080
Hist.: REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-307.110(1)
Public Property Leased or Rented by Taxable Owner

(1) Qualifying Conditions. The assessor shall assess and tax publicly owned real or personal property for the assessed or specially assessed value thereof uniformly with real property of nonexempt ownerships when the following conditions of a lease or other interest or estate less than fee simple are met. A lease or other possessory interest exists if the occupant is granted exclusive possession of a definitely described area for a specified period of time (term).

(2) Exclusive Possession. The test is whether the occupant has sufficient control over the premises to warrant the label of possession. If the occupant can exclude others, including the owner (except for inspection, making repairs etc.) the occupant has possession. But, if the premises must be shared with others, such as a common pasture, the occupant does not have a possessory interest. When the property can be used for many purposes such as farming, recreational, residential, or mining, the right to use it for a single limited purpose might not constitute possession; yet, the same right to use may well be regarded as possessory if the property in question is used for a limited number of purposes. If the property in question is of little use for anything other than mining or recreation, the grant of the right to use it for one of these purposes embraces a substantial part of all of the practical uses to which the land may be put. Therefore, although such use is limited, it could be considered "exclusive."

(a) Revocation. A possessory interest may exist even though the agreement provides that it may be revoked upon notice, for cause or upon the happening of some event. If the use may be terminated, without notice or cause, it may be a mere non-possessory license which is ordinarily revocable at will and without notice.

(b) "Management" or "Concession" agreements present special problems. For example, a county and a private corporation agree that the corporation will operate a county owned golf course for the county. Even though the agreement requires the corporation to meet many standards as to services, pricing, personnel etc., the corporation may still have a possessory interest if it has the exclusive right to occupy and operate the facilities without interference from the county and retains the major part of the proceeds. However, if the county is actively involved in the operation and allows the corporation a minor portion of the proceeds as compensation for its services, the corporation may be considered a mere agent or employee of the county.

(c) Parking Lots and Similar Arrangements. If the right is merely a "hunting license" to park in any available space, it is non-possessory. However, if a specific space is assigned, the interest may be possessory if the other conditions are met.

(3) Area. The occupant must have possession of an area that is definitely described or capable of being described.

(4) Term. A possessory interest may be for any period of time the parties agree upon.

(5) Rent. A lease is a contract and requires some sort of consideration in terms of money, goods, services, or other benefits.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.110
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-307.112
Property Held Under Lease

(1) A new claim shall be filed with the county assessor, as required under ORS 307.112(4), when a new lease, new lease-purchase agreement, extension of current lease, extension of current lease-purchase agreement or any modification to the existing lease or lease-purchase agreement is made.

(2) The new claim shall meet all the requirements of ORS 307.112.

(3) Late filing as provided in ORS 307.162(2) is permitted.

(4) The State of Oregon and the United States government are not permitted to file a claim for exemption under ORS 307.112.

(5) The assessor must be satisfied that the amount of rent charged is below market rent. "Market rent" is defined as the rental income a property would most probably command in the open market and includes an element for property taxes.

(6) To reflect the savings below market rent, the actual rent must be less than market rent in an amount that is at least equal to what the property tax would be if the property were taxable.

(7) Sufficient documentary proof must be submitted at the time of application.

(8) Acceptable documentary proof to show the property tax savings is passed on to the lessee may include but is not limited to the following comparisons:

(a) Current rental rate for any portion of that property occupied by nonexempt tenants;

(b) Historic rental rate data of that property;

(c) Rental rate used in a real market value appraisal for that property;

(d) Rent study of comparable or similar properties.

(9) The savings must be clearly evident. Insufficient proof or failure to show the rent is below market rent as described above is grounds for denial of the exemption.

(10) A statement that the "lessee is responsible for the taxes" is not sufficient proof of a tax savings.

(11) When used in reference to real property or tangible personal property, a lease is a contract of at least one year by which the owner of a property grants the rights of possession, use, and enjoyment of the property to another for a specified period of time in exchange for payment.

(12) Month-to-month tenancy or a general rental agreement is not considered the same as a lease for purposes of an exemption under this statute and will not qualify in an exemption claim.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.112
Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-307.112(1); RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-307.115(1)
Property Used for Public Park or Recreation

For property to qualify as an exempt public park or recreation site it must meet the standards for ownership and use.

(1) Owner means a nonprofit corporation that owns or is purchasing the property and meets the requirements of ORS 307.115(2).

(2) "Public use" means the property is open and available to all the people for lawful common uses without discrimination, limitations or restrictions other than those imposed by law or ordinance.

(3) Use of the property is not considered 'public use' when:

(a) Access is limited to persons paying a fee.

(b) Access is refused to persons who are unable to pay a fee.

(c) Access is restricted to events or activities determined by the owner.

(d) Access is limited due to the owner's activities.

(e) Entry is by invitation only from the owner.

(f) Entry is controlled by the desires of the owner.

(g) Entry contributes to the owner's financial interest.

(4) The following do not constitute public use and recreation:

(a) The owner sponsoring special events for public attendance.

(b) A mere byproduct of the owner's activities.

(c) Advertising public attendance to underwrite the cost of producing the owner's events.

(d) An activity which may financially benefit the owner.

(5) Nonqualifying activities of public park or recreation property includes and is not limited to: commercial business, industry, or trade, and income producing projects or ventures.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.115
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-307.120
Guidelines for Exempt Port Property Subject to In Lieu Tax

(1) Definitions: Port property subject to in lieu of payments means property, excepting the dock area, that is leased to a taxable owner and used for discharging, loading or handling of cargo from ships, or for the temporary storage of cargo that is directly incidental to transshipment.

(a) "Discharging, loading, or handling of cargo from ships" is limited to activities during which no change in the cargo can occur while it is being discharged, loaded, or handled.

(b) "Temporary storage of cargo" means storage of cargo temporarily resting in place and awaiting further movement or shipment to another location.

(2) Property Subject to In Lieu of Payment:

(a) Certain properties exempt under ORS 307.120 are subject to one quarter of one percent (.0025) payments in lieu of taxes to schools. Properties subject to the in lieu of payments are those leased, rented or preferentially assigned on January 1, and used for storage of cargo directly incidental to transshipment.

(b) Dock area properties used for the berthing of ships, barges or other watercraft, (except floating homes as defined in ORS 830.700), or the discharging, loading or handling of cargo are exempt and are not subject to the payments in lieu of taxes to schools.

(c) A property not leased, rented or preferentially assigned on January 1, will not be subject to the in lieu of payment for the tax year for which the January 1, assessment date applies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.120
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 9-1997, f. & cert. ef. 12-31-97; REV 4-1998, f. & cert. ef. 6-30-98

150-307.120(3)(a)
Request For Computation of In Lieu Tax Payment

(1) The request for computation of payment in lieu of tax is an annual request.

(2) To receive the in lieu tax computation in any year the taxpayer must:

(a) Have a possessory interest in the property;

(b) File a request using the Department of Revenue prescribed form;

(c) File the request form with the assessor in the county where the property is located;

(d) File the request form in the time prescribed by law;

(e) Provide a true copy of the lease or agreement that establishes the possessory interest; and

(f) Provide any other information the assessor deems necessary to complete the computation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.120
Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-307.123
Strategic Investment Program

(1) The county shall establish a separate tax account for project investments (e.g. A-1 account for buildings and M & E, and when applicable, a separate personal property account).

(2) Value not defined in the eligible project is taxable in addition to the trended base (assessable portion of the eligible project).

(3) The agreement between the company and the county governing body shall state that the company shall file with the Department of Revenue the information required by ORS 308.285–308.290 on the annual industrial property return as if the property were taxable.

(4) The Department of Revenue shall be responsible for the following:

(a) Accumulating the invested cost on the eligible project from data provided by the company on their industrial property return.

(b) Determining the RMV of buildings, machinery and personal property identified as part of the eligible project.

(c) Transmitting the above data to the counties.

(5) The county assessor shall be responsible for:

(a) Determining the trended base at three percent annually (e.g. $100 million the first year, $103 million the second year).

(b) Allocating the trended base of the eligible project per ORS 307.123(1)(a).

(c) Determining the exempt value.

(6) The county assessor and governing body shall be responsible for determining the amount of the community services fee and establishing procedures for the billing, collection and distribution of the community services fee. Enforcement of the contracts or other agreements shall be the sole responsibility of the parties to the contract.

(7) Examples:

NOTE: All numbers in the following examples are shown in millions.

Example 1: The eligible project is a $250 million investment on a previously undeveloped property.
Eligible investment(RMV) — $250
First $100 million of investment (taxable) — 100
Exempt value of the eligible investment — $150

Example 2: Eligible project includes a $500 million addition to an existing property with a $200 million value:
Eligible investment (RMV) — $500
First $100 million of investment (taxable) — 100
Exempt value of the eligible investment — $400
Taxable value ofthe eligible project — $100
RMV of existing property — + 200
0 Total taxable value of the property — $300

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.123
Hist.: RD 1-1994, f. 6-21-94, 7-1-94, Renumbered from 150-307.110; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97

150-307.126
Removal of Value of Federal Communication Commission (FCC) Licenses from the Unit Value of Centrally Assessed Property

(1) ORS 308.655 provides that the Department of Revenue has the authority to prescribe rules and regulations regarding property assessed under ORS 308.505 to 308.665. These statutes require the department to assess all property, real and personal, tangible or intangible, used or held for future use by a company as owner, occupant, lessee, or otherwise, for or in use in performing or maintaining a communications business.

(2) ORS 308.555 states the department may use unitary valuation to value all property of the company.

(3) For purposes of this rule, unitary valuation means valuing an integrated group of assets functioning as an economic unit as "one thing," without reference to the independent value of the component parts. The value of a component part in a communication company lies not in the fact that the component part has an independent market value separate and apart from the unit, but that the component part is a part of a thoroughly complete and integrated communications company and has been valued as such. To determine the unitary value, one or more approaches to value are reconciled to arrive at a correlated system value, otherwise known as a unitary value.

(4) FCC licenses are exempt from ad valorem property taxation under ORS 307.126.

(5) A unitary valuation is used in developing the value of the total property centrally assessed under ORS 308.505 to 308.665. The contributory value of FCC licenses will be removed from the final correlated system value.

(6) The contributory value of the FCC licenses will be removed by applying a market-to-book ratio to the original cost of the FCC license. The market-to-book ratio is calculated by dividing the correlated system value by the net book value of the system's taxable property (including the net book value of the FCC license value). The resulting ratio is then multiplied by the company's reported FCC license cost to determine the estimated contributory license value to be subtracted from the correlated system value.

(7) For businesses that have been given FCC licenses and have no booked cost for the FCC license(s), the department will estimate a cost for the FCC licenses. The department will estimate the cost by considering various FCC license characteristics including but not limited to: frequency, geographical area, population served and date of acquisition.

Stat. Auth.: ORS 305.100, 308.205(2), 308.655
Stats. Implemented: ORS 307.126
Hist.: REV 17-2010, f. 12-17-10, cert. ef. 1-1-11

150-307.130-(A)
Review Required in Determining Exempt Status of Property for Charitable Institutions

The following criteria shall be used in determining the qualification for property tax exemption under ORS 307.130 when an application is made by a charitable organization as required in 307.162, 307.112, or 307.166:

(1) Purpose. The purpose of this rule is to set forth, as a guide for assessors, those tests that are commonly applied by the Oregon courts in determining whether property qualifies for exemption under ORS 307.130. This rule does not include all of the principles that have been used by the courts. The assessor must recognize that evaluation of an application for charitable exemption must be made on a case-by-case basis in light of the specific fact situation presented.

(2) Organization:

(a) Applicant must be an incorporated institution;

(b) The corporation must be organized as a nonprofit corporation. This is a mandatory first step for an organization; however the status of an institution as a nonprofit corporation does not conclusively endow it with the attributes of a charity. For example, an organization is recognized by the Internal Revenue Service as income tax exempt within IRC (1954) Section 501(c)(3). However, the standards for determining whether the income of an organization is subject to federal income taxes and the question of whether property is exempt from property taxes are separate and distinct. Thus, whether a corporation is a charity is to be determined not only from its charter, but also from the manner in which it conducts its activities;

(c) The organization must separately account for funds and donations committed to charitable use;

(d) The organization must not operate for the profit or private advantage of the organization's founders and officials; and

(e) The organization's articles of incorporation or bylaws must require that its assets be used for charitable purposes when the organization dissolves.

(3) Property Interest:

(a) If application is made under ORS 307.162 the organization must be the owner or purchaser of the property.

(b) If application is made under ORS 307.112 the organization must be the lessee.

(c) If application is made under ORS 307.166 the organization must be the lessee or entity in possession.

(d) Any organization claiming the benefit of property tax exemption in subsection (3)(a), (b), or (c) under ORS 307.130, must have possession of and be using the property for the stated exempt purpose by June 30 of the year in which the exemption is claimed.

(4) Purpose and Activity:

(a) Any organization claiming the benefit of property tax exemption under ORS 307.130, as a charitable institution, must have charity as its primary, if not sole, object and must be performing in a manner that furthers that object.

(b) The activity conducted by the charitable institution must be for the direct good or benefit of the public or community at large. Public benefits must be the primary purpose rather than a by-product. An organization that is established primarily for the benefit of its members, is not a qualifying charity. For example, a rifle club formed primarily for the pleasure of its members also provides safety information and instruction. Since the club's primary purpose is not to provide a direct benefit to the public, its property is not exempt. An organization that performs a service to a professional organization of private persons (example: teachers, physicians or architects) is not a charity.

(c) If the activity of the charitable institution relieves a government burden, it is an indicator that the institution may be charitable. Failure to relieve a government burden will not disqualify an organization as charitable.

(d) An element of gift and giving must be present in the organization's activities, relating to those it serves. This element of gift and giving is giving something of value to a recipient with no expectation of compensation or remuneration. Often, a charitable organization's product or service is delivered to recipients at no cost or at a price below the market price or price to the organization of the product or service. Declarations of worthwhile purpose and charitable endeavors must be manifested in concrete endeavors and tangible reality which benefits the recipient. Unless this element of a gift or giving is present promises of future worthy endeavors are meaningless by inaction, and give the applicant no preferred status.

(A) Forgiveness of uncollectible accounts does not by itself constitute a gift or giving.

(B) The fact that a business activity actually operates at a loss does not make it charitable.

(C) The fact that an organization charges a fee for its services does not necessarily invalidate its claimed status as charitable. It is a factor to be considered in the context of the organization's manner of operation. In determining whether a fee-charging operation is charitable, it is relevant to consider the following:

(i) Whether the receipts are applied to the upkeep, maintenance and equipment of the institution or are otherwise employed;

(ii) Whether patients or patrons receive the same treatment irrespective of their ability to pay;

(iii) Whether the doors are open to rich and poor alike and without discrimination as to race, color or creed;

(iv) Whether charges are made to all and, if made, are lesser charges made to the poor or are any charges made to the indigent.

(D) The fact that individuals provide volunteer labor to assist the organization in performing its activities may indicate that the organization is charitable. However, it is not a standard in determining whether an organization is charitable per se.

(E) An institution shall not be denied exemption solely because:

(i) Its primary source of funding is from one or more government entities; or

(ii) The purpose or use of the property is not limited to relieving pain, alleviating disease or removing constraints.

(5) Use. The property must be used primarily for charitable purposes.

(a) There must be an actual charitable use of the property rather than just a charitable use of the income derived from the operation of the property. "Destination of income" theory does not qualify the property for exemption. For example, use of property by a charitable organization as a bingo parlor to raise money for a charitable activity is not an actual charitable use of the property, and does not qualify the property for exemption.

(b) A retail store operated by volunteers of a qualified organization may receive exemption if at least one-half of the inventory is donated and consigned. One-half of the inventory refers to the number of items. The total number of donated and consigned items must be at least equal to the total number items that constitutes new merchandise.

(c) To be eligible for a property tax exemption as a charitable institution, the applicant must be primarily eleemosynary in nature. Such an institution will demonstrate two elements of charity. First, the institution must perform a function or act which is good or beneficial for humans and other living things. The second part entails a gift or act of giving. The words "gift" and "giving" imply a voluntary act. While an institution shall not be deprived of an exemption as a charitable organization solely because its primary source of funding is one or more governmental agencies.

(d) The property shall be actually used or occupied for the benevolent and charitable work carried on by the organization.

(A) The use of the property must substantially contribute to the furtherance of the charitable purpose and goal of the organization. For example, a gift shop is located in a hospital qualifying for exemption as a benevolent and charitable institution. The gift shop sells candy and flowers and may be subject to ad valorem taxation, unless it furthers the charitable purpose and goal of the organization. As another example, a cafeteria is located in a hospital qualifying for exemption as a benevolent and charitable institution. The cafeteria is operated primarily for the use of the hospital staff and is incidentally used by the general public. The cafeteria is being used to contribute to the charitable goal of the hospital, and is exempt from ad valorem taxation.

(B) Only the portion of a property used for literary, benevolent, charitable or scientific purposes shall be granted exemption from ad valorem taxation under ORS 307.130. Property may be in part taxable and exempt. For example, a property otherwise qualifying for exemption, has a barber shop operating within the facility. The portion of the building in which the barber shop is located is subject to ad valorem taxation, unless the barbershop furthers the charitable purpose and goal of the organization.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.130
Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 3-1988, f. & cert. ef. 4-15-88; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95

150-307.130(1)
Literary Institution Defined

(1) A literary institution is an organization that is devoted to propagation and spread, or live performance of literature, study or use of books and body of writings in prose or verse, and scripts of plays both contemporary and classic.

(2) A literary institution must operate in a manner in which a significant portion of its activities are charitable. Property tax exemption must be denied when charitable activities are not present. OAR 150-307.130-(A) is the appropriate guideline for determining whether an organization is charitable.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.130
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-307.140
Minimum Criteria Required in Determining Exempt Status of Property for Religious Organizations

(1) The following criteria, as a minimum, will be used in determining the qualification for property tax exemption of property of a religious organization under 307.140 when an application is made as required in ORS 307.162, 307.112 or 307.166:

(a) The applicant must be a religious organization.

(A) If the religious organization is the owner or purchaser of the property, application is made under ORS 307.162.

(B) If the religious organization is leasing, subleasing, or in a lease-purchase agreement for the property from a taxable owner, application is made under ORS 307.112.

(C) If the religious organization is leasing or subleasing the property from another exempt organization, application is made under ORS 307.166.

(b) The applicant must be the entity in possession of the property.

(c) The property for which a religious organization claims an exemption must be reasonably necessary to accomplish the religious objectives of that organization.

(d) The actual use of the property must be consistent with the claimed necessity.

(2) Only the portion of a property used for religious purposes shall be granted exemption from ad valorem taxation. Property may be in part taxable and exempt.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.140
Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 6-1986, f. & cert. ef. 12-31-86; REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

150-307.140(4)
Parsonage and Caretaker Residence Exemption Guidelines

(1) A parsonage or caretaker residence is considered primarily a residence even though incidental religious use may occur there. A parsonage or caretaker's residence is totally taxable unless it meets the criteria established in OAR 150-307.140.

(2) The following activities are examples of those which do not qualify the residence for an exemption:

(a) Living close to the church to deter vandalism;

(b) Opening and closing the church daily;

(c) Living close to the church for convenience sake or;

(d) Required living quarters for caretaker or pastor's family which do not meet conditions in OAR 150-307.140.

(3) A partial exemption may be granted when use of specific portions of the residence meet the criteria established in OAR 150-307.140.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.140
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91

150-307.145
Definition of Schools and Academies

(1) "Schools" and "academies" mean educational institutions that:

(a) Offer education in kindergarten or grades 1 through 12, or any combination of those grade levels; or are post-secondary colleges or universities; and

(b) Provide a comprehensive instructional program that is not limited to dance, drama, music, religious or athletic instruction, or other special art or technical skill.

Example 1: An incorporated, charitable nonprofit organization that promotes the arts in its community offers several weekly dance classes at its Arts Center. The organization would not qualify for exemption as a "school" or "academy" under ORS 307.145 because it does not offer a comprehensive instructional program. Failure to qualify for exemption under 307.145 does not preclude exemption under another statute if the property qualifies for exemption under that statute.

Example 2: An incorporated charitable school focuses on teaching children about a foreign culture through a foreign language immersion program where children spend the school day speaking and hearing a foreign language as they learn about literature, mathematics, science, language, and social studies. The school would qualify for exemption under ORS 307.145 because it provides a comprehensive instructional program.

(2) Schools or academies focusing primarily on providing on-the-job training do not qualify.

(3) To qualify for exemption under ORS 307.145, a pre-school or pre-kindergarten must qualify as a "child care facility" as defined in 307.145(3)(a).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.145
Hist.: REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-307.147
Senior Center Property Exemption

The following criteria, as a minimum, is specific to senior center property only.

(1) To qualify for an exemption, the primary use of a property must be providing senior services and activities, rather than a by-product of another group or activity.

(2) Property used primarily for providing services and activities for senior persons may qualify for exemption.

(3) "Primary use" means 51 percent or more of the time the property is actually used.

(4) Eligible activities may include but are not limited to food service programs, exercise and health screening, estate planning seminars, arts and crafts workshops, dances or celebrations.

(5) Only the portion of a property that is reasonably necessary and actually used is eligible for exemption. Actual use must be consistent with the qualifying activities.

(6) An exemption shall not be denied due to incidental fund raising.

(7) Some fund raising activities such as baked goods sales, salmon bakes, benefit breakfasts, and raffles or games of chance, may occur so long as those activities comprise 49 percent or less of the total activity time. The assessor shall deny any claim for exemption if a record of the activities is not provided upon request.

(8) Activities which do not qualify include but are not limited to the following:

(a) A retail store, thrift store or gift shop whether stocked with consignment items, or donated goods does not qualify.

(b) Living quarters do not qualify.

(9) The property may be in part taxable and exempt. A partial exemption may be granted when a specific portion of a property is used in a manner that does not qualify.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.147
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-31-94, Renumbered from 150-307.130-(C)

150-307.150
Burial Grounds, Cemeteries, Crematories

(1) Buildings used exclusively to store machinery and equipment which is used solely for cemetery or crematory purposes are exempt.

Example: a crematory association owns a tool shed used solely to store maintenance machinery and equipment. The tool shed is exempt. **Example:** a caretaker's residence is owned by a cemetery association and is located on cemetery grounds. The caretaker's residence is taxable. **Example:** a funeral parlor is located on cemetery grounds. The funeral parlor is taxable.

(2) A pet cemetery is taxable. The assessor shall exempt only burial grounds of human remains.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.150
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87

150-307.162(1)
Application Process for Property Tax Exemption

(1) The applicant must specify the applicable exemption statute when filing a claim for exemption.

(2) It is not the county assessor or Department of Revenue's responsibility to determine under which statutory provision the applicant should apply.

(3) The assessor shall determine property tax exemption eligibility based on the exemption statute specified by the applicant on the application.

(4) The assessor shall return any application that is incomplete to the applicant for completion.

(5) If the assessor returns an application for completion or clarification, the applicant must return the application to the assessor within 15 days of the date it was mailed to the applicant or by the filing deadline, whichever is later, for the assessor to accept the application as a timely filing.

(6) Any application that is filed late must be accompanied by a late filing fee. If the applicant does not pay the late filing fee no exemption shall be allowed.

(7) If the exemption is denied by the assessor, the late filing fee shall be refunded to the applicant.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.162
Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-307.166
Property of Exempt Entities Leased to Other Exempt Entities

(1) For purposes of ORS 307.166, a lease or other agreement means any written document that communicates the terms and conditions of tenancy. A verbal agreement will not qualify in an exemption claim.

(2) Public body property which is leased or used by another public body is exempt from property taxes when the property is used by the lessee for a qualifying exempt purpose on July 1 of the assessment year to be exempted.The public body granting possession and use of their property must provide notice of the lease or other agreement to the assessor after entering the agreement. If requested by the assessor, a copy of the lease or other agreement must be provided.

(3) When public body property is subsequently leased to another entity other than a public body whose property is exempt from taxation, filing a timely application for a property tax exemption is required.

(4) When property of entities that are not public bodies but whose property is exempt from taxation is leased to a public body an application for a property tax exemption is also required.

(5) When application is required, late filing is permitted. Payment of the late filing fee must be submitted with the application. The late filing fee cannot be excused or waived.

(6) Except where a public body has leased or granted possession and use to another public body and notified the assessor as required, the assessor must be satisfied that the amount of rent charged is below market rent. For purposes of this statute, the definition, application, and examples explaining market rent are found in OAR 150-307.112.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.166
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1996, f. 12-23-96, cert. ef. 12-31-96; RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 3-2014, f. & cert. ef. 7-31-14

150-307.175
Property Tax Status of Alternative Energy Systems

(1) Definitions:

(a) "Alternative energy system" means a solar, geothermal, wind, water, fuel cell or methane gas energy system used for the purpose of heating, cooling or generating electricity.

(A) Solar alternative energy systems use the sun and may include but are not limited to:

(i) Solar electric or photovoltaic (PV) systems that consist of solar electric panels (photovoltaic cells) that convert sunlight directly into electricity and may include connective wiring, solar electric modules, inverter, mounting system, disconnection equipment, net-metering system, and storage batteries,

(ii) Solar heating or cooling systems that consist of active, passive, and thermal systems used for water, or space heating or cooling and may include south facing windows, trombe walls, extra thick concrete/stone floors designed for the absorption of heat, thermal chimneys, solar panels or collectors which directly heat coils of water on the roof or outside walls, extra hot water storage tanks, connecting piping, sensors, valves, pumps, heat exchangers, and controls.

(B) Geothermal alternative energy systems use heat extracted from the earth and may include but are not limited to geothermal heat pumps (GHPs), which can be used for both heating and cooling of buildings and hot water needs.

(i) Ground source geothermal heat pumps consist of buried loops or coils of tubing used to exchange heat.

(ii) Water source geothermal heat pumps consist of loops submerged in a lake, pond or well.

(C) Wind alternative energy systems produce mechanical or electrical power or energy. Wind turbines typically consist of a propeller driven generator attached to a building or tower used to drive a direct current generator which is generally tied to a battery storage system and used to power household or business needs. The system may be connected to a net-metering system or be completely off-grid. These systems may include:

(i) Small stand-alone wind turbines.

(ii) Groups of wind turbines.

(D) Water alternative energy systems or hydropower systems are used to generate electricity. These systems may include but are not limited to micro hydro systems which are small-scale facilities providing electricity to power homes, small farms, and businesses. Micro hydro systems typically consist of a small water drive wheel or turbine which is connected to an electric generator and the output is connected to the user by power wiring. These systems may include a storage battery system and net-metering system.

(E) Fuel cell alternative energy systems produce electricity electrochemically and non-reversibly, using hydrogen-rich fuel and oxygen, producing an electric current, water, and thermal energy. These systems may include but are not limited to fuel cell systems using reformed fossil fuels which also produce carbon dioxide.

(F) Methane gas alternative energy systems are typically gas collection systems used to fuel an electric generator and may also include methane digester systems. These systems may include but are not limited to:

(i) Methane collection systems installed at closed or partially closed land fills and used to fuel electric generator systems.

(ii) Methane digester systems owned by and installed at dairy farms and used to generate power.

(b) "Onsite" means a single, operationally integrated complex of property or properties composed of a single parcel of land and improvements thereon or a group of adjacent parcels and improvements thereon.

(2) Alternative energy systems qualify for exemption only if the system is a net metering facility, as defined in ORS 757.300, or is primarily designed to offset onsite electricity use.

Example 1: A company installs solar panels to generate electricity. The solar energy system is installed as a net metering facility. Therefore, the solar energy system qualifies for the property tax exemption.

Example 2: A utility owns a large wind generating farm. The system is not a net metering facility nor is it designed to offset onsite electricity use. Therefore, the wind energy system does not qualify for the property tax exemption.

Example 3: A methane collection system installed at a closed portion of an otherwise active landfill is used to fuel an electric generating facility to produce electricity used to offset power use at the active portion of the landfill. The system qualifies for the property tax exemption.

Example 4: A methane digester system installed at a dairy farm is used to fuel an electric generator system to generate power for the dairy farm's operations. This qualifies for exemption.

Example 5: An industrial facility installs a methane collection system where methane gas is compressed and used as a fuel source to generate electricity for the facility's operations. This qualifies for exemption.

(3) Alternative energy systems that provide heating, cooling or that generate electrical energy for personal consumption qualify for the property tax exemption only to the extent that they are primarily designed to offset onsite electricity use or are net metering facilities.

(4) Alternative energy system devices and components are exempt to the extent that they add real market value (RMV) to the property. Additional value accruing to property to which a qualified alternative energy system is installed due to the existence of such a system is exempt.

(5) Examples of property that typically do not qualify for the exemption include but are not limited to porches, sunrooms, solariums, and greenhouses.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.175
Hist.: RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 10-2002, f. & cert. ef. 12-31-02; REV 9-2008; f. & cert. ef. 9-23-08; REV 3-2014, f. & cert. ef. 7-31-14

150-307.180
Qualifications for Exemption of Indian Properties

The following criteria shall be used to determine the qualification for property tax exemption under ORS 307.180 when land is not held in trust for the tribe or for an individual by the federal government.

(1) Property must be located within the tribal boundaries of the reservation.

(2) The owner must be an enrolled tribal member residing on the reservation but not necessarily on the property.

Example: an enrolled tribal member owns farmland on the reservation but maintains a household in a housing unit on the reservation. The farmland is exempt from taxation.

(3) Property may be leased to a non-Indian and retain tax-exempt status.

Example: an enrolled tribal member living on the reservation leases all farmland to a non-Indian farmer. The farmland is exempt from taxation.

(4) Personal property leased to a tribal member and delivered on the reservation is exempt. Property leased to a tribal member, delivered off the reservation but used on the reservation is also exempt.

NOTE: A lease-purchase agreement is different than a lease, therefore property covered by a lease-purchase agreement might be taxable.

(5) Fee title ownership of land located on the reservation by an enrolled tribal member of that reservation does not negate the tax-exempt status of that land.

(6) Marriage between an enrolled tribal member and a non-Indian spouse will not, of itself, jeopardize the tax-exempt status of the land they hold together on the reservation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.180
Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88

150-307.183
Valuation of Summer Home Properties

(1) Real property belonging to the United States leased for summer homes is exempt from taxation. This exemption applies only to the land. Leased fee and leasehold (or possessory) interests in the land are exempt. No value for land shall be shown on the assessment roll.

(2) Improvements to the land are site developments and are taxable. Site developments include such items as water systems, septic systems, roadways, electrical service, and landscaping. The value of site developments shall be included on the improvement portion of the assessment roll.

(3) Improvements on the land such as buildings and structures are taxable.

(4) Appraisal methods for valuing these properties will vary depending on available market data. Regardless of the method used, care and consideration must be taken to avoid taxation of the land or any interests in the land. Appraisal methods to be used include:

(a) Reproduction or replacement cost new less allowances for various forms of depreciation.

(b) Sales comparison of summer home properties which may be owned fee simple. In using this method, care must be taken to recognize the tenuous nature of Forest Service leases and permits.

Example: Comparison of improvements. Sales of comparable improved properties owned in fee simple indicate a market value of $75,000. The land value for these properties is indicated from land sales to be $15,000. Thus, an indicated value of $60,000 ($75,000–$15,000) is indicated for the improvements of the subject summer home property. This value may not be applicable for the summer home property if the lease term (or expected continuation of the lease) is less than the anticipated life of the improvements.

Example: Land to property ratio. Sales of comparable improved properties owned in fee simple indicate a land to property ratio of 20% and a market value of $75,000 for the subject summer home property. Thus, the indicated value for the summer home property is $60,000 (80% times $75,000).

(c) Income capitalization. This approach is generally not applicable to summer home properties because they are not typically rented on a month-to-month basis. Also, lease payments made to the U.S. government for use of the land are usually very favorable to the lessee, making capitalization of this income stream unreliable as a value indicator.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.183
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-307.190
Exception To Taxable Personal Property

(1) Tangible personal property is assessed and taxed unless statutes specifically grant an exemption.

(2) "Use" of the property is the determining factor for granting an exemption.

(a) Tangible personal property used exclusively for personal use and enjoyment by the owner is granted exemption from property tax.

(b) Tangible personal property used in a trade or business is taxable. A trade or business is an activity performed for any form of compensation, personal reward or gain.

(c) Tangible personal property that is used both for the owner's personal use and as part of a trade or business is taxable.

Example: Household furnishings in a Bed and Breakfast or adult foster home are taxable when used by anyone other than the owner. Items used exclusively by the owner for personal enjoyment are exempt from property tax, such as the bed where the owner sleeps and the armoire or dresser that contains the owners clothes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.190
Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95

150-307.210
Water Association Qualifications

(1) For purposes of ORS 307.210:

(a) "Water Associations" are wholly mutual or cooperative in character and have the following characteristics:

(A) Each incorporated association is organized as a wholly mutual or cooperative association or, if organized as a nonprofit organization, its bylaws provide that it operate as a wholly mutual or cooperative association.

(B) An unincorporated association provides in its bylaws that the association is wholly mutual or cooperative in character and is not to produce a profit.

(b) "Domestic Water Use" is all household and outdoor uses that may include watering of livestock, lawn, garden, and farm irrigation.

(c) "Commercial Water Use" is use by an industrial or business establishment where the production of a product for resale is the company's main operation.

(2) Exempt water association property may include but is not limited to parcels of land, dams, man made and natural wells, reservoirs and diversion works, purifying, processing, treating facilities and chemicals, flumes, canals and ditches, pipe and pipe pushers, gates, valves, pressure tanks, pumps and pump houses, hoses, meters and meter boxes, cutting and threading machines, bulldozers, cranes, tractors and hand tools.

(3) The following property is not exempt and shall be classified and assessed in the same manner as other property subject to assessment and taxation.

(a) Property that is not owned by the association.

(b) Property that is owned by the association but is not used primarily in storing, conveying or distributing water.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.210
Hist.: 3-56; 1-58; 11-59; 1-66; 3-70; 11-71; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99

150-307.210(5)
Water Association Exemption Under ORS 307.210 Is Assessor's Responsibility

(1) The Assessor shall consider all water association exemption applications and determine whether any portion of the property is exempt.

(2) The water association shall include the information and data required on the exemption application form 150-310.013 to claim exemption.

(3) The Assessor may request additional information from the water association.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.210
Hist.: REV 4-1999, f. 12-1-99, cert. ef. 12-31-99

150-307.220-(A)
Jurisdiction Over Assessment of Telephonic Companies

(1) ORS 307.220 provides for the exemption from taxation of certain property, except parcels of land and buildings, owned by qualified associations used exclusively in the construction, maintenance, and operation of a telephonic communication system.

(2) Any property owned, rented, leased or occupied by an association used exclusively in the construction, maintenance, and operation of a telephonic system and not exempt will be classified and assessed pursuant to ORS 308.505 to 308.660.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.220
Hist.: 6-61; 1-66; 3-70; 11-71

150-307.220-(B)
Qualifications for Exemption of Mutual or Cooperative Telephone Associations

(1) Qualifying Conditions. Property owned by a mutual or cooperative telephone association is qualified for exemption if all the following conditions are satisfied:

(a) Ownership. The property must be owned by an association of persons that:

(A) Is wholly mutual or cooperative in character, whether incorporated or not. The characteristics of a mutual or cooperative association are:

(i) Each incorporated association is organized as a cooperative association or, if organized as a nonprofit organization, its bylaws provide that it operate as a cooperative association.

(ii) Each unincorporated association provides in its bylaws that the association is mutual or cooperative in character and is not to produce profit.

(iii) While one member may hold more stock or shares in the association than another member, voting cannot be based on ownership of shares, stock, certificates, or other evidence of their interest. Voting must be restricted to one vote to a member, or in proportion to their actual, estimated or potential patronage, as the bylaws may provide, except that in no event may any one member thereby exercise a majority vote.

(iv) All members must share proportionately, according to their evidence of interest, in the cost of construction, maintenance, and operation of the association's properties, and in the division of any surplus or reserves accumulated when such a surplus or reserve is not necessary for proper maintenance or construction of such system or all members must share in proportion to their patronage as the bylaws may provide.

(B) Operates without profit in money.

(C) Has no business or purpose other than the provision of telephone communications service.

(b) Use. All persons served must be members and must own shares, stock, certificates, or other evidence of their interest.

(c) Value. The association's telephone property has a real market value of not more than $2,500 as determined by the Department of Revenue.

(d) Operation. The association's telephone communication system operation is conducted without the ownership, operation or lease of telephonic switchboard exchange facilities, or direct or indirect ownership of stock in any telephone switchboard association, partnership or corporation.

(2) Eligible Property. Property that may qualify for exemption includes all property consisting of improvements, fixtures, equipment and supplies used exclusively in the construction, maintenance, and operation of a telephone communication system. Examples of property that may qualify for exemption include but are not restricted to:

(a) Poles, crossarms, guy stubs and guy wire;
(b) Aerial wire;
(c) Aerial or underground cable;
(d) Suspension strand;
(e) Insulators;
(f) Terminals;
(g) Drop and blockwire;
(h) Telephones.

(3) Ineligible Property. The following types of property that cannot qualify for exemption will be classified and assessed pursuant to ORS 308.505 to 308.660.

(a) Parcels of land and buildings owned, leased, rented, chartered or otherwise held for or used by an association in a telephone communication system.

(b) Any other property not owned by the association but used or held by it in a telephone communication system.

(c) Any property owned, leased, rented, chartered or otherwise held by an association and not used in providing telephone communication.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.230
Hist.: 6-61; 1-66; 3-70; 11-71; REV 10-2002, f. & cert. ef. 12-31-02

150-307.230-(A)
Jurisdiction over Assessment of Non-public Telephonic Systems

(1) ORS 307.230 provides for the exemption from taxation of all property owned by any person not engaged in public service operation and used exclusively in the construction, maintenance and operation of a telephone communication system serving exclusively property owned or operated by such person.

(2) Any property owned, rented, leased or occupied by a person not engaged in public service and used exclusively in the construction, maintenance and operation of a telephone communication system and not exempt will be classified and assessed pursuant to ORS 308.505 to 308.660.

(3) "Person" has the same meaning as defined in ORS 311.605.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.230
Hist.: 6-61; 1-66; 3-70; 11-71

150-307.230-(B)
Qualifications for Exemption for Privately Owned Telephone Systems

(1) Qualifying Conditions. Property as part of privately owned telephone systems is qualified for exemption if all the following conditions are satisfied:

(a) Ownership. The property must be owned by a person not engaged in public service operation.

(b) Use. The property is used exclusively in the construction, maintenance and operation of a telephone communication system serving exclusively property owned or operated by such person.

(c) Value. The person's telephone property has a real market value of not more than $1,500 as determined by the Department of Revenue.

(d) Operation. The person's telephone communication system operation is conducted without ownership, operation or lease of telephone switchboard exchange facilities, or direct or indirect ownership of stock in any telephone switchboard association, partnership or corporation.

(2) Eligible Property. Property that may qualify for exemption includes all property owned consisting of improvements, fixtures, equipment and supplies, used exclusively in the construction, maintenance and operation of a telephone communication system. Property that may qualify for exemption includes but is not restricted to the examples listed in OAR 150-307.220-(B)(2).

(3) Ineligible Property. The following types of property which cannot qualify for exemption will be classified and assessed in accordance with provisions of ORS 308.505 to 308.660:

(a) Parcels of land and buildings owned, leased, rented, chartered or otherwise held for or used by a person in a telephone communication system.

(b) Any other property not owned by a person and used or held in a telephone communication system.

(c) Any property owned, leased, rented, chartered or otherwise held by a person and not used in providing telephone communication.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.230
Hist.: 6-61; 1-66; 3-70; 11-71; REV 10-2002, f. & cert. ef. 12-31-02

150-307.240-(B)
Application for Exemption Under ORS 307.220 or 307.230

(1) The application for exemption must contain all data required on the form prescribed by the Department of Revenue. The application for the first year in which an exemption is requested must be filed on or before March 15, and the Department will act upon the application within 30 days after receipt of the application.

(2) The Department will examine all applications and determine:

(a) Whether or not the applicant constitutes the type and kind of organization or owner described in ORS 307.220 or 307.230;

(b) What properties are entitled to exemption; and

(c) The parcels of land which will be assessed by the Department and those which will be assessed by the county assessor.

(3) The Department may require supplementary information from the applicant and may make a field examination to substantiate eligibility of the property for exemption.

(4) Upon initial qualification by an association or person, the Department will prepare and mail to the association or person (with a copy to the assessor) an exemption order containing a general description of property exempt under ORS 307.220 or 307.230.

[ED. NOTE: Forms referrenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.240
Hist.: 6-61; 1-66; 3-70; 11-71; 12-31-77; TC 2-1978, f. & cert. ef. 3-16-78; REV 10-2002, f. & cert. ef. 12-31-02

150-307.241
Definition of Elderly

Funded exemptions are granted to qualifying non profit homes for the elderly under ORS 307.241 to 307.245. For purposes of 307.241 to 307.245 and 307.375, the term “elderly” refers to a person 62 years of age or older. This rule is to assist in determining the eligibility of a nonprofit home for a funded property tax exemption.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.241
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-307.242(2)
Documents to Accompany Claim

Claims filed under ORS 307.241 to 307.245 must be approved by the assessor and shall be submitted by the assessor to the Department of Revenue accompanied by all data required by the Department as necessary for the assessor to approve the claim. The Department shall review the claim and other material and shall notify the assessor in writing of its approval or rejection of the claim. The assessor shall not notify claimant of county approval of the claim until notification of Department action on the claim has been received. All claims submitted to the Department of Revenue shall be accompanied by:

(1) Copy of completed federal or state government form Project Income Analysis and Appraisal;

(2) Statement from claimant showing current year rents certified by U.S. Department of Housing and Urban Development or Oregon Housing Division and a statement of total income for the nonprofit home listing rent for each living unit, leased or rented commercial area and income from any other source;

(3) Statement from assessor showing use, square footage and income from space in home either leased or rented or available for lease or rental for commercial use. Space designed or planned for commercial use but not in commercial use must be available to or in use by the residents of the home or that space is not eligible for tax exemption;

(4) Statement from assessor that all land on which the tax exemption is claimed is or is not used by the applicant as described in the exemption claim for nonprofit housing, recreation, social facilities and care for the elderly;

(5) Statement from assessor showing division of total project value, land and improvements, eligible and not eligible for property tax exemption;

(6) Statement from the claimant showing how exemption granted in any previous year has been reflected by a reduction in the amount of rent that would otherwise have been paid for occupancy of the facility by its residents. If the claimant states the rent, as certified for the home by the U.S. Department of Housing and Urban Development or Oregon Housing Division, does not contain an amount for property tax a letter signed by a representative of the government agency involved is required. Where rent charged does contain an amount for property tax the claimant must provide a listing showing individual living unit rents as certified by the government agency and the amount each of those rents was reduced in the previous year to reflect the tax exemption.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.242
Hist.: TC 7-1980, f. 11-28-80, cert. ef. 12-31-80

150-307.250
Defining “Surviving Spouse” of a Veteran

(1) “Surviving spouse” of a veteran means:

(a) A man or woman who is legally married to a veteran at the time of the veteran’s death; or

(b) A man or woman who is joined in a registered domestic partnership with a veteran at the time of the veteran’s death. “Domestic partnership” has the meaning given that term as defined in ORS 106.310, and the partnership must meet the provisions of ORS 106.300 to ORS 106.340, also known as the Oregon Family Fairness Act (OFFA).

(2) “Surviving spouse remaining unmarried of a veteran” means the individual does not enter into a new marriage or registered domestic partnership following the death of the veteran.

(3) The exemption applies only to the period before the date of the first new marriage or registered domestic partnership of the surviving spouse after the death of the veteran.

(4) If a surviving spouse of a veteran enters into a new marriage or registered domestic partnership following the death of the veteran and that marriage or partnership is annulled by a court having jurisdiction to do so, the surviving spouse will be restored to his or her previous status as a surviving spouse remaining unmarried of a veteran.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.250
Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.250(1)(d); REV 5-2009, f. & cert. ef. 7-31-09; Renumbered from 150-307.250(1)(c) by REV 4-2011, f, 12-30-11, cert. ef. 1-1-12

150-307.260(1)(a)
Veteran’s Exemption for Surviving Spouse

(1) If a qualified veteran dies after making timely application, the exemption shall continue on the property for the surviving spouse for the assessment year for which the application was made.

(2) The surviving spouse must own and live on the property and make a timely application in the following year to continue the exemption.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.260
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.206(1)-(C)

150-307.260(3)
Physician Certification of Disability for Exemption

(1) A veteran described under ORS 307.250(2)(b) must be certified annually by a physician as having a disability rating of 40 percent or more.

(2) The veteran must file the physician’s certificate annually with the Exemption Claim form and their statement of total gross income.

(3) The veteran must file the physician’s certificate annually up to and including age 65. Once the veteran reaches the age of 66 and has filed the physician’s certificate in the previous year, the veteran is no longer required to file the certificate but is required to file annually the Exemption Claim form and the statement of total gross income.

Example: A veteran 64 years of age files the physician’s certificate with the Exemption Claim form and their statement of total gross income on or before April 1, 2009. He then has his 65th birthday on May 15, 2009. The veteran must file the physician’s certificate with the Exemption Claim form and income statement when he next files on or before April 1, 2010. On

May 15, 2010, the veteran has his 66th birthday. Since the veteran is now 66 years of age and previously filed the certificate after his 65th birthday, he is no longer required to file the certificate but is required to file his Exemption Claim form and statement of total gross income on or before April 1, 2011, or for any year thereafter.

(4) A veteran with a physician-certified permanent disability must be rated as having disabilities of 40 percent or more to qualify for the exemption.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.260
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.260(1)-(A); Renumbered from 150-307.250(1)(b) by REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

150-307.270(1)-(A)
Property to Which Veteran's Exemption Applies

(1) Definitions for the purpose of this rule:

(a) "Basic life needs" include, but are not limited to, preparation of meals, personal hygiene, or daily care of oneself.

(b) "By reason of health" means to obtain medical care or to receive basic life needs.

(c) "Temporary absence" means absence with the intention to reoccupy the homestead, similar to a domicile. Examples include but are not limited to temporary vacation, business travel, or military service.

(2) If a qualified veteran or surviving spouse owns only an undivided interest in a property and the remaining interest is owned by a nonspouse or a nonveteran, the veteran is entitled to a tax exemption only to the extent of the veteran's actual ownership interest in the homestead property.

Example 1: A qualified veteran owns an undivided one-half interest in a manufactured structure that has an assessed value of $10,000. The remaining undivided one-half interest is in the name of the veteran's son. The veteran will be allowed an exemption of $5,000, which is one-half the assessed value of the manufactured structure. The remaining undivided interest is not entitled to an exemption unless the person owning the remaining one-half interest is a qualified veteran who also occupies the same homestead property.

(3) Only one exemption for each qualified veteran is allowed in any tax year. Two or more qualified veterans may each receive an exemption on the same homestead property if each veteran owns, lives on the property, and files timely.

(4) The right to claim the exemption will not be lost if the claimant is temporarily absent from the property or is required to live away from the homestead by reason of health. Examples of absence by reason of health may include, but are not limited to:

(a) Confinement to a nursing home or other long-term care facility; or

(b) Receiving care at a family member's or other individual's home.

Example 2: An Oregon resident who qualifies for the veteran's property tax exemption on their homestead stays in Arizona for a few months during the year. Although temporarily absent from their homestead, it continues to qualify as their primary residence because the claimant has the intention of returning.

Example 3: Due to failing health, the claimant moves to her daughter's home. After eighteen months, it becomes apparent it is unlikely the claimant will ever be able to return to her own home. Although the claimant did not remain in her home, the property continues to qualify as her primary residence and is eligible for the exemption because the claimant was absent by reason of health.

(6) If the assessor is notified or has reason to believe the claimant is not living at the primary residence by reason of health, the assessor may request documentation that proves continued eligibility for the exemption. An example of documentation is a letter from a medical provider stating the claimant is unable to provide their own basic life needs.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.270
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.270; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

150-307.270(1)-(B)
Transfer of Veteran's Exemption to a Different Property Requires Refiling

(1) The exemption provided for veterans or surviving spouses under ORS 307.250 does not automatically transfer from one property to another property.

(2) The veteran or surviving spouse will need to file a new application with the county assessor where the property is located to claim the exemption.

(3) The late filing provision allowed under ORS 307.260(1)(c)(B) is not applicable when the exemption is claimed for a new or different property.

(4) A written claim must be filed on or before April 1 of the assessment year for which the exemption is claimed. When the designated property is acquired after March 1 but prior to July 1, the claim shall be filed within 30 days after the date of acquisition.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.260
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-307.260(1); RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.260(1)-(B)

150-307.270(1)-(C)
Veterans Property Held in Trust

To receive an exemption on property that is held in a trust, the trust must be clearly identified as revocable for the specific property on which a claim for exemption is filed under ORS 307.250 and an application is made as required in 307.260

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.270
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-307.250

150-307.286
Oregon Active Military Service Member's Exemption — Eligibility

For purposes of ORS 307.286:

(1) A qualifying service member's homestead:

(a) Must be the qualifying service member's principal residence that is located in Oregon;

(b) Must be owned by the qualifying service member prior to July 1 of the tax year for which exemption is claimed;

(c) May be a personal property manufactured structure or a floating home; and

(d) Includes land under a manufactured structure if the land is owned by the qualifying service member.

(2) The right to claim the exemption will not be lost if the qualifying service member is temporarily absent from the homestead during the tax year for which exemption is claimed. Temporary absences include absences for vacation, business travel, hospitalization, or military service.

(3) The exemption allowed under ORS 307.286 is limited to the lesser of the:

(a) Assessed value of the homestead property owned by the qualifying service member; or

(b) Statutory limitation, which is equal to $60,000 for the 2005-06 tax year and adjusted annually as described in ORS 307.286(2).

Example 1: A qualified service member owns a homestead that has an assessed value of $80,000. Because the assessed value of the homestead is more than $60,000, the exemption allowed is $60,000 for the 2005-06 tax year.

Example 2: A qualified service member owns a homestead consisting of a manufactured structure and the land upon which it is located. The manufactured structure is assessed as real property and has an assessed value of $40,000. The land upon which the structure is located has an assessed value of $15,000. Because the assessed value of the manufactured structure and the land combined is less than $60,000, the exemption allowed is $55,000 for the 2005-06 tax year. The amount of the exemption cannot exceed the assessed value of the homestead property.

Example 3: A qualified service member owns a homestead consisting of a manufactured structure, but does not own the land upon which it is located. The manufactured structure is assessed as personal property and has an assessed value of $50,000. The exemption allowed for the 2005-06 tax year is $50,000 and only applies to the manufactured structure. The exemption does not apply to the land, because the qualified service member does not own the land.

(4) An Oregon resident is eligible for the exemption provided under ORS 307.286, if:

(a) The individual is serving in the Oregon National Guard, military reserve forces, or other U.S. state's or territory's organized militia;

(b) The individual has been ordered to federal active duty under Title 10 United States Code (USC), or a deployment under the Emergency Management Assistance Compact; and

(c) The period of active duty exceeds 178 consecutive days.

(5) The qualifying service member must attach documentation to the claim for exemption that shows proof of active duty during each tax year for which exemption is claimed. The service member may claim the exemption for each tax year during which at least one day was served on active duty.

(a) Examples of valid documentation include, but are not limited to: military orders, form DD214, a letter on military letterhead, or other military record.

(b) Acceptable documentation for the exemption must show:

(A) Service in the Oregon National Guard, military reserve force, or other U.S. state's or territory's organized militia; and

(B) Service performed for more than 178 consecutive days in federal active duty under Title 10 USC or in deployment under the Emergency Management Assistance Compact on or after January 1, 2005.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.286
Hist.: REV 4-2006, f. & cert. ef. 7-31-06; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-307.289
Oregon Active Military Service Member's Exemption Claimed By Lawful Occupant

For purposes of ORS 307.289:

(1) "Qualifying duty" means:

(a) An Oregon resident is serving in the Oregon National Guard, military reserve forces, or other U.S. state's or territory's organized militia;

(b) The individual has been ordered to federal active duty under Title 10 United States Code (USC), or a deployment under the Emergency Management Assistance Compact;

(c) The individual was ordered or deployed on or after January 1, 2005; and

(d) The period of ordered active duty service exceeds 178 consecutive days.

(2) A qualifying service member's homestead:

(a) Must be the qualifying service member's principal residence that is located in Oregon;

(b) Must be owned by the qualifying service member prior to July 1 of the tax year for which exemption is claimed;

(c) May be a personal property manufactured structure or a floating home; and

(d) Includes land under a manufactured structure if the land is owned by the qualifying service member.

(3) A lawful occupant is an individual who is using the qualifying service member's homestead as his or her principal residence at the time the claim is filed.

(a) The lawful occupant is not required to hold an ownership interest in the homestead.

(b) A lawful occupant may include, but is not limited to, a qualifying service member's: spouse, parent, adult child, or other relative; domestic partner; or roommate. A neighbor or caretaker, who has a key to the qualifying service member's homestead, but for whom the homestead is not a principal residence, does not qualify as a lawful occupant.

(4) The lawful occupant may claim the homestead exemption if the service member would otherwise qualify for this exemption but died while performing the qualifying duty during the current or prior tax year and before filing a claim.

(a) An individual claiming to be a lawful occupant must attach documentation to the claim for exemption that demonstrates the homestead is his or her principal residence at the time claim is made. The county assessor may require more than one piece of documentation.

(b) Documentation may include, but is not limited to, a valid driver's license, passport, election registration card, or the most recent property tax statement for the homestead.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.289
Hist.: REV 4-2006, f. & cert. ef. 7-31-06; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-307.320
Agricultural Land Devoted to Agricultural Purposes as Real Property

(1) The term "land" as used in ORS 307.320 differs from the definition of "land" in 307.010(1) in that it is limited to the land itself. It is land that has a classification as agricultural land and is being used for agricultural purposes such as raising and harvesting crops or rearing, feeding and management of livestock.

(2) For the purpose of advalorem taxation, deciduous trees, shrubs, plants and crops in, under, or growing upon agricultural land devoted to agricultural purposes are wholly exempt from such taxation and need not be listed upon the assessment roll. (See OAR 150-308.235.)

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.320
Hist.: 1-58; 11-59; 1-66; 3-70; TC 7-1980, f. 11-28-80, cert. ef. 12-31-80; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84

150-307.330
Exemption of Buildings, Structures and Machinery or Equipment during Construction

(1) Definitions for purposes of ORS 307.330 and this rule:

(a) "Addition" means any enlargement of an existing building or structure. This includes the construction of additional stories or the erection of a new wing on an existing building.

(b) "Building" means all real property improvements erected upon the land such as hotels, office buildings, retail stores, condominiums and manufacturing plants and includes heating and ventilating systems, elevators, and similar equipment normally installed as part of the building construction.

(c) "Completed" means the building, structure or addition is ready for its intended use or occupancy.

(d) "In the process of construction" means that construction of the new building, structure or addition has begun, but is not yet completed, and typically the foundation is partially or wholly laid. Site preparation or demolition of an existing building or structure is not considered part of the construction process.

(e) "In use or occupancy" means the property is being utilized in the manner for which the completed building, structure or addition was intended.

(f) "Land" means land in its natural state and includes site development such as fill, excavation, grading and leveling.

(g) "Machinery or equipment" includes machinery or equipment housed within the building, structure or addition for the purpose of manufacturing or otherwise processing raw or finished materials.

(h) "Modernization" means to take corrective measures to bring a property into conformity with changes in style.

(i) "Structure" means all real property improvements, other than buildings, and includes improvements such as ramps, loading docks, wharfs, and paved areas used for parking or storage.

(j) "Testing" means a limited trial production run as a check of equipment and system performance, but does not include the processing of a substantial quantity of finished and marketable products that are, or can be, sold through the usual channels of trade.

(2) Property eligible for exemption:

(a) New building, structure or addition to an existing building or structure that is in the process of construction on January 1 of each assessment year in which exemption is claimed. The building, structure or addition must be intended primarily for the furtherance of the production of income, whether from a one-time sale of property or an ongoing stream of income. For example, a new condominium project being constructed for future sale to purchasers, who may live on the property or rent the property to others, will qualify for exemption.

(b) Machinery or equipment located at the construction site or installed in or affixed to a building, structure or addition. Testing of equipment is allowable during the period of construction.

(c) All personal property that would qualify as real property under OAR 150-307.010(1) that is situated at the place of construction on January 1 of each assessment year in which exemption is claimed.

(3) Manufacturing facilities may claim exemption for no more than two consecutive years. Conditions for exemption must exist on January 1 of each assessment year in which exemption is claimed.

(4) Property not eligible for exemption:

(a) Land.

(b) Modernization of an existing building or structure.

(c) Heating equipment, elevators, ventilating systems and similar equipment installed in a building after its original construction.

(d) Property constructed for residential occupancy by the owner.

(e) Nonmanufacturing facilities, of any kind, completed less than one year from the date construction began.

(5) No exemption may be allowed if use or occupancy is made of the building, structure or addition, or any part thereof, on or before January 1 of any assessment year in which exemption is claimed.

(a) If the building, structure or addition is completed and ready for use or occupancy on January 1, although not in use, it is taxable.

(b) If the building, structure or addition is completed and leased on January 1, but not occupied by the lessee, it is taxable.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.330
Hist.: 11-59. 11-61; 7-64; 1-66; 12-66; 3-70; 11-71; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

150-307.370
War Veterans Filing a Claim for Exemption if Living in a Nonprofit Home for the Elderly

(1) Residents of nonprofit homes for the elderly established under ORS 307.370 to 307.385, and 308.490, and who are otherwise qualified, are entitled to the war veteran's tax exemptions. Each veteran or surviving spouse qualifying for the exemption under 307.250 shall file a claim with the county assessor on or before April 1 of each year the exemption is claimed. When the veteran or surviving spouse moves into the nonprofit home for the elderly after March 1 and before July 1 of any year, then the claim must be filed within 30 days after the veteran or surviving spouse moves into the nonprofit home for the elderly.

(2) Each nonprofit home for the elderly corporation annually shall aid qualifying residents in applying for the property tax exemptions on behalf of the corporation, for the benefit of the war veteran or surviving spouse as provided by ORS 307.370 to 307.385, and 308.490. The application shall be on duplicate forms and shall be completed and signed by the resident-applicant, and filed with the assessor on or before the date required by law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.370
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95

150-307.375
Nonprofit Home for the Elderly

The corporation must be nonprofit in nature and organized to furnish facilities primarily for citizens over 62 years of age.

(1) At least 95 percent of the corporation's gross operating income must come from payments for living, medical, recreation, and social services for persons over 62 years of age using the facilities.

(2) No part of the net earnings of the corporation can be used to benefit any stockholder or individual.

(3) Upon dissolution, the assets remaining after satisfying all lawful debts and liabilities shall be distributed to one or more corporations exempt from taxation under ORS Chapter 307 or to the state of Oregon. These corporations receiving the assets upon dissolution shall be organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes in Chapter 307.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.375
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; REV 4-2002, f. & cert. ef. 7-29-02, Renumbered from 150-370.370(A)

150-307.394
Personal Property Used for Placing Farm Crops in Storage

(1) Definitions:

(a) "Storage of farm crops" refers to the holding area in which a product is placed before processing begins.

(b) "Processing" is altering the crop in any way such as: washing, icing, sorting, grading, waxing, boxing, slicing, or cutting.

(c) "Primary" is the leading use or the use involving the highest percentage of time relative to all the various uses.

Example: If an unlicensed farm vehicle is used 45 percent of the time to move cleaned, sorted, washed and bagged carrots ready for market (PRODUCT); 30 percent of the time to move freshly-picked carrots from the field to the warehouse or cold storage facility; and 25 percent of the time sitting idle, then the vehicle is used primarily in a nonexempt status and is fully assessable, even though that use is not 50 percent or more of the time available.

(2) Machinery and equipment used to place a farm crop in storage are exempt from taxation. However, once processing of the crop is begun, it is no longer a crop, but a product. When the same machinery and equipment are used for both placing in storage and processing the primary use is what determines its assessment status.

Example: Apples are picked and go directly into cold storage. This would be considered "placing in storage of farm crops." When these same apples are sorted, washed or boxed it becomes a product and placing back into cold storage until sold is not considered "placing in storage of a farm crops." At this point apples change from a crop to a product.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.400
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 4-2002, f. & cert. ef. 7-29-02, Renumbered from 150-370.400

150-307.397
Hoop Houses

(1) Frost control systems include structures used to protect plants from extreme cold and use passive solar gain as their heat source.

(2) An example of a qualifying structure is a hoop house which:

(a) Has polyethylene sheeting and arched pipe rafters and wind bracing; and

(b) Has no heating system other than solar gain; and

(c) Is used for frost control; and which may

(d) Use a sprinkling system to assist frost control.

(3) An example of a structure that would not qualify as a frost control system is a hoop house which:

(a) Has polyethylene sheeting and arched pipe rafters and wind bracing; and

(b) Has a permanent heat source or climate control system.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 150-307.400
Hist.: RD 5-1996, f. 12-23-96, cert. ef. 12-31-96; REV 4-2002, f. & cert. ef. 7-29-02, Renumbered from 150-370.400(5)(a)

150-307.405
Pollution Control Facilities

Certified pollution control facilities meeting the requirements of ORS 468.165 and 468.170, are exempt from advalorem taxes to the extent of the highest percentage figure certified by the Environmental Quality Commission. This percentage is then applied to the amount of value the certified pollution control facilities contribute to the total property value. The value contribution of the pollution control facility can differ from its original cost because of inflation, depreciation, obsolescence, or other economic factors. Whenever the property is reappraised the value contribution of the certified pollution control facility shall be identified in the conclusion of value. The annual value changes will be recorded by the appraiser on county Form 310-089.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.405
Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88

150-307.405(3)
Pollution Control Exemption Expiration Dates

The number of years certified pollution control facilities are exempt from ad valorem property taxes depends on the completion date of the facility. The term of the exemption shall begin in the year of certification. [Table not included. See ED. NOTE.]

(1) Facility must be certified prior to December 31, 1982.

(2) For 1983 and after advalorem exemption is available only to nonprofit corporations and cooperatives.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.405
Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92

150-307.455
Oregon Food Processor Property Tax Exemption

PURPOSE: The Oregon Department of Revenue (DOR) and the Oregon Department of Agriculture (ODA) may adopt rules to implement the provisions of ORS 307.455 and 307.457. 307.455 defines the eligibility requirements for exempt food processing machinery and equipment (M&E). This rule is intended to ensure that both agencies interpret and apply ORS 307.455 and 307.457 in a consistent manner; to clarify the meaning of terms used in ORS 307.455; and to explain the process through which a food processor may receive the exemption provided by ORS 307.455.

(1) Definitions:

(a) "Assessor" means the county assessor, or DOR, if DOR is responsible for the appraisal of the facility under ORS 306.126.

(b) "Certified" means that ODA has inspected the qualified M&E and has provided written verification to the food processor that the M&E is eligible for exemption under ORS 307.455.

(c) "Newly acquired" means new or used M&E that is first purchased or leased by a food processor not more than two years (24 months) prior to placing it into service. Leased equipment may be exempt only if the food processor is responsible for the payment of the property taxes under the terms of the lease agreement. Newly acquired property does not include existing equipment that has been refurbished or reconditioned in the time frame provided by this rule.

(d) "Placed into service" means the date the M&E is first used or in such condition that it is readily available and operational for its intended commercial use. It does not include property that is being tested or is in the process of being erected or installed on the January 1 assessment date.

(e) "Qualified M&E" means property, whether new or used, that is newly acquired by a food processor and placed into service prior to January 1 preceding the first tax year for which an exemption under this section is sought, and that consists of:

(A) Real property M&E that is used by a food processor in the primary processing of raw or fresh fruit, vegetables, nuts, legumes, or seafood; or

(B) Personal property M&E that is used in an integrated processing line for the primary processing of raw or fresh fruit, vegetables, nuts, legumes, or seafood.

(f) "Real Market Value (RMV)" of the property, for the purpose of determining the late filing fee pursuant to ORS 307.455, means the invoice cost of the qualified M&E , installation, engineering, and all miscellaneous costs including machinery process piping, foundations, power wiring, interest during installation, and freight.

(2) A food processor seeking an exemption under ORS 307.455 must make a request to ODA for certification. The request must:

(a) Be made in writing on a form provided by ODA;

(b) Include a listing on the Oregon Food Processor Certification of Qualified Machinery and Equipment form provided by DOR of all qualified M&E for which certification is sought;

(c) Be made at any time after M&E becomes "qualified M&E" and

(d) Be postmarked by February 1 of the assessment year during which the exemption is claimed. If the request is made after February 1, ODA will not guarantee that certification will be completed prior to the March 1 exemption claim filing deadline.

(3) Upon receiving the request for certification, the Food and Safety Division of ODA will:

(a) Schedule a site visit with the food processor;

(b) Inspect the M&E that is the subject of the listing submitted to ODA for which certification is sought;

(c) Determine if the subject M&E constitutes qualified M&E; and

(d) Provide written certification to the food processor approving or denying the subject M&E as qualified and eligible for exemption. The written certification is provided by ODA on the listing of qualified M&E submitted by the food processor.

(e) Denial of certification of certain property by the Oregon Department of Agriculture is a contested case for the purpose of ORS Chapter 183.

(4) Following the certification process, the food processor must file an exemption claim form with the assessor. The claim must:

(a) Be filed on a completed Oregon Food Processor Exemption Claim form provided by DOR;

(b) Include the written certification signed and dated by ODA; and

(c) Be filed by March 1, except as provided by section 9 of this rule.

(5) The filing of an exemption claim form is separate from the filing of a property tax return.

(6) Approved extensions for filing property tax returns do not apply to filing the exemption claim form.

(7) The assessor will return any exemption claim form not meeting the requirements of subsection 4(a) and (b) of this rule to the food processor.

(8) If the assessor returns an exemption claim form for completion, the food processor must return the exemption claim form to the assessor by March 1 for the claim to be considered as timely filed.

(9) An exemption claim form that is filed after March 1, and on or before December 31 of the assessment year during which the exemption is claimed, must be accompanied by a late filing fee pursuant to ORS 307.455(2)(b). If the late filing fee is not included with the claim form, no exemption will be allowed.

(a) The late filing fee is the greater of $200 or one-tenth of one percent of RMV of the property that is the subject of the claim form.

(b) The certified listing required by subsection 4(b) of this rule that is included with a late filed exemption claim must show the RMV of each piece of qualified M&E. The RMV is reported on the certified listing form, as directed by that form's instructions.

(c) Denial of the exemption may be appealed to the Oregon Tax Court pursuant to 305.275.

(10) Upon the assessor's receipt of a completed exemption claim form, and late filing fee if applicable, the assessor will compare the certified listing of all qualified M&E with the schedule of real and personal property M&E included on the property tax return. The property tax return must clearly identify the M&E that has been certified as eligible for exemption by ODA.

(11) Eligible M&E is exempt for the first qualifying tax year and the following four tax years as long as it continues to qualify as of January 1 of each year.

(a) The food processor must notify the assessor if any of the exempt M&E becomes ineligible for the exemption. Property becomes ineligible when it no longer constitutes "qualified M&E" as defined in this rule.

(b) The assessor may require verification of the M&E's continued qualification for exemption.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 307.459
Stats. Implemented: ORS 307.455
Hist.: REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

150-307.475
Hardship Situations

(1) "Exemption" includes total exemptions, partial exemptions, and special assessments including, but not limited to, those listed in ORS 308A.706(1)(d). Relief under this section does not apply to the provisions of ORS 311.666 to 311.735.

(2) "Good and sufficient cause" is an extraordinary circumstance beyond the control of the taxpayer or the taxpayer's agent or representative that causes the taxpayer to file a late application for an exemption, cancellation of tax, or redetermination of value pursuant to ORS 308.146(6) or 308.428 with the assessor or local governing body.

(a) Extraordinary circumstances include, but are not limited to:

(A) Illness, absence, or disability that substantially impairs a taxpayer's ability to make a timely application. The substantial impairment must have existed prior to the filing deadline, and must have been of such a nature that a reasonable and prudent taxpayer could not have been expected to conform to the deadline.

(B) Delayed receipt of a disability certification, a death certificate, or other documentary justification necessary for the filing of an application for exemption, cancellation of tax, or redetermination of value, unless the taxpayer, with ordinary prudence, could have obtained the required information in a timely manner.

(C) Reasonable reliance on misinformation provided by county assessment and taxation staff or Department of Revenue personnel.

(D) Active duty military service during the tax year for which the application for the exemption was filed but only when the petitioner has applied and otherwise qualified for the exemption under ORS 307.286. The department may not recommend the assessor accept a late filed application for the exemption due to this circumstance unless the petition to the department is filed timely or the deadline for filing a petition with the department is extended under section (4) of this rule.

(b) If none of the other extraordinary circumstances described in subsection (2)(a) of this rule apply, the department cannot find that good and sufficient cause exists if the late filing is due to:

(A) The taxpayer's inadvertence, oversight, or lack of knowledge regarding the filing requirements.

(B) Financial hardship.

(C) Reliance on misinformation provided by a professional such as a real estate broker, attorney, or CPA.

(3) "Military service," as used in section (4) of this rule, includes the period of time that National Guard members are called into federal service for more than 30 days under 32 USC 502(f), as well as the time that members of the Army, Air Force, Navy, Marine Corps, or Coast Guard, and military reservists are ordered to report to active duty.

(4) Notwithstanding ORS 307.475(3), the Servicemembers' Civil Relief Act (SCRA), 50 USC app. 526, suspends the deadline for filing a petition for hardship relief during the period that a service member is in active duty military service with the armed forces.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.475
Hist.: RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; REV 4-2006, f. & cert. ef. 7-31-06; REV 4-2007, f. 7-30-07, cert. ef. 7-31-07; REV 3-2014, f. & cert. ef. 7-31-14

150-307.480
Farm Labor Camp Assessment

Only the portion of the farm labor camp property actually occupied, or held for occupation, by persons primarily employed for agricultural or horticultural purposes would qualify. Land and improvements which are not an integral part of the farm labor camp shall not qualify for the exemption. Examples of areas which may qualify for exemption are:

(1) Cooking and eating areas.

(2) Parking areas.

(3) Buffer areas, when reasonably necessary to protect the labor camp or to protect surrounding area from noise or other nuisance factors.

(4) Recreation areas.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.480
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-307.495
Filing a Claim for Exemption When a Farm Labor Camp or Child Care Facility is Acquired

(1) Each nonprofit corporation claiming exemption under ORS 307.485 shall file a claim with the county assessor on or before April 1 of each assessment year for which the exemption is claimed.

(2) Each nonprofit corporation claiming exemption under ORS 307.485 that acquires property after March 1 and before July 1 shall file a claim with the county assessor within 30 days after acquisition.

(3) For existing farm labor camps or child care facilities, "acquisition" occurs when:

(a) The nonprofit corporation takes ownership of the property; or

(b) The nonprofit corporation, who is operating the camp or facility, enters into a lease or lease-purchase agreement.

(4) For unimproved property, "acquisition" occurs when:

(a) The new improvements for the farm labor camp or child care facility are completed and have been issued a temporary or permanent certificate of occupancy; or

(b) If no certificate is required, is ready for occupancy.

(5) When the claim for exemption is filed, the farm labor camp or child care facility must qualify as being "eligible" within the definitions of ORS 307.480(1) and (2) and must be in compliance with the required health and fire codes for farm labor camps or is a certified child care facility.

(6) Acquisition must occur before July 1 of the assessment year for which the exemption is claimed.

(a) If the farm labor camp or child care facility property qualifies before July 1, the property may be eligible for exemption for the ensuing tax year.

(b) If acquisition does not occur before July 1, or if the property does not meet other statutory requirements for a camp or facility before July 1, the property will not be eligible for the exemption for the ensuing tax year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.495
Hist.: REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-307.547
Certification of Nonprofit Corporation Low Income Housing Exemption to County Assessor

If the governing body determines under ORS 307.547 that property qualifies for exemption from taxation, the governing body must certify the exemption to the county assessor:

(1) On or before April 1 preceding the tax year for which exemption is granted, or

(2) If after April 1, within one week of the governing body determining the property qualifies for exemption.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.547
Hist.: REV 11-2009, f. 12-21-09, cert. ef. 1-1-10; REV 3-2014, f. & cert. ef. 7-31-14

150-307.804
Rural Health Care Facilities

(1) Definitions:

(a) "Health care provider" has the meaning given that term as defined in ORS 127.505(11).

(b) "Medical care" has the same meaning as "health care services" as defined in ORS 750.005(5) and it must be provided by a health care provider.

(2) To qualify for the property tax exemption under ORS 307.804, the rural health care facility must be used exclusively to provide medical care.

(3) The following examples are types of facilities that do not provide medical care exclusively, and therefore do not qualify for the exemption provided in ORS 307.804. These include but are not limited to:

(a) Athletic clubs as defined in OAR 333-060-0015;

(b) Long term care facilities as defined in ORS 442.015(22);

(c) Nursing homes;

(d) Group homes; or

(e) Drug or alcohol treatment facilities.

(4) Real and personal property of a rural health care facility qualifying for exemption under ORS 307.804 includes:

(a) Real and personal property located at a rural health care facility and used exclusively to provide the medical care. The property may be owned by an entity other than the owner of the facility.

(b) Real and personal property equipment located at a rural health care facility and used exclusively to provide the medical care. The property may be owned by an entity other than the owner of the facility.

(5) The owner of the rural health care facility must file annually with the county assessor to receive the exemption.

(6) The owner of the rural health care facility may file on behalf of other persons whose property is located at the facility and used exclusively to provide medical care.

Stat. Auth.: 305.100
Stat. Implemented: 307.804
Hist.: REV 1-2003, f. & cert. ef. 7-31-03; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-307.811(1)
Definitions

The word "solely" in ORS 307.811(1), is interpreted to mean that the potentially exempt property, real or personal, is being used exclusively in the operations of a long term care facility, including personal, common and auxiliary support areas and property related to such operations. Example: The exemption may include the bedroom and bathroom, common areas and kitchen and storage areas and other property, provided that such property is used only in the operations of the facility.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.811
Hist.: REV 8-2000, f. & cert. ef. 8-3-00

150-307.811(2)(a)
Filing Requirements

(1) For the facility to obtain the long term care facility exemption, the following documentation must be filed with the county assessor's office:

(a) A copy of the certification of qualification for exemption, for the tax year for which exemption is sought, issued by Senior and Disabled Services Division (SDSD) and Mental Health and Disability Services Division.

(b) A copy of the appropriate resolution or ordinance from each taxing district adopting the provisions of ORS 307.811. Such an ordinance or resolution would read substantially equivalent to the following: The provisions of ORS 307.811 are adopted for the purpose of allowing real and personal property or eligible long term care facilities to be exempt from ad volorem property taxation within this taxing district.

(2) To avoid the late filing penalty, the certification of qualification for exemption accompanied by the resolution of ordinance must be filed on or before April 1 of the year preceding the tax year for which the exemption is being claimed. After April 1 and on or before December 31 of the tax year, the taxpayer may file a certification of qualification for exemption accompanied by a copy of the resolution or ordinance. The filing must be accompanied by a late fee of the greater of $200 or one-tenth of one percent of the real market value of the property to which the certification of qualification for exemption applies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.811
Hist.: REV 8-2000, f. & cert. ef. 8-3-00

DIVISION 308

ASSESSMENT OF PROPERTY FOR TAXATION

150-308.010
Continuing Education Requirements for Registered Appraisers, Waiver of those Requirements, and Revocation of Registrations

(1) Registered appraisers in Oregon must participate in a continuing education program related to technical competency. To maintain their registration, appraisers must meet the continuing education requirements outlined in this rule. The requirements of this rule apply to any person who wishes to maintain registration, without regard to the person's place of employment.

(2) Definitions:

(a) For the purposes of this rule, a "registered appraiser" is a person who has satisfied the requirements of ORS 308.010 relating to employment or has successfully completed an appraiser skills examination.

(b) "Continuing education credits" are units of training that are approved by the department in subjects related to assessment and taxation. Credits are equal to the number of hours in a course or presentation the department approves for continuing education.

(A) Technical credits are awarded for training in assessment and taxation subjects. Topics eligible for technical credit include, but are not limited to: mass appraisal, tax rate calculation, ratio studies, personal property, farm or forest uses, board of property tax appeals, property tax exemptions and special assessments and computer applications.

(B) Instructor credits are awarded for course development and presentation. The course instructor will receive instructor credits for the first training session equal to the number of hours the department approved for continuing education for that training session. For each subsequent training session on the same subject, the course trainer will receive one-half hour of instructor credit for each hour of department approved continuing education credit.

(3) Required Credit Hours

(a) Registered appraisers must accumulate 30 credit hours of continuing education every two calendar years following registration. Registered appraisers with less than three years appraisal experience with either the Department of Revenue or an Oregon county assessor's office or a combination of the two must accumulate 60 credit hours of continuing education credits within the first two calendar years following their registration.

(b) In the case of registered appraisers employed by the county, the assessor annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the continuing education requirements. In the case of registered appraisers employed by the State of Oregon, the direct supervisor of those employees annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the continuing education requirements. In the case of registered appraisers not employed by the county assessor or the State of Oregon, individuals annually will self-certify on a form provided by the Department of Revenue as to the satisfactory completion of continuing education requirements.

(c) The Department of Revenue will maintain a database of training it provides to registered appraisers. That database may be supplemented by records provided by the registered appraiser as to qualifying appraisal training received from sources other than the Department of Revenue.

(d) The department will provide sufficient training programs to allow registered appraisers to meet continuing education credit requirements. Credit hours are approved for appraisal-related courses offered by the following organizations:

(A) Department of Revenue;

(B) International Association of Assessing Officials (IAAO);

(C) American Society of Appraisers (ASA);

(D) The Appraisal Institute.

(e) The department will approve credit hours provided through training given by other entities, individuals or by the county if it determines that the content of the training meets the definition for technical credits provided in this rule.

(4) Waiver of Requirement for Continuing Education Credits

(a) Prior to March 31 of the first year of any registered appraiser's current certification period, either the registered appraiser or the appraiser's employer on behalf of the appraiser may submit a request to the Department of Revenue for waiver of the continuing education requirements to be certified for the current two-year certification period. A request for waiver must be in writing and signed by the requestor. If it is a waiver for a registered appraiser employed by the county, the assessor must approve it. For registered appraisers employed by the Department of Revenue, the appraiser's immediate supervisor must approve the request for waiver.

(b) The following are conditions for which the department may grant a waiver:

(A) Military service that prevents the completion of continuing education requirements.

(B) Disability or illness that prevents the completion of continuing education requirements.

(C) Accident or other uncontrollable events that prevent the completion of continuing education requirements.

(D) Limited duration assignments within the Department of Revenue but outside the Property Tax Division for Department of Revenue appraisers.

(E) Formal retirement from regular employment, whether or not the appraiser is working on a temporary or part-time basis in an appraisal capacity.

(F) Absence from the state that prevents completion of continuing education requirements.

(c) Waivers under this subsection for the conditions in subparagraphs (A) through (C) of paragraph (b) above may be allowed indefinitely as long as the condition continues. However waivers under subparagraphs (A) through (C) above will not be granted for more than a single two-year certification period if the appraiser is also practicing in an appraisal capacity, either independently or under the employ of an individual, entity, or public employer.

(d) Waivers under this subsection may be granted for no more than a single two-year certification period for the conditions in subparagraphs (D) through (F) above.

(5) Validation of Accumulated Credits

(a) Prior to January 1 each year registered appraisers must provide the department with a statement that they have met their education requirement. The statement must be made on a form provided by the department.

(b) Prior to February 1 of each year the department will notify the Human Resource Services Division of the Department of Administrative Services of:

(A) Those individuals who have met the continuing education requirements of ORS 308.010 and this rule or

(B) Have been granted a waiver of the requirements.

(6) Revocation of Appraiser Registration The Human Resource Services Division of the Department of Administrative Services:

(a) May revoke appraiser registration under ORS 308.010(1) for fraud or deceit in appraising or in the securing of a certificate or for incompetence.

(b) Will revoke appraiser registration under ORS 308.010(4)(d) for failing to submit satisfactory evidence to the department that the registered appraiser has met the continuing education requirement.

Stat. Auth.: ORS 305.100 & 308.010
Stats. Implemented: ORS 308.010
Hist.: RD 3-1989, f. 12-18-89, cert.ef. 12-31-89, Renumbered from 150-308.010; 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150-308.010-(A), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-308.010(1)
Revocation of Appraiser Registration

(1) The department will permanently revoke the registration of an appraiser when it has received a certified copy of a final determination, as prescribed by this section, that the appraiser has committed civil or criminal fraud or misrepresentation.

(2) Such determination must be by a court, state or local government administrative body, or statutorily authorized board of arbitration, and must result from a claim or defense in the proceeding based upon an allegation that the appraiser committed such fraud or misrepresentation.

(3) Such determination shall be 'final,' when no longer subject to review by a court or body of higher jurisdiction. The department shall notify the Department of Administrative Services of the revocation. The appraiser's registration shall then be removed from the data base of currently registered appraisers.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.010
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.015
Appraiser Trainee Program

"Appraiser Trainee Program" provides on the job training for employees in a county assessor's office. Employees in a county assessor's office may be enrolled in the program under the supervision of the county assessor and a Department of Revenue employee. A standardized training program outlining minimum training requirements for all trainees shall be developed by the Department of Revenue. An individualized training program may be prepared for each trainee, depending on their education and work experience.

(1) For the purpose of this rule, "employee" includes, but is not limited to:

(a) Any person filling a position included in the assessor's budget.

(b) Any person for whom the assessor has agreed to provide on the job training and is not in a position included in the assessor's budget i.e. a person referred to the county assessor through a licensed vocational rehabilitation organization.

(2) To be enrolled in the Appraiser Trainee Program, an individual must:

(a) Be currently working a minimum of 20 hours per week in the office of a county assessor or meet the definition of 'employee' as described in (1).

(b) Obtain a written recommendation from the county assessor to be accepted into the training program. The county assessor shall make a written request to the Department of Revenue Training Coordinator, Property Tax Division, to have the employee enrolled in the Appraiser Trainee Program.

(3) Completion or termination of the Appraiser Trainee Program:

(a) Each person enrolled in the Appraiser Trainee Program must complete the requirements of the training plan within two years from the date of enrollment in the program.

(b) The trainee will automatically be terminated from the program upon termination of employment with the county assessor. Upon reemployment with a county assessor, the trainee may request reinstatement. Reinstatement must be approved by the county assessor and the Department of Revenue Training Coordinator. When reinstated, the total participation time in the program may not exceed two years.

Example: Trainee participates in program for eight months then moves from the area and terminates employment. Trainee returns to the area, requests and is granted reinstatement, and resumes the training program. The trainee has one year and four months from the date of reinstatement to complete the requirements of the training program.

The Department of Revenue will determine if the trainee has met the requirements of the program. Upon satisfactory completion, the Department and the assessor of the county will:

(1) Issue a certificate of completion to the trainee.

(2) Issue a Certification of Affidavit to the Department of Administrative Services, Human Resources Services Division.

The Department does not register the trainee as an appraiser. The trainee must take the County Property Appraiser 1 examination administered by the Department of Administrative Services, Human Resources Services Division in order to obtain registration in the State of Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.015
Hist.: 12-19-75; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-308.030
Standards for Imposition, Waiver, and Reduction of Penalty on Utilities and Designated Companies Assessed by the Department. Imposition of Penalty for Failure to File a Timely or Complete Return

(1) The department may impose a penalty under ORS 308.030 whenever an annual statement is not filed within the time fixed for filing an annual statement or by the approved extension date, or an incomplete annual statement is filed.

(a) The annual statement packets that are mailed to the taxpayer contain cover letters which specify the information that the taxpayer must include in the annual statement the taxpayer submits to the department. If a taxpayer submits an incomplete annual statement, the department will return it to the taxpayer with a notice stating the information that is required for the annual statement to be considered complete. A complete annual statement must be refiled within 14 days from the date on the notice of the incomplete filing.

(b) The taxpayer may be subject to a late-filing penalty under ORS 308.030 if the complete annual statement is not filed by the later of the original due date, the approved extension date, or 14 days from the date on the notice of the incomplete filing. Taxpayer Request for Waiver or Reduction

(2) Taxpayers who object to a late-filing penalty imposed under ORS 308.030 for late filing of an annual statement may request that the penalty be waived or reduced. The director of the department will consider all requests to waive or reduce late-filing penalties imposed under ORS 308.030 consistent with this rule.

(3) The request for waiver or reduction of a late-filing penalty must be in writing and must be signed by the taxpayer, an officer of the taxpayer, or an authorized representative of the taxpayer.

(4) The taxpayer may file a request for waiver or reduction of the late-filing penalty at any time after the taxpayer is subject to the late-filing penalty, but must be received by the department no later than July 31, of the year in which the director reviews the assessment roll for the year of delinquency.

(5) The request for waiver or reduction of a late-filing penalty must contain all the facts showing that one or more of the following factors for waiver or reduction of the late-filing penalty apply:

(a) The actions of the taxpayer resulted in the imposition of a penalty which constituted a first-time offense on the part of the taxpayer.

(b) Good and sufficient cause, as defined in ORS 305.288(5)(b), exists for a taxpayer's failure to file the annual statement required by law within the time fixed for filing or the approved extension date.

(6) Examples of situations the director may accept as good and sufficient cause for the late filing of an annual statement include:

(a) The delay was caused by the death or serious illness of the person who is solely responsible for filing the annual statement, or death or serious illness in that person's immediate family.

(b) The delay was caused by the unavoidable and unforeseen absence of the person who is solely responsible for filing the annual statement prior to the due date of the annual statement.

(c) The delay occurred because the taxpayer did not receive the annual statement packet mailed by the department to the taxpayer's last-known address, which was not the taxpayer's current address. The annual statement packet was returned to the department, remailed to a new address, and the taxpayer responded within the extended filing time.

(d) The delay was caused by the destruction by fire, natural disaster or other casualty of the taxpayer's records needed to prepare the annual statement.

(7) Examples of situations the director may not accept as good and sufficient cause for the late filing of the annual statement include:

(a) The delay was due to the taxpayer's reliance upon an individual (e.g., an accountant) to prepare the annual statement on time. The taxpayer has an affirmative duty to file timely.

(b) The delay was the result of personnel changes within the taxpayer's organization.

(c) For private railroad companies, the delay was the result of railroads not providing necessary mileage reports prior to the filing deadline or the approved extension date.

(8) The director will use the following guidelines when considering a request to waive or reduce a late-filing penalty.

(a) Non-filers No waiver of late-filing penalty.

(b) Filing delinquency 1–5 days: 6–30 days: Over 30 days.

(A) First time offense for late-filing: Waive: Waive: Waive.

(B) Good and sufficient cause established: Waive: Reduce 75%: No Waiver

(c) Promote long-term effectiveness and efficiency

(A) First delinquency in rolling three years: Waive: Reduce 75%: No Waiver

(B) Second delinquency in rolling three years Reduce 75%: Reduce 50%: No Waiver

(C) Third delinquency in rolling three years: No Waiver: No Waiver: No Waiver

(d) Days late are calculated from the later of the original due date or the approved extension date. If no delinquency has occurred within the preceding three years, any request for waiver or reduction may be considered the same as a "first delinquency in rolling three years." If a taxpayer has been subject to a late-filing penalty at any time within the preceding three years, a second delinquency will be considered a "second delinquency in rolling three years," even if a delinquency did not occur in the intervening year.

Stat. Auth.: ORS 305.100,. 308.030.
Stats. Implemented: ORS 308.030.
Hist: REV 2-2005, f. 6-27-05, cert. ef 6-30-05

150-308.057
Continuing Education Requirements for Assessors

(1) Assessors and directors of assessment and taxation must have 15 credits of technical training, 15 credits of management training and 15 credits which they can allocate in any combination of technical or management credits for a total of 45 credits every two years. Newly appointed or elected assessors must complete 20 credits of technical training, 20 credits of management training and 20 credits which they can allocate in any combination of technical or management credits for a total of 60 credits within the first two calendar years following their appointment or election.

(a) Technical training must be in the area of assessment and taxation such as appraisal, budgets, ratio studies, and tax rate computation. A minimum of 15 credits of technical training must be completed every two years. Assessors and directors of assessment and taxation must complete a course in Basic Mass Appraisal.

(b) Management training must be in the area of personnel relations (hiring, discipline, dismissals) office management and management of an appraisal program. A minimum of 15 credits of management training must be taken every two years.

(2) Completion of the continuing education requirements under this rule for assessors and directors of assessment and taxation shall be considered to meet the continuing education requirements of ORS 308.010(4)(a).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.057
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-308.057-(A); REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-308.059-(A)
Continuing Education Requirement for Appraisal Managers in County Assessment Offices

(1) Appraisal managers means employees classified in the county's management personnel category who supervise appraisal staff. Appraisal managers must be registered appraisers under ORS 308.010.

(2) Appraisal managers must meet the same continuing education requirements as assessors under OAR 150-308.057.

(3) Completion of the continuing education requirements under this rule for appraisal managers shall be considered to meet the continuing education requirements of ORS 308.010(4)(a).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.059
Hist.: Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-308.059; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93); REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-308.059-(B)
Qualifications of Managerial Employees of the Assessor's Office

(1) In order to ensure qualified management in county assessment offices, persons hired into a management position in a county must meet at least the following general minimum qualifications.

(a) Basic knowledge of the principles, practices and techniques of supervision and management.

(b) Skill in communicating effectively.

(c) Skill in supervising, including planning and assigning work according to the nature of the job to be accomplished.

(d) Ability to use the people, equipment and budgetary resources available to meet program goals and objectives.

(e) Ability to understand, apply, and explain provisions of the laws, rules, regulations, policies, procedures, standards and guidelines governing program operations.

(f) Some positions, for example chief appraiser, will require a high level of specialized technical expertise.

(2) The management positions in the various counties are distinguished by varying degrees of knowledge, problem solving and accountability determined by the nature of work, working relationships, number of employees, and other factors. Therefore, the minimum employment qualifications for each management position shall be agreed upon between the county and department prior to their use for hiring.

(3) In the event a county does not have established minimum employment qualifications, the department and the assessor shall agree upon the hiring criteria. The criteria used will consider the minimum qualifications listed above and the assessor's organizational structure and the management position. If, because of a lack of qualified applicants, it becomes necessary for the assessor to hire a person who does not meet the minimum qualifications, a training program for that person will be jointly established by the department and county.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.059
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93

150-308.105
Taxable Personal Property Whose Temporary Situs Is in the State of Oregon

Personal property is assessable under ORS 308.105 if it is in Oregon on the assessment date, January 1, at 1 a.m., and meets the following conditions:

(1) The property is not in transit, but has come to rest in Oregon;

(2) The property was not here by misadventure or some reason beyond the owner's control. The owner intended the property to remain here for the time being;

(3) While in Oregon the property performed the service for which it was designed and for the benefit of the owner's business;

(4) Was not in Oregon solely for repairs.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.105
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1992, f. & cert. ef. 12-29-92; RD 10-1992, f. 12-30-92, cert. ef. 12-31-92, Renumbered from 150-308.105-(A); RD 9-1997, f. & cert. ef. 12-31-97

150-308.115
Billboards as Real Property

All billboards that are erected upon the land or affixed to buildings or other permanent structures shall be classified as real property.

(1) The person or persons who are responsible for paying the taxes on the billboard must file annually with the assessor's office a Real Property Return for all billboards within the county.

(2) Either of the following procedures may be used by the assessor in assessing billboards.

(a) Establish one "A1-improvement only" account for each billboard based upon location; or

(b) The county may establish one "A1-improvement only" account for each individual ownership in each tax code area where the billboards are located. This account lists the locations — by address, map/tax lot or both — of all billboards in the tax code area.

(3) Mobile billboards shall be classified as personal property. A billboard is mounted on a frame so it can be carried by a person, on a flatbed, or in the back of a pickup.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.115
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92

150-308.146
Determining Maximum Assessed Value when the Property Class is Changed

(1) The single act of changing the property classification, described in OAR 150-308.215(1)-(A), to better reflect the highest and best use of the property, does not qualify as an exception to the 3 percent limitation on growth in the maximum assessed value (MAV), as described in ORS 308.146(1).

(2) Any exception value added to the base MAV after the change is made to the property class will be calculated by applying the changed property ratio of the current property class to the real market value of any qualified exception identified in ORS 308.146.

Stat. Auth.: ORS 305.100.
Stats. Implemented: ORS 308.146.
Hist: REV 2-2005, f. 6-27-05, cert. ef 6-30-05

150-308.146(5)(a)
Reduction of Maximum Assessed Value (MAV) for Property Destroyed or Damaged by Fire or Act of God

(1) "Fire or act of God" has the same meaning and restrictions as used in ORS 308.425 including the arson restriction of ORS 308.440.

(2) As used in ORS 308.146(5)(a), "reduction in real market value" means that the total real market value (RMV) after adjustment is less than it would otherwise have been, had the damage or destruction by fire or act of God not occurred.

(3) When a portion of property is destroyed or damaged by fire or act of God, use the following procedure to adjust MAV for the year in which the destruction or damage is reflected by a reduction in RMV.

Note: An example is incorporated into the steps with the following assumptions:
2008-09 MAV = $187,379
2008-09 (1-1-08) total RMV equals $300,000.
2008-09 assessed value (AV) = $187,379.
9-1-08 the house is destroyed by fire. The house RMV for 1-1-08 was $180,000.
There is no market trending in this area.

Step 1: Multiply the prior year AV by 1.03. Compare the result to the prior year MAV to determine the larger amount. The larger amount becomes the current year MAV (unadjusted) as if the account had not changed, i.e., the larger of: Prior year AV x 1.03 or prior year MAV = current year MAV of unchanged account.
Example: Larger of: $187,379 x 1.03 = $193,000 or $187,379. Current year MAV = $193,000.

Step 2: Determine the prior year's RMV for the affected portion. The affected portion is that part of the property that was destroyed or damaged by fire or act of God. The RMV of the loss is the RMV of the affected portion.
Example: RMV of affected portion equals $180,000.

Step 3: Subtract the RMV of the affected portion (Step 2) from the prior year total RMV to determine the RMV of the unaffected portion, i.e., the prior year total RMV - RMV of the affected portion = RMV of the unaffected portion.
Example: $300,000 - $180,000 = $120,000.

Step 4: Divide the RMV of the unaffected portion (Step 3) by the total prior year RMV to determine the percentage of unaffected property, i.e., the RMV of the unaffected portion / total prior year RMV = percentage of unaffected property.
Example: $120,000 / $300,000 = 40%

Step 5: Multiply the unadjusted MAV (Step 1) by the percentage of unaffected property (Step 4) to determine MAV that has been adjusted to reflect the loss from fire or act of God (MAV attributable to the unaffected portion only), i.e., the unadjusted MAV x percentage of unaffected property = MAV adjusted to reflect the loss from fire or act of God.
Example: $193,000 x 40% = $77,200.

(5) As used in section (4), the "year" in which the RMV is reduced due to fire or act of God can be either:

(a) The assessment year.

(b) The tax year if RMV is determined as of July 1 under ORS 308.146(6) or 308.428.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.149
Hist.: REV 8-2000, f. & cert. ef. 8-3-00; REV 5-2009, f. & cert. ef. 7-31-09

150-308.146(8)
Reduction of Maximum Assessed Value (MAV) When a Building is Demolished or Removed

(1) As used in ORS 308.146(8)(a), "reduction in real market value" means the total real market value (RMV) after adjustment is less than it would otherwise have been, had the demolishment or removal not occurred.

(2) As used in section (3) of this rule, the "year" in which the RMV is reduced due to demolishment or removal is either:

(a) The assessment year, or

(b) The tax year, if RMV is determined as of July 1 under ORS 308.146(6).

(3) When a building is demolished or removed, use the following procedure to adjust the maximum assessed value (MAV) for the year in which the demolishment or removal is reflected by a reduction in RMV.

Note: An example is incorporated into the steps with the following assumptions:
2007-08 MAV = $87,379
2007-08 (1-1-07) total RMV = $100,000.
2007-08 AV = $87,379.
There is no market trending in this area.
On September 1, 2007 the house is demolished. The RMV of the house for 1-1-07 was $75,000.
Step 1: Perform the 103% test as if the property had not changed. Multiply the prior year assessed value (AV) by 1.03. Compare the result to the prior year MAV to determine the larger amount. The larger amount becomes the current year MAV (unadjusted) as if the account had not changed.
Larger of: Prior year AV x 1.03 or prior year MAV = current year MAV of unchanged account.
Example: Larger of: $87,379 x 1.03 = $90,000 or $87,379. Current year MAV = $90,000.
Step 2: Determine the prior year RMV for the affected portion. The affected portion is the building or buildings that were demolished or removed. The RMV of the loss is the RMV of the affected portion.
Example: RMV of affected portion = $75,000.
Step 3: Determine the prior year RMV for the unaffected portion. Subtract the RMV of the affected portion (from Step 2) from the prior year total RMV to determine the RMV of the unaffected portion.
Prior year total RMV – RMV of the affected portion = RMV of the unaffected portion.
Example: $100,000 - $75,000 = $25,000.
Step 4: Determine the percentage of the unaffected property. Divide the RMV of the unaffected portion (from Step 3) by the total prior year RMV to determine the percentage of the unaffected property.
RMV of the unaffected portion / total prior year RMV = percentage of the unaffected property.
Example: $25,000 / $100,000 = 25%
Step 5: Determine the MAV that has been adjusted to reflect the loss. Multiply the unadjusted MAV (from Step 1) by the percentage of the unaffected property (from Step 4) to determine an MAV that has been adjusted to reflect the loss from demolishment or removal (MAV attributable to the unaffected portion only).
Unadjusted MAV x percentage of unaffected property = MAV adjusted to reflect the loss from demolishment or removal.
Example: $90,000 x 25% = $22,500.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.146
Hist.: REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-308.149-(A)
Definitions

(1) For purposes of ORS 308.149:

(a) "New construction" means any new structure, building, addition or improvement to the land, including site development.

(b) "Reconstruction" means to rebuild or replace an existing structure with one of comparable utility.

(c) "Major addition" means an addition that has a real market value over $10,000 and adds square footage to an existing structure.

(d) "Remodeling" means a type of renovation that changes the basic plan, form or style of the property.

(e) "Renovation" means the process by which older structures or historic buildings are modernized, remodeled or restored.

(f) "Rehabilitation" means to restore to a former condition without changing the basic plan, form or style of the structure.

(2)(a) For purposes of ORS 308.149 "general ongoing maintenance and repair" means activity that:

(A) Preserves the condition of existing improvements without significantly changing design or materials and achieves an average useful life that is typical of the type and quality so the property continues to perform and function efficiently;

(B) Does not create new structures, additions to existing real property improvements or replacement of real or personal property machinery and equipment;

(C) Does not affect a sufficient portion of the improvements to qualify as new construction, reconstruction, major additions, remodeling, renovation or rehabilitation; and

(D) For income producing properties is part of a regularly scheduled maintenance program.

(b) Regardless of cost, the value of general ongoing maintenance and repairs may not be included as additions for the calculation of maximum assessed value.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.149
Hist.: RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, Renumbered from 150-308.149, f. 11-13-98, cert. ef. 12-31-98; REV 11-1998, f. 12-29-98, cert. ef. 12-31-98; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99

150-308.149(3)
Computation of Changed Property Ratio for Centrally Assessed Property

The ratio of average maximum assessed value to average real market value, also known as the changed property ratio, shall be rounded to two decimal places for purposes of assessed value calculation. See OAR 150-308.540.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.149
Hist.: REV 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from OAR 150-1997 Or. Law Ch. 541 Sect. 19

150-308.149(5)
Net Capitalized Additions

(1) Definitions:

(a) For purposes of centrally-assessed property, the term "improvements" means changes in the value of property (as defined in 1997 OR Law Ch. 541, Sect. (7)(1)(b)) as the result of new construction, reconstruction, major additions, remodeling, renovation, rehabilitation or acquisition of property except on-going maintenance and repair. "Improvements" are measured by changes in Oregon net capitalized additions as defined below.

(b) The term "capitalized" refers to company expenditures for certain assets with a useful life typically extending beyond one year. These assets are aggregated in fixed asset accounts subject to annual depreciation charges, rather than repair and maintenance expense accounts. Examples include acquisitions of or changes to buildings, equipment, and personal property such as furniture and fixtures.

(c) The term "net additions" means the difference between the aggregate costs of Oregon assets in the prior and current years. For the 1997–98 implementation year, additions include the change from the 1995–96 base year. In all subsequent years, additions include the change from the prior year.

(d) The term "net capitalized additions" means "net additions" as calculated using capitalized costs in the company's annual reports.

Examples:
(A) For the current year, a new transformer is added for $100,000 and there are no retirements. The net addition is $100,000.
(B) A seven-year old transformer with a ten-year life expectancy (net book value of $30,000) is retired from service and replaced by a new transformer (cost $100,000). The net addition is $70,000, reflecting the additional 7 years' life expectancy. (The remaining $30,000 is considered maintenance).
(C) Same as (B) above, except that the new transformer is added to the existing number of transformers. No other transformers are retired; however, $30,000 of other capitalized equipment is retired. The net addition is still $70,000.
Typical fixed asset accounting procedures provide for annual removal of retired assets. Using successive years' account totals to determine maximum assessed value will result in a netting of retirements against true improvements.
(D) Same as (B) above, except that no new transformer is added. The net capitalized addition is $0, since there have been no improvements.
(E) If the change in Oregon assets can only be determined by an allocation of system additions, then these changes shall be allocated to Oregon in the same manner as other company property.

(F) In the case of mobile property, additions shall also include the change in presence in the state as measured by the change in allocation factors.

(e) The term "ongoing maintenance and repair" means expenditures which the company has elected to record as an expense in repair and maintenance accounts rather than aggregate in a fixed asset account as described (1)(b). Items may be expensed because the useful life of the expenditures does not extend over one year, or because their associated dollar amounts are too small to qualify as a capital asset under company capitalization threshold guidelines. Typical examples include spare parts and maintenance supplies.

Example: A private car company maintains a capitalization threshold for its equipment accounts of $2000. The company frequently makes purchases of spare parts for its repair shops. One of these was a bulk purchase of miscellaneous car bearings for $1000, and the company expensed this item. The company also decided to upgrade half of its fleet with a $20,000 investment in specialized bearings which would allow the cars to travel at significantly higher speeds. This investment was capitalized. The expenditure of $1000 would be considered "ongoing maintenance and repair." The expenditure of $20,000 would be considered an "improvement." The fact that each expenditure is for bearings is not controlling.

(2) Application of Definitions:

(a) In the case of companies which do not keep fixed asset accounts, the department may make a reasonable analysis of reported assets using capitalization practices under accepted accounting principles.

(b) In cases where the Department of Revenue annual company reporting is based on aggregate account balances, the department will not undertake an item-by-item analysis of the amount and purpose of each expenditure within statutory appraisal timelines. Expensed items shall be considered "ongoing maintenance and repair" and net capitalized additions shall be considered "improvements." The department may undertake an item-by-item analysis when the appraisal is challenged by the taxpayer in litigation or otherwise.

(c) Typical accounting policies include a "capitalization threshold" of a certain dollar amount for different types of expenditures. The department recognizes that certain assets which qualify as improvements under the law may be expensed as a matter of company policy. In these cases, the department shall presume that the minor construction thresholds of $10,000 and $25,000 are addressed by this accounting convention. The department may make a reasonable adjustment when the application of this approach results in a material error.

(3) For purposes of computing maximum assessed value for centrally-assessed property, the aggregate Oregon net capitalized additions shall be adjusted to reflect their real market value as a result of wear, aging, and the impact of market conditions since placement in service. The net capitalized additions shall then be multiplied by the statewide maximum assessed value to real market value ratio for centrally-assessed property (always 1.00 or less). The maximum assessed value shall be compared to the real market value, and the lesser of the two shall be placed on the roll as the company's assessed value.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.149
Hist.: RD 9-1997, f. & cert. ef. 12-31-97

150-308.149(6)
Minor Construction

(1) Definition: "Minor construction" is an improvement to real property that results in an addition to real market value (RMV), but does not qualify as an addition to maximum assessed value (MAV) due to a value threshold. The value threshold is an RMV of over $10,000 in any one assessment year, or over $25,000 for all cumulative additions made over five assessment years.

(2) Minor construction does not include general ongoing maintenance and repairs.

(3) When testing the over $25,000 threshold, use the cumulative RMV of all minor and major construction over a period not to exceed five consecutive assessment years.

(a) Minor and major construction values are not market trended.

(b) Values for retirements are not considered in the threshold test.

(c) Values for minor construction items that are removed or destroyed prior to being an adjustment to MAV are subtracted from the minor construction cumulative RMV.

(4) Once the over $25,000 threshold is met, use the following steps to calculate the MAV adjustment:

(a) Use minor construction values that are not market trended.

(b) Make adjustments for any retirements from the prior assessment year. The net value of additions and retirements may not go below zero.

(c) Apply the changed property ratio (CPR) from the year the cumulative RMV becomes an addition to MAV.

(d) Reset the cumulative RMV for minor construction to zero and restart the 5-year period. The following examples demonstrate the over $25,000 threshold. RMVs in the following examples are not market trended and/or depreciated.

Example 1: Over $25,000 Not Met. [Example not included. See ED. NOTE.]

Example 2: Over $25,000 Not Met, Prior Years Drop Off. [Example not included. See ED. NOTE.]

Example 3: Cumulative RMV Reset. [Example not included. See ED. NOTE.]

Example 4: Cumulative RMV Reset. [Example not included. See ED. NOTE.]

Example 5: Individual Year and Cumulative Year Adjustments. [Example not included. See ED. NOTE.]

Example 6: Removal of Destroyed Minor Construction. [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.149
Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 8-2000, f. & cert. ef. 8-3-00; REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-308.156
Establishing a Changed Property Ratio

(1) The assessor must establish a CPR for property classes 0 through 8 each assessment year. For determining the ratio of the average maximum assessed value over the average real market value, only the first digit of the property class needs to be recognized. These ratios must be rounded to three decimals.

(a) Property classes may be combined to arrive at a ratio. The resulting ratio would become the CPR for each property class used to calculate the ratio.

(b) For specially assessed properties, only the non-specially assessed portion of value will be used to determine a ratio. For specially assessed properties such as farm or timber, the assessor may use either of the following methods to arrive at a CPR:

(A) The non-specially assessed portion of the unchanged 5-x-x or 6-x-x property classes may be used to create the CPR for those classes; or,

(B) The 4-x-x property class values may be combined with the non-specially assessed values from the 5-x-x and/or 6-x-x property classes to calculate the ratio. The resulting ratio would become the CPR for each property class used to calculate the ratio.

(2) Residential property class (1-x-x) includes all manufactured structures and floating homes not assigned to other property classes.

(3) For locally and centrally assessed property, the value of the CPR may not be greater than 1.000.

Stat. Auth.: ORS 305.100 & 308.156(7)
Stats. Implemented: ORS 308.156
Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 1-2003, f. & cert. ef. 7-31-03

150-308.156(5)
Definition of Affected

"Affected property" means property that is subject to one or more of the following events: partitioned or subdivided; added to the account as omitted property; rezoned and used consistent with the rezoning; disqualified from a special assessment, exemption, or partial exemption.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.156
Hist.: REV 4-1998, f. & cert. ef. 6-30-98

150-308.156(5)-(A)
Subdivided and Partitioned Property MAV

For purposes of calculating maximum assessed value when a property is subdivided or partitioned, the portion of the property that is "affected" includes:

(1) The entire land that was subdivided or partitioned into smaller lots or parcels, if any.

(2) The improvements if one or more of the following apply:

(a) The act of subdividing or partitioning the land results in the apportionment of a single improvement (building or structure) to more than one tax lot.

Example 1: A lot improved with a duplex is partitioned such that the duplex is split into two single-family residences.

(b) The act of subdividing or partitioning the land changes the market's perception of the value of the improvements.

Example 2: A partition includes a vacant warehouse that was previously part of a large industrial complex. Prior to the partition, the market perceived the warehouse as unnecessary to the industrial complex and of little or no value. After the partition, the warehouse is a stand-alone improvement no longer associated with the industrial complex. The market now perceives the warehouse as a property that can be used for many different purposes with considerable value. By contrast, there is no change in market perception regarding the remaining improvements in the industrial complex.

(c) The improvements are divided into separate units of property.

Example 3: The legal subdivision of an apartment building into condominium units.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.156
Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 6-2001, f. & cert. ef. 12-31-01; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02

150-308.156(5)-(B)
Rezoned Property — Calculating Maximum Assessed Value (MAV)

(1) For purposes of determining MAV under ORS 308.142 to 308.166:

(a) "Rezoned" means on or after July 1, 1995, the governmental body that regulates zoning:

(A) Made a change in the zone designation of the property on the zoning map;

(B) Made a change in one or more conditions or restrictions affecting the authorized uses of the property in the zone that is applicable to the property; or

(C) Made any other change in the authorized uses of the property.

(b) "Rezoned" does not include:

(A) Changes in the authorized uses of the property that were imposed before July 1, 1995, by the government that regulates zoning of the property;

(B) Satisfaction of conditions or restrictions on the authorized uses of the property that were imposed before July 1, 1995, by the government that regulates zoning of the property;

(C) Changes in the authorized uses of the property imposed by a government other than the government that regulates zoning of the property; or

(D) The issuance of a conditional use permit.

(2) *The Entire Property is Rezoned*. The assessor will calculate a new MAV for the entire property tax account for the current assessment year, if:

(a) The entire property has been rezoned, and

(b) After January 1 of the preceding assessment year and on or before January 1 of the current assessment year, the entire property is used consistently with the rezoning.

Example 1: In 1998 the zoning ordinance was modified to allow additional permitted uses to the zone and was approved by the governing body. The designation on the zoning map did not change. Last year the entire property was developed under one of the new permitted uses.
Prior Year Values: Real Market Value (RMV) = $250,000; MAV = $97,088; Assessed Value (AV) = $97,088.
Current year RMV of the affected portion = $750,000.
Current year changed property ratio (CPR) for this property type = .800.
Because the rezone affects the entire property, multiply the current year RMV of the entire property by the CPR. This is the MAV for the entire property.
$750,000 x .800 = $600,000 (Current year MAV for the affected portion.)

(3) *The Property is Partially Rezoned*. The assessor will calculate a new MAV for a portion of the property tax account for the current assessment year, if:

(a) The affected portion of the property has been rezoned, and

(b) After January 1 of the preceding assessment year and on or before January 1 of the current assessment year, the affected portion of the property is used consistently with the rezoning. Use the following steps to determine the MAV for the property.

Example 2: Property was partially rezoned two years ago, and the rezoned portion has now been improved.
Prior year values: RMV = $250,000; MAV $97,088; AV = $97,088.
Prior year RMV of unaffected portion = $50,000.
Current year RMV of affected portion = $700,000.
Current year CPR for this property type = .800.
Step 1: Calculate the current year MAV as if the account had not changed.
Multiply the prior year AV by 1.03. Compare the result to the prior year MAV to determine the larger amount. This becomes the current year MAV as if the account had not changed.
Larger of: Prior year AV x 1.03 compared to prior year MAV = current year MAV of unchanged account.
Larger of: $97,088 x 1.03 = $100,000 or $97,088.
$100,000 = Current year MAV of the unchanged account
Step 2: Calculate the percentage of the unaffected portion.
Determine the prior year's RMV for the unaffected portion of the property. Divide that value by the prior year RMV for the whole account. This is the percentage of the account that is unaffected by the change to the property.
Prior year RMV (unaffected portion) divided by prior year RMV (total account) = percentage of the property that is unaffected.
$50,000 = prior year RMV for the unaffected portion.
$250,000 = prior year RMV for the total account.
$50,000 / $250,000 = 20% (Percentage of the account that is unaffected.)
Step 3: Calculate the current year MAV for the unaffected portion.
Multiply the current year MAV (Step 1) by the percentage of the unaffected portion (Step 2). This is the current year MAV for the unaffected portion.
$100,000 x 20% = $20,000 (Current year MAV for the unaffected portion.)
Step 4: Calculate the MAV for the affected portion.
Multiply the current RMV of the affected portion by the CPR. This is the MAV for the affected portion.
$700,000 x .800 = $560,000 (Current year MAV for the affected portion.)
Step 5: Calculate the MAV for the account.
Add the MAV for the unaffected portion (step 3) and the MAV for the affected portion (step 4) to get the MAV for the account.
$20,000 + $560,000 = $580,000 (Current MAV for the account.)
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.156
Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 8-2000, f. & cert. ef. 8-3-00; REV 6-2003, f. & cert. ef. 12-31-03

150-308.156(5)-(C)
Omitted Property—Allocating Maximum Assessed Value (MAV)

(1) When omitted property is added to the property tax account after January 1 preceding the current assessment year and before January 1 of the current assessment year, only the omitted property portion is considered affected. The existing property is the unaffected portion. The intent is to correct the tax roll for current and prior years as if the omitted property had been a regular part of those tax rolls.

(2) To correct the first year's Assessed Value (AV) when the omitted property is added to the roll :

(a) Multiply the real market value (RMV) of the omitted property for the first year it should have been added to the roll by that year's appropriate changed property ratio (CPR) to determine MAV for the omitted property.

(b) Add the RMV and MAV of the omitted portion to the existing RMV and MAV to get a corrected RMV and MAV for the account.

(c) The lesser of the corrected RMV or MAV is the AV that should have been on the roll had the property been discovered timely.

EXAMPLE 1: Property was built in 2003 and should have been added to the 2004-05 tax roll. The assessor discovers the property in December 2004 and adds it to the 2004-05 tax roll. [Table not included. See ED. NOTE.]

(3) To correct the AV for subsequent years that omitted property should be added to the roll:

(a) Add the omitted property's trended or recalculated RMV to the property's existing RMV to get a corrected RMV for the account.

(b) Multiply the prior year's corrected AV by 1.03 and compare to the prior year's corrected MAV. The greater of the two will be the corrected MAV for the account.

(c) The lesser of the corrected RMV or MAV is the account's AV.

EXAMPLE 2: Property was built in 2003 and should have been added to the 2004-05 tax roll. The assessor discovers the property in December 2008, and adds it to the 2004-05 through 2008-09 tax rolls. RMV trending is 5 percent per year. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.156
Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 5-2009, f. & cert. ef. 7-31-09

150-308.156(5)-(D)
Exemption, Partial Exemption or Special Assessment Disqualification — Allocating MAV

When an exempt, partially exempt or specially assessed property is disqualified after January 1 of the assessment year preceding the current assessment year and before January 1 of the current assessment year, a new MAV for the account must be calculated. The new MAV total will be the MAV of any unchanged portion and the new MAV of any disqualified portion. The new MAV of the disqualified portion is the RMV multiplied by the appropriate changed ratio.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.156
Hist.: REV 4-1998, f. & cert. ef. 6-30-98

150-308.159
Calculation of Maximum Assessed Value (MAV) for Lot Line Adjustments

(1) For purposes of calculating MAV when properties are subject to a lot line adjustment, the portion of the property that is "affected" includes:

(a) All the land comprising the properties subject to the lot line adjustment.

(b) Buildings or structures when a new lot line divides the building or structure.

NOTE: An example of how to perform the mathematics of this rule is incorporated throughout the rule based upon the following information:
The zoning for both tax lot 100 and tax lot 200 is RR-5 (Rural Residential 5-acre minimum) requiring a minimum of five acres before a dwelling may be built.
Before the lot line adjustment, tax lot 100 was a vacant 4-acre lot that was unbuildable due to its size. Undersized lots sell for $7,000 per acre, making the real market value (RMV) of this unbuildable tax lot $28,000. The associated MAV for this tax lot was $22,400. Tax lot 200 is a vacant 8-acre lot that is buildable under the current zoning. Buildable lots sell for $15,000 per acre, making the RMV of this tax lot $120,000. The associated MAV for this tax lot is $96,000.
After the lot line adjustment both lots are 6 acres in size and are buildable under the current zoning. Because buildable lots sell for $15,000 per acre, it makes the RMV of each tax lot $90,000.
The changed property ratio (CPR) to be used in this example is .800.

(2) Calculate the total MAV of the affected portion before the lot line adjustment as follows:

(a) For each account subject to the lot line adjustment:

(A) Divide the affected portion's RMV by the total RMV of the account.

Tax Lot (TL) 100: $28,000/$28,000 = 1.00
TL 200: $120,000/$120,000 = 1.00.

(B) Multiply the result of (A) by the property's total MAV to determine the MAV attributable to the affected portion.

TL 100: 1.00 x $22,400 = $22,400.
TL 200: 1.00 x $96,000 = $96,000.

(b) Add the MAV attributable to the affected portion for each account to determine the total MAV of the affected portion before the lot line adjustment.

$22,400 + $96,000 = $118,400.

(3) Calculate the total MAV for the affected portion after the lot line adjustment as follows:

(a) For each account subject to the lot line adjustment, multiply the new RMV of the affected portion by the appropriate CPR to determine the MAV for the affected portion as follows.

TL 100: $90,000 x .800 = $72,000.
TL 200: $90,000 x .800 = $72,000.

(b) Add the MAV for the affected portion of each account to determine the total MAV of the affected portion after the lot line adjustment.

$72,000 + $72,000 = $144,000.

(4) Compare the total MAV of the affected portion before the lot line adjustment to the total MAV of the affected portion after the lot line adjustment as follows:

Before = $118,400. After = $144,000.

(a) If the total MAV of the affected portion after the lot line adjustment is equal to or lesser than the total MAV of the affected portion before the lot line adjustment: Add the MAV for the affected portion of each account to any unaffected MAV for that account to determine the total MAV for each account.

The example does not fit this description. Continue to paragraph (b).

(b) If the total MAV of the affected portion after the lot line adjustment is greater than the total MAV of the affected portion before the lot line adjustment, the MAV for the affected portion of each account must be proportionally reduced.

The example fits this description. Proceed to paragraph (A).

(A) Divide the total MAV of the affected portion before the lot line adjustment by the total MAV of the affected portion after the lot line adjustment to determine the proportionate reduction.

$118,400/$144,000 = .822222.

(B) Multiply the proportionate reduction by the MAV of the affected portion after the lot line adjustment for each account.

TL 100: .822222 x $72,000 = $59,200.
TL 200: .822222 x $72,000 = $59,200.

(C) Add the MAV of the affected portion after the proportionate reduction in (B) to any unaffected MAV for that account to determine the total MAV for each account.

TL 100: $59,200 + $0 = $59,200.
TL 200: $59,200 + $0 = $59,200.

Stat. Auth.: ORS 305.100 & 308.156
Stats. Implemented: ORS 308.159
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-308.205-(A)
Real Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment which comprise an integral part of the property or manufacturing operation) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Rural lands" means those lands with property classification 400, 401, 500, 501, 600, 601, 800, and 801 as defined by OAR 150-308.215. They are distinguished from platted land as acreages in varying sizes and are either improved or unimproved.

(d) "Utility" means the quality or property of being useful which may either add to or subtract from market value.

(e) "Highest and best use" means the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value. See The Appraisal of Real Estate, 12th edition (2001).

(2) Methods and Procedures for Determining Real Market Value:

(a) For the valuation of real property all three approaches-sales comparison approach, cost approach, and income approach-must be considered. For a particular property, it may be that all three approaches cannot be applied, however, each must be investigated for its merit in each specific appraisal.

(b) The real market value of a unit of property shall not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, etc., each priced separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length market transactions. When nontypical market conditions of sale are involved in a transaction (duress, death, foreclosures, inter-related corporations or persons, etc.) the transaction will not be used in the sales comparison approach unless market-based adjustments can be made for the nontypical market condition.

(d) If there are no market transactions of property comparable to the subject, then it is still appropriate to use market value indications derived by the cost, income or stock and debt approaches.

(e) Sales on the basis of disposal at salvage or scrap levels are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(f) The cost approach must use the reproduction, replacement, or used equipment technique; however, original historical cost may be used when appraising property under ORS 308.505 to 308.730. The value estimate must include all costs required to assemble and construct the unit of property.

(g) The income to be used in the income approach must be the economic rent that the property would most probably command in the open market as indicated by current rents being paid, and asked, for comparable space. Income from the operation of the property may be utilized for property types, such as industrial plants that are not typically leased or rented.

(h) The real market value for rural lands is based on an average price per acre for each size of parcel. Adjustments to the value must be made to those acres with more or less utility. For improved parcels the value of the site developments as defined by OAR 150-307.010(1)(2)(a)(A) must be added.

(i) Determining highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(3) Valuation of Especial Property: Especial property is property specially designed, equipped, and used for a specific operation or use that is beneficial to only one particular user. This may occur because the especial property is part of a larger total operation or because of the specific nature of the operation or use. In either case, the improvement's usefulness is designed without concern for marketability. Because a general market for the property does not exist, the property has no apparent immediate market value. Real market value must be determined by estimating just compensation for loss to the owner of the unit of property through either the cost or income approaches, whichever is applicable, or a combination of both.

(4) Real market value for all personal property must be as of the date of assessment in accord with the statutory definition and must take into account the location and place in the level of trade of items of property in the hands of manufacturers, producers, wholesalers, distributors, retailers, users, and others.

(5) Valuation of Land Under Improvements Having Only Partial Exemption. This does not apply to those cases where land is not eligible for inclusion in the exemption.

(a) The value of land under a single story improvement when part of the improvement is receiving an exemption must be apportioned between the exempted and taxable portions of the improvement based on the value of each portion.

Example 1: There is a one-story building of which a part representing 80 percent of total value is under exemption and the remaining part is taxable and consists of new construction representing 20 percent of the total value. The value of the land under the building would be apportioned 80 percent to the exemption and 20 percent to the taxable or market value each year.

(b) The value of land under a multiple story improvement when all or part of one or more stories of the improvement is receiving an exemption must be apportioned between the exempted and taxable portions of the improvement based on the contribution of the current market value of each portion.

Example 2: There is a two story building which occupies a 100' x 100' lot in its entirety.

The first story is under exemption, and the value carried on the roll represents 60 percent of the total improvement value. The second story, valued at market, represents 40 percent of the total improvement value. The value of the land under the building must be apportioned 60 percent to the exemption and 40 percent to the property valued at market.

(c) Where an improvement does not fully occupy the land and where only a portion of the improvement and land are used for an exempt purpose, then the value of the improvement and land must be allocated between the exempt and taxable portions of the parcel. Any portion of the land or improvement that is not used, developed, or that is being held for future expansion is fully taxable.

Example 3: Assume a parcel that measures 200' by 200', a building measuring 100' x 100', paved parking measuring 100' x 100' and unimproved land measuring 200' x 100'. One-half or 50% of the building and parking are used by an exempt entity. One-half (50%) or 5000 square feet of the building is exempt, one-half (50%) of the parking is exempt. The remainder of the building, the parking lot and unimproved land are fully taxable.

Example 4: There is a building measuring 100' x 100' located on one-fourth of a 200' x 200' lot. The remaining portion of the lot is a parking area. The taxable portion of the building rents or leases a 100' x 100' parking area and has exclusive use. The value of the remaining 100' x 200' area of the lot is exempted only to the extent it is used as a parking area for the exempt entity. If 100' x 100' of this 100' x 200' parking area is used for parking and the remainder is held by the exempt entity for future expansion, the area held for expansion is fully taxable.

(d) When an improvement is partially exempted and that improvement contains common areas (i.e., hallways, restrooms, conference rooms, etc.), the percentage of the total area of these common areas that receives exemption shall be the same as the percentage of the total net rentable area occupied by the exempt entity.

(6) Valuation of Land Under Improvements Having Only Partial Special Assessment: The procedures described in Section (5) of this rule also apply to properties receiving a partial special assessment, such as a partial historical designation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.205
Hist.: 1-54; 12-55; 11-59; 8-62; 1-64; 12-65; 1-66; 3-70; 11-71; 12-31-79; 12-31-81; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-308.205-(C)
Derivation of Capital Structure and Discount Rates for Valuing Industrial Properties and Department-Assessed Properties

(1) Capital Structure. The capital structure of a company refers to the make-up of its financial structure, i.e., long-term debt and equity. For ad valorem appraisal purposes, the appropriate capital structure for a company is the typical capital structure for the industry group to which the property belongs based upon current market cost of debt and equity. If it can be shown that use of an industry capital structure would not reflect the market value of the property because of the unique nature of the property or its operation, the current owner's capital structure may be used. The procedures to be followed in determining capital structure are as follows:

(a) Select industry group, i.e., electric utility, airline, railroad, lumber, food processing, etc.

(b) Determine if it is necessary to have industry sub groups. Sub groups are groupings of properties within an industry type that have similar characteristics and that are different from other sub groups within the industry type. Sub groups have similar qualities such as bond ratings, degree of risk if unrated, business activities and size.

(c) For each group or sub group, a sufficient number of companies should be selected that have publicly traded securities and similar debt ratings (e.g., Moody's Aa, A, Baa, etc.). The company or companies whose property is subject to appraisal may be included as part of the data set.

(d) The appropriate capital structures shall be determined by a correlation of the capital structures of the companies in the selected group.

(e) Capital structures for companies with nonrated debt must be estimated from the best data available, such as balance sheets, public utility commission-approved structures, sales data, lenders' opinions, industry recommendations, or patterns established by companies with rated debt within the same industry.

(2) Basic Discount Rate. Basic discount rate, cost of capital, and capitalization rate are synonymous as used herein. The band-of-investment method is the preferred method for calculating basic discount rate. An example of this method, assuming a capital structure

of 50 percent debt, 10 percent preferred stock, and 40 percent common equity, is shown below: [Table not included. See ED. NOTE.]

(a) The band-of-investment capitalization rate can readily be converted to an after-tax rate. The after-tax interest rate is substituted for the current cost of debt in the band-of-investment procedure. This after-tax cost of debt is calculated by multiplying the current cost of debt by one minus the corporate tax rate. When the after-tax cost of capital is used, the tax expense of the prospective purchaser must be deducted from the income to be capitalized as though the property had no tax shelter from debt interest to avoid double counting the deduction for income taxes.

(b) Cost of Debt. The cost of debt is the current market rate for new securities. The embedded rate on securities previously issued is not a proper measure. In order to determine the cost of debt the appraiser should:

(A) Refer to the rates for seasoned bond issues from Moody's Utility, Industrial, and Transportation weekly news reports or other rating services for at least two months immediately prior to the appraisal date. This should be done by bond rating (Aa, A, Baa, etc.) and industry type.

(B) Obtain information on new bond issues by industry type and bond rating from Moody's Bond Survey or other publications for at least two months immediately prior to the appraisal date.

(C) Consider recommendations on debt rates submitted by industry.

(D) Select rates for each industry group by bond rating after analyzing the data in the steps above.

(c) Preferred Stock. The cost of preferred stock is determined from the current market rates, not the embedded rate.

(d) Cost of Equity. The two preferred methods for determining the cost of equity capital are the Discounted Cash Flow (DCF) model and Capital Asset Pricing Model (CAPM). The appraiser should consider other models if circumstances and data justify their use. [Table not included. See ED. NOTE.] Information on the estimated annual dividend for the next period (year) and the expected rate of growth can be obtained from such financial publications as Value Line. The current price for the common stock is the average price near the appraisal date. The DCF equity rate for the industry group is determined by correlating equity rates of return computed for the companies in the industry capital structure group. [Table not included. See ED. NOTE.] Information on the risk free rate (Rf) can be obtained from the Federal Reserve Bulletin containing rates for U.S. Treasury notes or bonds as near the appraisal date as possible. Data for Beta (Bi) and the market rate (Rm) shall be obtained from a reliable source such as Value Line. A single number for risk premium (Rp) such as those published by Ibbotson Associates, Kidder Peabody, and others may be used. The CAPM equity rate for the industry group is determined by correlating equity rates of return computed for the companies in the industry capital structure group.

(3) Effective Date: This rule first applies to property valuations as of January 1, 1990.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.205
Hist.: RD 2-1990, f. & cert. ef. 3-15-90

150-308.205-(D)
Industrial Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment erected upon the land or attached to the land or structures) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Highest and best use" means the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value. See The Appraisal of Real Estate, 12th edition (2001).

(2) If the highest and best use of the unit of property is an operating plant or an operating integrated complex, the real market value will be considered to be a "going concern." The going concern concept recognizes that the value of an assembled and operational group of assets usually exceeds the value of an identical group of assets that are separate or not operational.

(3) Methods and Procedures for Determining the Real Market Value of Industrial Property:

(a) For the valuation of industrial property all three approaches sales comparison, cost, and income, must be considered. For a particular property, it may be that all three approaches can not be applied, however, each must be investigated for its merit in each specific appraisal.

(b) The market value of a unit of property must not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, machines, conveyors, etc., each price separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length transactions. When non-typical market conditions of sale are involved in a transaction (duress, death, foreclosure, bankruptcy, liquidation, interrelated corporations or persons, etc.) the transaction will not be used in the sales comparison approach unless market-based adjustments can be made for the non-typical market condition.

(d) Properties utilized in the sales comparison approach, although not necessarily identical, at the very least must be similar in many respects. Adjustments must be made for differences in location, product, production capacity, and all other factors that may affect value. Excessively large adjustments or an excessive number of adjustments is an indication that the properties are not comparable.

(e) When utilizing the sales comparison approach, the appraiser must take into consideration difference between the subject and the comparable properties for physical condition, functional obsolescence and economic obsolescence. Adjustments must be made for differences between the subject and comparable properties for factors such as physical condition, functional deficiencies, operating efficiency, and economic obsolescence. If the properties are functionally or economically equivalent, verification of the equivalency must be included in the appraisal.

(f) Sales for the disposal of properties through auction, liquidation or scrap sales are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(g) The cost approach may utilize either the reproduction, replacement, or the used equipment technique. It is acceptable to use trended historical cost to estimate the reproduction cost new. The value estimate must include all costs required to assemble and construct the unit of property.

(h) When using the income approach, the income from the operation of the property may be utilized for industrial properties and other properties that are not typically leased or rented. When the income from the property's operation is used, the unit of property must be valued as a going concern. In utilizing the income approach for the valuation of industrial properties, the discounted cash flow technique is one of the appropriate methods to derive a value estimate. Consideration in the discounted cash flow technique is given to items such as the anticipated free cash flow available to the debt and equity holders, inventory valuation methods, intangible assets, income taxes, net working capital, capital reinvestment, etc. When utilizing the discounted cash flow technique, the capitalization or discount rate must be derived in accordance with OAR 150-308.205-(C).

(i) Determining the highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(4) Basic information for an appraisal. Basic data and procedures in making appraisals normally include the following when applicable:

(a) Location of property by tax codes and tax lot numbers;

(b) Map or sketch of land owned and layout of plant;

(c) Inventory of physical plant;

(d) Reproduction or replacement cost computations, as applicable;

(e) Analysis of depreciation;

(f) Analysis of economics as they affect valuation;

(g) Analysis of sales data, when applicable;

(h) Field inspection;

(i) Research and familiarization with typical properties of the industry;

(j) Annual reports to stockholders;

(k) Fixed assets schedules;

(l) Income statements;

(m) Such other data that may affect value.

(5) Basic information for an appraisal utilizing the annual report method. Basic data for an appraisal utilizing the annual report method normally includes the following:

(a) Report of additions;

(b) Report of retirements;

(c) Knowledge of miscellaneous technical and economic conditions that affect value;

(d) Trending factors:

(A) Separate factors for yard improvements, buildings, and equipment classified as real property must be developed.

(B) The development of the factors must use data published by the United States Department of Labor, the Oregon Building Construction Trades Council, and other sources the Department of Revenue deems to be reliable indicators of property value over time.

(C) Data developed by physical inspection together with appraising a segment of the total property or making a general review of the total value under certain circumstances may supplement the data utilized in (A) above.

(e) Depreciation allowances;

(f) Real market value for prior year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.205
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-308.205-(E)
Valuation of Contaminated Property

(1) Definations:

(a) "Contaminated site" means real property that, on the assessment date:

(A) Is on the National Priority List of the Environmental Protection Agency;

(B) Is included by the Department of Environmental Quality in an inventory of confirmed releases pursuant to ORS 465.225;

(C) Is an illegal drug manufacturing site as defined in ORS 453.858; or

(D) Is demonstrated as provided under Section (2) of this rule to have had a release of a hazardous substance as defined in ORS 465.200.

(b) "Contaminated site" does not include any permitted release or permitted facility approved by the Department of Environmental Quality for storage or disposal of a hazardous substance.

(c) "Cost to cure" means the discounted present value of the estimated after tax cost of the remaining remedial work specific to the subject property to remove, contain, or treat the hazardous substance. Cost to cure may include the cost of environmental audits, surety bonds, insurance, monitoring costs, and engineering and legal fees. The costs must be directly related to the clean up or containment of a hazardous substance.

(2) Demonstrating Contamination of Site: A property is defined as a contaminated site under Section (1)(a)(D) above if it is shown that the property has had a release of a hazardous substance. This will be demonstrated through:

(a) The submission of reliable, objective information such as engineering studies, environmental audits, laboratory reports or historical records; or

(b) Evidence that the release has been reported to the Department of Environmental Quality.

(3) Appraising Contaminated Sites: The real market value of a contaminated site shall be determined in accord with this rule. The appraiser shall consider the Sales Comparison Approach, the Cost Approach, and the Income Approach. For a particular contaminated site, it may be that all three approaches cannot be applied, however, each shall be investigated for its merit. In all cases, actual market data are the most reliable indicators.

(a) The Sales Comparison Approach may be used to determine the real market value of a contaminated site by comparison with verified sales of similarly contaminated sites. If no sales exist of property similarly contaminated, a comparison may be made to sales of properties without contamination. Adjustment factors shall be developed to account for the influence of contamination based upon a cost to cure analysis. These factors shall be applied to the subject property. Adjustments shall be considered for the following:

(A) Limitations upon the use of the contaminated site due to the nature and extent of the contamination or due to governmental restrictions related to contamination;

(B) The increased cost to insure or finance the property;

(C) The potential liability for the cost to cure;

(D) Governmental limitations and restrictions placed upon the transferability of all or any portion of the contaminated sites;

(E) Other market influences.

(b) The Cost Approach may be used to determine the value of the contaminated site without the contamination. The cost to cure may be deducted as a measure of functional obsolescence.

(c) The Income Approach should use market rental data. If market rental data are not available, the property's actual income may be used.

(A) The income stream may be adjusted to reflect the estimated annual cost of remedial work specific to the subject property to remove, contain, or treat the hazardous substance during those years the cost is incurred. The annual cost of remedial work may include the cost of environmental audits, surety bonds, insurance, monitoring cots, and engineering and legal fees. The costs must be directly related to the clean up or containment of a hazardous substance.

(B) If the capitalization rate is derived from properties with similar contamination, no adjustment should be made to that rate. If the rate is developed from properties without contamination, or a built-up rate is used, consider adjustments for the increased present and contingent future risk of ownership, difficulties in future appreciation or depreciation, and the effect upon the ability to sell or transfer the property; that is, the liquidity of an investment in the property.

(C) Alternately, an income approach projecting the income stream as if the subject property was not contaminated, may be used when the cost to cure is deducted from the resultant value indicator.

(d) The market may respond to contamination in a variety of ways. In all cases, actual market sales and income data are the most reliable indicators.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.205
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97

150-308.205-(F)
Measuring Functional Obsolescence in Industrial Property

(1) The procedure for estimating functional obsolescence for industrial property in the reproduction cost approach is as follows:

(a) The total functional obsolescence equals:

(A) The physically depreciated reproduction cost of the property with a deficiency requiring a substitution or modernization, or a superadequacy, less

(B) The physically depreciated cost of the replacement property with a deficiency requiring a substitution or modernization, or a superadequacy, plus

(C) The cost to cure or the value of the loss (if less).

(b) For an industrial property with a deficiency requiring an addition follow the same steps as listed in subsection (1)(a), except step (A) equals zero.

(c) The result of (1)(a) equals the total functional obsolescence deduction in the reproduction cost approach attributable to the property with a deficiency or superadequacy.

(d) In specific situations, the procedure in subsection (1) can be simplified:

(A) For curable functional obsolescence caused by a deficiency requiring a substitution or modernization, or a superadequacy, functional obsolescence equals the physically depreciated reproduction cost of the property with a deficiency or superadequacy plus the excess cost to cure.

(B) For curable functional obsolescence caused by a deficiency requiring an addition, functional obsolescence equals the excess cost to cure.

(e) For purposes of measuring functional obsolescence, the property with a deficiency or superadequacy in subsection (1) of this rule can be the entire subject property or one or more portions of the property that are being analyzed for the existence of functional obsolescence. If the entire property has multiple deficiencies or superadequacies, multiple applications of the procedure in subsection (1) of this rule may be required to measure the total functional obsolescence.

(f) Some methods of measuring depreciation may capture more than just physical depreciation. The depreciation measured may include elements of functional and external obsolescence.

(A) If in subsection (1)(a)(A) an age-life method is used to estimate the total depreciation of the property with a deficiency or superadequacy, no additional functional obsolescence should be deducted from the depreciated reproduction cost of the individual assets.

(B) If in subsection (1)(a)(A) the selling price of used equipment is used to estimate the depreciation of the property with a deficiency or superadequacy, no additional functional obsolescence should be deducted from the depreciated reproduction cost of the individual assets.

(C) In situations where all functional obsolescence of individual assets is fully captured by the depreciation method used, there may be additional functional obsolescence due to the assemblage of the individual assets into the layout of the property. Functional obsolescence due to layout can be accurately measured using the procedures described in subsection (1) of this rule. However, care must be taken to avoid double counting the functional obsolescence.

(2) The deduction for functional obsolescence in the replacement cost approach equals the cost to cure or the value of the loss (if less).

(a) When using the procedure in subsection (1)(a) of this rule to estimate the deduction for functional obsolescence in the replacement cost approach, steps (A) and (B) must equal zero ($0).

(b) When using consistent estimates of reproduction and replacement cost new, physical depreciation, and functional and external obsolescence, the market value indicator from replacement cost approach must equal the market value indicator from the reproduction cost approach. (see example 3) [Example not included, see ED. Note.]

(3) Definitions:

(a) The reproduction cost approach is an appraisal method for estimating market value of the subject property. The formula for this method is: Market Value equals the Reproduction Cost New less physical depreciation less functional obsolescence less external obsolescence.

(A) The reproduction cost new is the cost to construct a new replica of the subject property as of the appraisal date using the same materials, design, layout, quality of workmanship and embodying the deficiencies and superadequacies of the subject property.

(B) The appraisal approach where the appraiser estimates the depreciation based on the selling prices of used equipment is a reproduction cost approach when the used prices utilized in the appraisal are for pieces of equipment that are replicas of the subject equipment. The formula for this method is: Market Value equals the Reproduction Cost New less the depreciation from used equipment prices less the functional and external obsolescence not captured in the used equipment prices.

(C) The appraisal approach where the appraiser estimates the depreciation using an age-life method is a reproduction cost approach when the starting point is the reproduction cost new. The formula for this method is: Market Value equals the Reproduction Cost New less the depreciation from an age-life analysis less the functional and external obsolescence not captured in the age-life analysis.

(b) The replacement cost approach is an appraisal method for estimating the market value of the subject property as of the appraisal date. The formula for this method is: Market Value equals the Replacement Cost New less physical depreciation less the cost to cure (or the value of the loss, if less) less external obsolescence. The replacement cost new is the cost, as of the appraisal date, to construct a property having equivalent utility to the subject property but built with the most cost-effective materials, design, and layout. The most cost effective materials, design, and layout is that combination of investment (cash out-flows) and the present value of anticipated after tax net income (cash in-flows) that produces the highest net present value.

(c) Functional Obsolescence is a loss in market value of a subject property when there is a reasonable feasibility of a typical prospective purchaser acquiring, without undue delay, a replacement property possessing an equivalent utility but is more cost-effective in terms of design, materials, or equipment. Functional obsolescence exists only by a comparison between the subject and the replacement property. There is no loss in value due to functional obsolescence unless the physically depreciated reproduction cost of the subject property minus the physically depreciated replacement cost of the replacement property plus the cost to cure (or value of the loss, if less) is greater than zero.

(A) Functional obsolescence due to a deficiency requiring a substitution or modernization is caused by an asset present in the subject property that is substandard compared to the replacement property.

(B) Functional obsolescence due to a deficiency requiring an addition is caused by a component that is missing from the subject property that is present in the replacement property

(C) Functional obsolescence due to a superadequacy is caused by an asset present in the subject property that is not present in the replacement property and does not contribute to value an amount equal to its cost.

(d) The physically depreciated reproduction cost of the property with a deficiency or superadequacy is the cost, as of the appraisal date, to construct a new replica of that property using the same materials, design, layout, quality of workmanship and embodying the deficiencies and superadequacies of that property less the amount of physical depreciation due to physical deterioration associated with wear and tear, the impact of the elements, and aging.

(e) The physically depreciated cost of the replacement property is the cost, as of the appraisal date, to construct a new property with the equivalent utility to the property with the deficiency or superadequacy using the most cost effective materials, design, and layout less the appropriate physical depreciation.

(A) For curable functional obsolescence, the appropriate percent of physical depreciation for the replacement property in subsection (1)(a)(B) is equal to the percent of physical depreciation of the replacement property included in the cost to cure in subsection (1)(a)(C) and (3)(h)(A). For example, if curable functional obsolescence is cured by purchasing and installing a new machine, the replacement property is also new (zero depreciation). (See example (3). [Example not included, see ED. Note.] However, if curable functional obsolescence is cured by purchasing and installing a used machine that is 70% physically depreciated, the replacement property also must be 70% depreciated. (See example 4)[Example not included, see ED. Note.]

(B) For incurable functional obsolescence, the appropriate percentage of physical depreciation for the replacement property in subsection (1)(a)(B) is the same percentage of physical depreciation as the percentage of physical depreciation of the property with a deficiency or superadequacy, as it exists in the uncured condition.

(f) Functional obsolescence is incurable if the cost to cure is greater than the value of the loss.

(g) Functional obsolescence is curable if the cost to cure is less than the value of the loss.

(A) To be considered curable, it must be physically possible, legally permissible, and financially feasible to cure the functional obsolescence.

(B) If curing functional obsolescence is required to allow the existing assets to continue to function at their highest and best use and the requirements of subsection (3)(g)(A) are met, the obsolescence is curable even if the cost to cure is greater than the value of the loss. (See Example 6) [Example not included, see ED. Note.]

(h) The cost to cure equals the net cash out-flow anticipated to be necessary to eliminate the deficiency or superadequacy. This equals:

(A) The physically depreciated replacement cost of the replacement property, plus

(B) The retrofitting cost associated with installing the replacement property in the subject property, plus

(C) The cost to remove the property with a deficiency or superadequacy; less

(D) The salvage value of the property with a deficiency or superadequacy.

(i) The excess cost to cure recognizes that installing an asset in an existing property may cost more than installing the same asset when a property is constructed new on the appraisal date. The excess cost to cure equals:

(A) The retrofitting cost associated with installing the replacement property in the subject property; plus

(B) The cost to remove the property with a deficiency or superadequacy; less

(C) The salvage value of the property with a deficiency or superadequacy.

(j) Retrofitting cost is the cost as of the appraisal date to install an asset in the subject property less the cost as of the appraisal date to install the same asset as part of new construction.

(k) The value of the loss equals the present value of the after-tax loss in anticipated income from the continuing operation of the property with a deficiency or superadequacy compared to the projected operation of the replacement property. For industrial plants, this loss in income is often the result of excess operating costs due to inefficiencies in the subject plant compared to the subject property when cured of the functional obsolescence. The present value includes factors for the time period that the plant will continue to incur the loss in income and an appropriate discount rate. See OAR 150-308.205-(C) for the appropriate method of calculating the discount rate.

(4) Examples (Assume zero external obsolescence for all examples): [Examples not included. See ED. NOTE.]

Example 1: An example of incurable functional obsolescence due to a deficiency requiring a substitution or modernization. [Examples not included. See ED. NOTE.]

Example 2. An example of incurable functional obsolescence due to a superadequacy. [Examples not included. See ED. NOTE.]

Example 3: An example of curable functional obsolescence due to a deficiency requiring and addition. [Examples not included. See ED. NOTE.]

Example 4: An example of curable functional obsolescence due to a deficiency requiring a substitution. [Examples not included. See ED. NOTE.]

Example 5: An example of a deficiency in the subject plant that does not indicate the presence of functional obsolescence. [Examples not included. See ED. NOTE.]

Example 6: An example of curable functional obsolescence due to a deficiency requiring an addition. [Examples not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 205.320, 308.205, 308.027, 308.156, 308.234, 308.704, 308.709, 308.205, 308.712, 308.714, 309.200, 311.806, 309.200 & 457.450

Hist.: REV 6-2001, f. & cert. ef. 12-31-01

150-308.205-(G)
Effective Tax Rate

(1) Definitions for this rule:

(a) "Changed property ratio" (CPR) is the ratio, not greater than 1.00, of the average maximum assessed value over the average real market value for the assessment year in the same area and property class.

(b) "Nominal tax rate" is the tentative consolidated ad valorem property tax rate by code area described in ORS 310.147(2). When applicable, the nominal tax rate can be adjusted to reflect a reduction of tax to meet the limitations identified under Section 11b, Article XI of the Oregon Constitution

(c) "Effective tax rate" for any given property is the nominal tax rate, as described in subsection (1)(b), multiplied by the appropriate CPR, described in subsection (1)(a).

(2) The effective tax rate can be determined by the following methodology:

(a) Select the nominal tax rate known on the assessment date. For example, the assessment date of January 1, 2008 requires the nominal tax rate calculated for the prior tax year, 2007–08.

(b) Multiply the nominal rate by the CPR applicable to the assessment date, considering the subject property classification and location. The result is the effective tax rate.

Example 1: An apartment complex is being valued for assessment purposes, in an area with a changed property ratio of 65% or 0.65 and a nominal tax rate of $19.8615 per thousand of assessed value (1.98615%) or .0198615; the effective tax rate is calculated as follows: Changed Property Ratio (CPR) x Nominal Tax Rate (NTR) = Effective Tax Rate (ETR) 0.65 (CPR) x .0198615 (NTR) = 0.01291 (ETR) or 1.3%

Stat. Auth.: ORS 305.100, 308.205, 308.724

Stats. Implemented: ORS 308.205

Hist.: REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-308.205(2)
Valuation Review of Principal and Secondary Industrial Property.

(1) The department may conduct valuation reviews of principal and secondary industrial properties to verify the accuracy of the property's real market value and maximum assessed value.

(2) Valuation reviews will follow procedures adopted by the Department of Revenue.

(3) The real market value and maximum assessed value of a property may change for the current year and previous years following the requirements in ORS 311.205 and 311.216, as a result of the valuation review.

(4) The real market value and maximum assessed value of a property may change for subsequent tax years if the result of the valuation review is a change in valuation judgment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.205

Hist.: REV 9-1998, f. 12-11-98, cert. ef. 12-31-98; REV 12-1998, f. 12-29-98, cert. ef. 12-31-98

150-308.215(1)-(A)
Real Market Value and Property Classification as Part of Assessment Roll

(1) In addition to the assessed value of property, the assessment roll must show:

(a) The real market value (RMV) of the land, excluding all buildings, structures, and improvements thereon;

(b) The RMV of all buildings, structures, and improvements; and

(c) The total RMV for each parcel of real property not required to be assessed as a unit.

(d) For properties subject to ORS Chapter 100, for example, condominiums and time shares that are required to be assessed as a unit, the assessment roll must show the RMV as well as the assessed value of each unit.

(2) The assessment roll must include the property classification code number for each parcel of real property in the county, except for those properties assessed by the department under ORS 308.505 to 308.665. The assessor must classify and assign a property classification code number to each parcel as provided in section (8) of this rule.

(3) The assessor must maintain the proper classification on each parcel of property.

(4) A county must separately identify and adjust land and improvement values for each property class for each market area to bring real property to RMV. These adjustments to value must be

developed from market studies or by any other method approved by the department as provided under ORS 309.200.

(5) The class code numbers that this rule establishes must be used for computing the real property class ratios required by ORS 309.200.

(6) An assessor must obtain written approval from the Department of Revenue before deviating from the basic property classes defined in section (8) of this rule.

(7)(a) All classification must be based upon highest and best use of the property. The term "highest and best use" is defined in OARs 150-308.205-(A) and 150-308.205-(D). The class associated with the property may or may not be its current use.

(b) Unique properties can be classified under the "miscellaneous" category in section (8). The "miscellaneous" category can also be used for property requiring a separate trend.

(c) The property classification system must not be used to categorize market data that is more accurately described by other characteristics, such as the quality class of the improvements, market areas, or neighborhoods.

(d) The property class for mixed-use or transitional properties will be assigned based upon the use that contributes the most to the real market value on the current assessment date.

(A) A mixed-use property is one in which different parts of the property are used differently, such as a commercial use on one part, and a residential use on another part.

(B) A transitional use property is one in which the real market value on the current assessment date, at its current highest and best use, is being influenced in the market by an anticipated change in future use, such as residential property that is likely to sell for a commercial use in the future, but is not in commercial use on the assessment date.

(8) DEFINITIONS FOR PROPERTY CLASSIFICATION SYSTEM. [Classificaton not included. See ED. NOTE.]

(9) Starting with the 2006–07 tax year, each assessor must prepare an annual plan that outlines how the county will comply with the provisions of this rule no later than the January 1, 2009 assessment date. The plan must be submitted as part of the sales ratio study and accompanying appraisal plan submitted under ORS 309.200 and 309.203. The plan must address how the county complies with, or intends to comply with the provisions of this rule for the initial tax year and all subsequent tax years up to the 2009–2010 tax year.

[ED. NOTE: Classificaton referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 308.215
Stats. Implemented: ORS 308.215
Hist.: 3-70; 9-71; 11-73; 1-1-77; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-308.215(1); RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 2-2005, f. 6-27-05, cert. ef 6-30-05; REV 4-2006, f. & cert .ef. 7-31-06

150-308.215(1)-(B)
Property With Multiple Leases Assessed as One Parcel

Properties with multiple leases must be assessed as one parcel except those properties covered by 307.110(2). The statutes have no provisions for assessing multiple leaseholds of undivided parcels of real property as separate tax accounts. It is not the assessor's responsibility to divide the assessed values and tax amounts for each leasehold for the owner. The accounts shall be set up as one account and the appraisal card(s) shall reflect the value of the entire parcel. Only buildings, machinery and equipment or fixtures owned separately from other associated property shall be separately assessed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.215
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.215(1)(g)
Contents of Assessment Roll for Condominiums

For purposes of the assessment roll for condominiums, the land, buildings, structures and improvements are to be considered together as a single value for the real market value. Where appropriate, the land, buildings, structures and improvements are to be considered together as a single value for the assessed value.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.215
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92

150-308.219
Printout Required When Assessment and Tax Rolls do not Constitute a Written Record

All information specified in the laws and administrative rules relating to the assessment roll, the tax roll and the June 30 Tax Collector's Report must be on the printouts or microfiche. The information required on these printouts or microfiche is specified below.

(1) The tax roll must reflect the assessments as of September 25 and show all corrections, changes, and additions made to the data in the computer occurring between September 25 and the date the roll is delivered to the tax collector. In addition to the information specified under ORS 308.215 for the assessment roll, printouts or microfiche must contain the following information.

(a) Tax year;

(b) County;

(c) Mailing address for the tax statement;

(d) Building class;

(e) Manufactured structure "X" plate number or HUD identification number;

(f) All current year taxes extended;

(g) All delinquent taxes as specified in ORS 311.125.

(2) The June 30 Tax Collector's Report must be prepared by July 15 and include all changes, corrections, and additions made to the roll since the preceding June 30 Tax Collector's Report. The report must include all unpaid accounts. This includes all changes from the roll and all effects on tax monies on each account.

(3) The printouts referred to in ORS 308.219 are specifically the assessment roll, tax roll, and the June 30 Tax Collector's Report. Any other listings used are supplemental documents and not part of the required rolls, microfiche or report printouts.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.219
Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 6-2003, f. & cert. ef. 12-31-03

150-308.225
Filing Requirements for Certain Delayed Annexations by Cities

(1) This rule applies to delayed annexations by cities allowed under ORS 222.750. In these annexations, all nonresidential zoned property and all residentially zoned property in nonresidential use become annexed immediately, while all properties zoned for and in residential use are annexed on a delayed basis, with the length of the delay specified by the ordinance or resolution. Properties subject to delay are annexed immediately upon transfer of ownership.

(2) For purposes of ad valorem taxation, the requirements for notification can be found in ORS 308.225, and the procedure is as follows:

(a) During initial submission of a code boundary change request for annexation of unincorporated territory subject to delayed annexation under ORS 222.750, the map and legal description must at a minimum describe the initially annexed properties. If describing the entire exterior boundary of the annexation in the initial submission, any areas subject to delayed annexation must be clearly excepted by separately describing the areas and noting them on the filed map.

(b) A code boundary change request must be submitted for any property subject to delayed annexation that becomes part of the city before the end of its delay period due to transfer of ownership.

(c) If not described in a previous submission, a code boundary change request must be submitted for any remaining properties at the conclusion of their delay.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.225
Hist.: REV 11-2010, f. 7-23-10, cert. ef. 7-31-10

150-308.231
Appraisals of Real Property by Registered Appraisers

Only appraisers registered under ORS 308.010 shall appraise real property. If nonregistered appraisal assistants are utilized for gathering inventory data, it shall be only for gathering or recording factual inventory data or property characteristics. Any value estimates, or appraisal judgment decisions shall be made only by registered appraisers. Value estimates include lump sum dollar adjustments or percentage adjustments, depreciated replacement costs (DRC), land or site valuation. Judgment decisions include determination of quality class, quality adjustment, depreciation from all causes; or overimprovement or underimprovement and estimated market rent.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.231
Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91

150-308.232
Determining Taxable Value for Assessment Charges on Property Exempt from Taxation

If a property that is exempt from ad valorem taxation is subject to assessment charges, the assessor shall determine the maximum amount of assessment charges by using the real market value of the property.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.232
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91

150-308.234
Appraisal of Real Property

The following constitutes standards for the valuation of real property except for property assessed under ORS 308.505 to 308.665 and ORS 308.805 to 308.820.

(1) Industrial property. In the case of industrial properties, appraisals must conform with the following conditions:

(a) Basic data and supplemental data for an appraisal must be the same as required in ORS 308.290 and 308.411. Valid data in any previous appraisal such as property descriptions, inventory listing, maps, etc., may be used in the appraisal.

(b) An appraisal as provided by the industrial property return process is not an appraisal contemplated under ORS 308.234.

(c) A valuation review as provided in OAR 150-308.205(2) is an appraisal as contemplated under ORS 308.234, if the valuation review meets the requirements of 308.411.

(d) Nothing in this rule is intended to invalidate any assessment that appears on the assessment roll.

(2) All other real property. Real property must be valued at its real market value (RMV) using methods approved by the department and the results must meet the performance standards required by this rule.

(a) The following definitions apply for the purposes of this rule:

(A) "Coefficient of dispersion" (COD) is the average absolute deviation of a group of numbers from the median expressed as a percentage of the median. In ratio studies, it refers to the average absolute deviation from the median ratio, expressed as a percent of the median ratio.

(B) "Homogeneous" describes a market area where the properties have a high degree of similarity in one or more of the following: type, use, quality, or condition.

(C) "Market area" is defined as a group of properties that share important characteristics affecting their value. It may be defined along physical/geographical or abstract boundaries or, as in the case of commercial property, according to use. Properties included in a market area do not have to be contiguous.

(D) "Nonhomogeneous" means market areas that do not meet the definition of "homogeneous."

(b) ORS 308.232 requires that all real property be valued at 100 percent of its RMV. Achieving and maintaining RMV is measured by the ratio study. Ratios must be computed for each market area, where possible. In market areas where the amount of sales data is insufficient for statistical analysis, one or more of the following actions should be taken to provide adequate data:

(A) A two-year sales sample may be used;

(B) Comparable market areas may be combined; or

(C) Appraisal ratio data may be included.

(c) Criteria for results-based valuation standards:

(A) RMV at 100 percent.

(B) COD standards for measuring equity of RMV: [Formula not included. See ED. NOTE.]

(C) Exceptions to COD standards. When a market area does not meet the standards because of a market anomaly, the correction may be delayed until the following year, waived, or have alternate standards applied, as approved by the Department of Revenue.

(d) The department will determine compliance with standards of this rule by annual reviews of the results determined by the county.

(A) If compliance deficiencies are found, the department must make written notification to the assessor of the deficiencies and identify appropriate corrective action. Within 30 days of notification of the deficiencies, the assessor must respond in writing to the department as to the action to be taken to correct the identified deficiencies.

(B) In the event an assessor's program has been found to be deficient and the assessor does not take action to correct the deficiencies as outlined in the department's written notification, the department will take action as required by ORS 308.062.

[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.234
Hist.: 8-65; 1-66; 3-70; 9-70; 9-71; 8-72; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; REV 4-1998, f. & cert. ef. 6-30-98; REV 9-1998, f. 12-11-98, cert. ef. 12-31-98; REV 12-1998, f. 12-29-98, cert. ef. 12-31-98; REV 6-2001, f. & cert. ef. 12-31-01; REV 11-2010, f. 7-23-10, cert. ef. 7-31-10

150-308.235
Agricultural Land Devoted to Agricultural Purposes; Valuation for Ad Valorem Tax Purposes

(1) Agricultural land devoted to agricultural purposes as defined in OAR 150-307.320 is real property and shall, insofar as possible, be valued by the methods provided in 150-308.205-(A). When practical, the value of comparable bare land shall be utilized as primary evidence.

(2) In the absence of comparable bare land sales, or when a partial appraisal is not feasible, the appraiser shall estimate the market value of the land and the deciduous trees, shrubs, plants and crops as a unit. The taxable value of the agricultural land devoted to agricultural purposes shall then be determined by deducting the market value of the deciduous trees, shrubs, plants and crops thereon from the total appraised market value. The market value of the deciduous trees, shrubs, plants and crops shall be determined by a method which considers:

(a) The cost of seed, shrub, nursery tree, or cutting as culture dictates.

(b) The cost of implanting the seed, shrub, nursery tree or cutting into the land as culture dictates.

(c) The loss of income from the land during the period of establishing the tree, shrub and plant in condition to produce a crop.

(d) The risk involved in establishing the tree, shrub and plant.

(e) The quality and quantity of the trees, shrubs, plants and crops.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.235
Hist.: 1-58; 11-59; 1-66; 3-70; 9-71

150-308.242(3)
Stipulation Procedures

(1) The phrase "the convening of the board" in ORS 308.242 (3)(b) means the first meeting of the year during which the Board of Property Tax Appeals (BOPTA) officially opens the session under ORS 309.026.

(2) The assessor may change the roll after December 31 and without an order of the board when:

(a) A petition is filed with BOPTA under ORS 309.100;

(b) The assessor and the petitioner sign a stipulation that specifies a reduction in value prior to the date the board convenes as required by ORS 309.110(2); and

(c) The stipulation is delivered to the clerk of the board prior to the time the board convenes.

Stat. Auth.: ORS 305.100, 305.102
Stats. Implemented: ORS 308.242, 309.110
Hist.: REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-308.250
Cancellation of Personal Property Assessments

(1) The assessor must cancel the personal property assessment for any taxpayer whose taxable personal property in the county has a total assessed value (AV) below the threshold value computed annually under ORS 308.250(4).

(2) The department will notify the assessor of the threshold value no later than March 1 of the tax year for which the threshold value applies.

(3) After the first year of cancellation, the taxpayer must complete and file Form 150-553-004, Confidential Personal Property Return, annually with the assessor by the personal property return due date under ORS 308.290. The taxpayer must check the box that indicates the assessor cancelled the AV the previous year and must include the following:

(a) Taxpayer's name, address, and phone number;

(b) If applicable, the business name, address, and type of business;

(c) Location of property, if different from (a) and (b) above; and

(d) Assessor's account number.

(4) The department will provide to the assessor the Confidential Personal Property Return on which the taxpayer may make the claim in subsection (3).

(5) If the taxpayer fails to file the form required in section (3) of this rule, the assessor will determine the AV of taxable personal property based on available information. Such information may be obtained from a phone call to the taxpayer or a review of taxpayer's property or records. If the assessor finds that the total AV of the taxpayer's property within the county is equal to or greater than the threshold value, the assessor must place the computed value on the next assessment and tax roll.

(6) The assessor may review the taxpayer's taxable personal property or business records to verify that the value of the taxable personal property is less than the threshold value. If the assessor finds that the value of the taxable personal property is equal to or greater than the threshold value, the assessor must add the value of all taxable personal property to the assessment and tax roll.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.250
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97; REV 6-2003, f. & cert. ef. 12-31-03

150-308.256(4)
Exemption of Watercraft Undergoing Repairs

(1) Watercraft owned or operated by centrally assessed water transportation companies and undergoing "major" repairs as defined in ORS 308.256(4), shall be deemed exempt from taxation if such repairs are in progress as of January 1, of the assessment year, but only upon receipt by the Department of Revenue of documentation included in the annual filing stating the nature, extent, and location of such repairs.

(2) All other assessable Watercraft undergoing "major" repairs as defined in ORS 308.256(4), shall be deemed exempt from taxation if such repairs are in progress as of January 1, of the assessment year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.256
Hist.: RD 2-1992, f. 5-28-92, cert. ef. 6-1-92; RD 9-1997, f. & cert. ef. 12-31-97

150-308.275(1)
Valuation of New Construction

New construction including additions, remodeling, and rehabilitation, not in the current reappraisal area, shall be valued using the same appraisal data used for the building classes in that area when last appraised. The resulting value for new construction shall then be adjusted from the base appraisal year in the same manner as similarly classed improvements in the area.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.275
Hist.: 1-54; 11-59; 1-66; 3-70; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92

150-308.290
Confidentiality — Returns of Taxable Property

Refer to OAR 150-192.501 for clarification of what is confidential information and how to safeguard that material.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.290
Hist.: TC 7-1980, f. 11-28-80, cert. ef. 12-31-80; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88

150-308.290-(A)
Extending Filing Deadline for Property Tax Returns

For purposes of ORS 308.290 and this rule,

(1) "Property tax return" means a personal property tax return, a real property tax return, or a combined property tax return. Personal and real property tax returns are described in ORS 308.290(1) and filed with the county assessor in whose county the taxable property is sited. A combined property tax return is described in 308.290(4) and filed with the Department of Revenue when the department is responsible for appraising the taxpayer's property.

(2) "Office" means the office of one or more county assessors or the department to which property tax returns are delivered.

(3) "Good and sufficient cause" means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, which prevents the taxpayer from filing the property tax return by the deadline.

(a) An extension of the filing deadline for 'good and sufficient cause' applies to the property tax return for the current year only.

(b) "Good and sufficient cause" includes, but is not limited to:

(A) Unavoidable and unforeseen absence, illness, or disability of the person who is solely responsible for filing the return and which substantially impairs a taxpayer's ability to file a timely property tax return. The substantial impairment must have been of such a nature that a reasonable and prudent taxpayer could not have been expected to conform to the deadline.

Example 1: The taxpayer's spouse manages the financial records including tax returns for their construction business. In January, the spouse is diagnosed with lung cancer and begins in-patient treatment that is expected to continue for several months. The assessor grants an extension of filing deadline for good and sufficient cause for the current year only.

Example 2: The accountant for a florist shop experiences a home tragedy (child in auto accident) and must take time away from work in February. As the only person responsible for the taxpayer's books and tax filings, no one can step in to complete the property tax return timely. The assessor accepts a request for extension of filing deadline for good and sufficient cause for the current year only.

Example 3: The local accountant for a nationwide chain of auto stores wins a three week Caribbean cruise that must be taken in February. Management authorizes the vacation. The person who would have stepped in to cover the accountant's work takes a new job and leaves January 15. The department denies a request for extension of filing deadline. This is not "good and sufficient cause," as the taxpayer could have reasonably foreseen this situation and made other arrangements to complete the tax return by the March 1 deadline.

(B) Destruction by fire, natural disaster, or other casualty of the taxpayer's records needed to prepare the return.

Example 4: ABZ Company buys an Oregon business in December. The records of the Oregon firm are not transferred to the new company's accountant until early February and records of the prior tax returns are not included. The accountant cannot gather the information to provide an accurate tax return by March 1. The department grants a request for extension of filing deadline for good and sufficient cause for the current year only.

(4) "Administrative need" means the taxpayer has a recurring inability to obtain the information needed to complete and file the return by the March 1 deadline, due either to the volume of information that the taxpayer must process or competing internal year end reporting requirements.

(5) "Substantially complete" means a return that contains sufficient information to allow the return to be processed by the department or county. A return is not substantially complete if:

(a) It is submitted with blank or missing schedules unless the schedules are appropriately left blank and are labeled with an identifying notation such as "no", "none", or "not applicable"; or

(b) It is submitted with attachments that do not include required information as specified on the schedule.

(c) A return that is not substantially complete will not be considered "filed".

(6) Requesting an Extension. Taxpayers may request an extension of filing deadline of property tax returns. Extensions will be granted for "good and sufficient cause" or "administrative need."

(7) A taxpayer may apply for an extension to:

(a) The department, if the subject property is assigned to the department for appraisal under ORS 308.290(4);

(b) The department, if the taxpayer is required to file returns in more than one county and requests an extension for all property tax returns required to be filed within Oregon as provided by ORS 308.290(7); or

(c) The county assessor, if the taxpayer's subject property is sited in only that county and appraised by that office as provided by ORS 308.290(1).

(8) A request for extension of filing deadline must meet all of the following requirements:

(a) The request must be postmarked on or before February 15, in the office responsible for appraisal of the subject property.

(b) The request for extension must be in writing and must contain:

(A) The business or company name on the property tax account(s),

(B) The company's complete mailing address and telephone number,

(C) The county property tax account number(s) when known,

(D) The situs address and county of each property listed, and

(E) Other information as required by the assessor or the department.

(c) The request must be signed by the taxpayer(s), an officer of the taxpayer, or the authorized representative of the taxpayer;

(d) The request must contain all of the facts explaining the need for an extension, including, but not limited to:

(A) For a request due to good and sufficient cause, the taxpayer must describe the extraordinary circumstance that prevents the return from being filed timely.

(B) For a request due to administrative need, the taxpayer must describe the administrative need and how the conditions described in Sections (10) and (11) of this rule will be met.

(e) If the taxpayer is a leasing company (lessor) and is requesting an extension for locations in multiple counties as provided by ORS 308.290(7)(a):

(A) The lessor must have sole responsibility for payment of taxes charged to all property items on the asset listing; and

(B) The lessor must provide a list of all equipment classified as real or personal property and identify the situs and county of each property listed.

(9) The office receiving the request for extension will advise the taxpayer whether the request for extension of filing deadline is granted or denied. The department will notify both the taxpayer and the assessor when an extension is granted or denied by the department under ORS 308.290(7)(a).

(10) Granting an Extension. When a request for extension is granted, the office will send an "Extension Approval" letter along with instructions for reporting requirements which include, but are not limited to:

(a) A complete listing of assets describing each item of real and personal property (including those fully depreciated, expensed, or held in storage), the date each was purchased, original cost, and location; or

(b) A listing of equipment which identifies the situs and county of the property for both real and personal property reported by a leasing company; or

(c) A summary by classification of assets, with the specific real and personal property additions and retirements for the current year. This method is only acceptable if the office has agreed to an addition/deletion listing from the taxpayer.

(11) In addition to the requirements in Section (10) of this rule, the taxpayer must also:

(a) Provide a summary by classification of assets in a combined return that includes each asset's trending and depreciation codes or valuation factors applied to all property according to schedules supplied by the office; or

(b) Apply the personal property valuation factors provided by the office to the asset list(s) by property classification to develop the value of the personal property.

(12) When filing a return after approval of an extension, the taxpayer must:

(a) Submit a complete return;

(b) Submit information as required in Sections (10) and (11) of this rule; and

(c) Include a copy of the Extension Approval letter.

(13) Denying an Extension. When an office denies a request for extension of filing deadline:

(a) The office will promptly advise the taxpayer in writing of the denial, and

(b) The completed property tax return(s) must be filed with the office on or before March 1.

(14) Reasons for denying a request for extension include, but are not limited to:

(a) The request for extension was not received on or before February 15;

(b) The office lacks authority to grant an extension because the office is not responsible for appraisal of the subject property;

(c) The request for extension is based on an administrative need that was previously denied or had been granted but subsequently revoked; or

(d) The reason for the request does not meet the definition of good and sufficient cause or an administrative need as described in this rule.

(15) If the taxpayer is granted an extension for administrative need, the extension will continue for subsequent tax years unless canceled by the taxpayer or revoked by the assessor or the department after discussion with the taxpayer concerning the taxpayer's failure to meet the requirements described in Sections (10) and (11) of this rule.

(16) Revoking an Extension. The assessor or the department may revoke an extension of filing deadline a year after written notification to the taxpayer explaining reasons for revocation. Reasons for revoking an extension include, but are not limited to:

(a) The property tax return is not received on or before April 15;

(b) The property tax return does not substantially comply with the requirements described in Sections (10) and (11) of this rule;

(c) The property tax return is not signed by the taxpayer(s), an officer of the taxpayer, or the authorized representative of the taxpayer;

(d) Property has been omitted from the property tax return;

(e) Property has been incorrectly classified;

(f) Responsibility for appraisal of the subject property transfers to another office. The taxpayer may then apply to the appropriate office for an extension; or

(g) Taxpayer fails to provide the county with a copy of the Extension Approval letter.

(17) Consequence of Filing after Extension Date. The taxpayer must submit a substantially complete property tax return to the proper office on or before April 15 to be considered timely filed by the extended deadline.

(18) If an office grants an extension and the taxpayer files a return that is not substantially complete by April 15, the office will reject the property tax return(s) and return it to the taxpayer with a request that the required information be added and the return re-submitted within the timeframe specified by the office.

(19) If the taxpayer fails to re-submit the return, the office shall list and value the taxable property based on the best information obtainable from other sources as described in ORS 308.290(9).

(20) Any return filed after April 15 will be considered as late filed and a penalty assessed as described in ORS 308.295 and 308.296.

Stat. Auth.: ORS 305.100, 308.290
Stats. Implemented: ORS 308.290
Hist.: REV 7-2008, f. 8-29-08, cert. ef. 8-31-08; REV 3-2014, f. & cert. ef. 7-31-14

150-308.290-(B)
Industrial Property Returns — Incomplete Returns and Late Filing Penalties

(1) Industrial Property Returns are combined returns of real and personal property for principal and secondary industrial property. The Industrial Property Return forms and instructions specify the information to be included in the return and submitted to the department.

(2) A taxpayer must submit a substantially complete return by the due date of the return. A return is substantially complete if it contains sufficient information to allow the return to be processed by the department. A return is not substantially complete if:

(a) It is submitted with blank or missing schedules unless the schedules are appropriately left blank and are labeled with an identifying notation such as “no”, “none”, or “not applicable”; or

(b) It is submitted with attachments that do not include required information as specified on the schedule.

(3) For the purposes of the late filing penalty imposed by ORS 308.295, a return that is not substantially complete will not be considered “filed”.

(4) If a taxpayer submits a return that is not substantially complete, the department will send the return back to the taxpayer with a request that the return be filed with the required information. The taxpayer will be subject to a late filing penalty under ORS 308.295 if a substantially complete Industrial Property Return is not filed by the due date or within the time allowed by an extension as described in OAR 308.290(A).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.290
Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef 6-30-02; REV 10-2002, f. & cert. ef. 12-31-02; Renumbered from 150-308.290(4)(b) by REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-308.290(7)-(A)
County Contractors Having Access to Confidential Records

Each county shall include in all vendor contracts, where a firm’s officers or employees may have access to confidential tax information, a clause prohibiting disclosure of information by any officer or employee of the vendor. The recommended clause follows: The disclosure of confidential information, obtained from the administration of tax laws, shall be unlawful. All reports, displays or discussions of confidential information shall be clearly labeled and protected by all officers or employees of the firms. Specific reference is made to ORS 308.290, 308.413, and 310.630 to 310.690.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.290
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-308.290(5); RD 6-1994, f. 12-15-94, cert. ef. 12-31-94, Renumbered from 150-308.290(7)

150-308.290(7)-(B)
Confidentiality of Property Tax Information for Centrally Assessed Companies; Exchange Under Reciprocal Agreements

(1) The following information must be held confidential by the department:

(a) Returns filed under ORS 308.290, 308.525, and 308.810;

(b) Appraisals containing information from returns filed under ORS 308.290, 308.525, and 308.810;

(c) Any data or information obtained during an inspection of the subject property or audit of a company subject to the filing requirements of ORS 308.290, 308.525, and 308.810;

(d) Trade secrets as defined in ORS 192.501(2).

(2) The following information will not be held confidential by the department:

(a) Information contained in the central assessment roll as defined in ORS 308.560;

(b) Appraisal conclusions developed or derived by the department for a company subject to the filing requirements of ORS 308.290, 308.525, and 308.810, including:

(A) Interstate allocation percentages;

(B) Capitalization rates;

(C) Value indicators;

(D) System values.

(3) For the purposes of exchange under reciprocal agreements authorized in ORS 308.290(7), subject to the limitations of section (4) of this rule, “property tax information” includes:

(a) Information contained in annual returns filed under ORS 308.290, 308.525, and 308.810;

(b) Appraisals conducted under ORS 308.290, 308.505 to 308.660, 308.705 to 308.730, and 308.805 to 308.820;

(c) Any information developed by the department in conjunction with such appraisals including, but not limited to, capitalization rates, market and sales studies, and cost and depreciation schedules;

(d) Any data or information obtained during an inspection of the subject property or audit of a company subject to the filing requirements of ORS 308.290, 308.525, and 308.810;

(e) Any other information regarding unitary valuation, allocation, or taxation.

(4) For the purposes of exchange under reciprocal agreements “property tax information” does not include:

(a) Trade secrets as defined in ORS 192.501(2);

(b) Information or data restricted by order of a court of competent jurisdiction.

(5) Any reciprocal agreement with the federal government or the several states entered into for the purposes of exchange of property tax information must require the reciprocating party to apply the confidentiality standards, limitations, and definitions contained in ORS 192.501, 308.290, 308.413, and this rule to any exchanged Oregon property tax information.

(6) Confidential information must not be exchanged under a reciprocal agreement with another state unless the reciprocal agreement meets the standards specified in section (4) of this rule.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.290
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 10-2002, f. & cert. ef. 12-31-02

150-308.411-(A)
Appraisal and Valuation of Industrial Plants

(1) The preliminary survey is defined as gathering of data necessary to determine the methods and approaches to be used in the appraisal to value the plant. Data pertaining to the plant may be obtained from files in the Department of Revenue, from the county assessor’s office, from the company itself or from other sources. Information to be obtained may include but is not limited to:

(a) Type of industry;

(b) Chronological age of the plant;

(c) Dates of major modernizations;

(d) Production rates relative to plant capacity;

(e) Economic factors affecting the industry;

(f) Records of sales of comparable plants;

(2) Following the collection and analysis of data, a preliminary survey letter will be written to the taxpayer summarizing the information found in (2) above. The letter should describe the property with the following:

(a) Company name;

(b) Address;

(c) Property description;

(d) County;

(e) Account number;

(f) Code number. The letter will also indicate the approaches that will most likely be used in the appraisal of the property. If the appraiser has determined that the income approach is an appropriate appraisal technique to use, an “Initial Request for Financial Data” form will be included with the preliminary survey letter.

(3) Following receipt of the preliminary survey letter the plant owner or owner’s representative shall meet with the appraiser. This meeting may take place in person, or may take place as a telephone

conversation. The purpose of the meeting is to clarify any points in the preliminary survey letter or the "Initial Request for Financial Data" and to assist the taxpayer in making a decision concerning the election options.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.411
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-308.413
Confidentiality of Industrial Plant Information

Any information furnished to the department and made confidential under ORS 308.411 shall be available to each officer and employee of the office of the county assessor who has been authorized by the county assessor. All authorized personnel shall have signed certificates required under 308.413(3). The county assessor shall prepare a written list of the personnel authorized to receive the information. The list shall be mailed to the Director, Department of Revenue. The assessor shall review the list annually and shall correct it by additions and deletions as appropriate. Any changes shall be mailed to the Director, Department of Revenue. The safeguard procedures set forth in OAR 150-192.501 apply to the information made confidential under ORS 308.411.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.413
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90

150-308.425
Definition of Destroyed or Damaged

"Destroyed or Damaged" means that the real or personal property is physically degraded by a qualifying fire or Act of God event. Property whose value is affected only by its proximity to another property physically degraded by a qualifying fire or Act of God event is not considered destroyed or damaged for purposes of proration of tax.

Example: A landslide caused by an Act of God occurs in a subdivision. Some properties in the subdivision are physically damaged or destroyed by the landslide. Other properties in the subdivision are not physically affected by the slide, but may have a degraded market value due to the market attaching a stigma to the subdivision. Only those properties in the subdivision, which were physically degraded by the slide, are "damaged or destroyed" and eligible for a proration of tax under ORS 308.425.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.435
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

150-308.490
Valuation of Nonprofit Homes for the Elderly

(1) Comparable Facilities includes both nonprofit and for-profit facilities with similar:

(a) Levels of care:

(A) Retirement living only: no meals are included in the rent; similar to apartment or condominium living.

(B) Retirement living: monthly rent can include meals; laundry; utilities; housekeeping; and, assistance with daily living activities.

(C) Retirement living: includes all of (B), and nursing services.

(b) Age, quality, and building condition.

(c) Functional considerations: For example; ADA requirements; room mix; and, size.

(d) Locational considerations.

(2) Qualified Operating Gross Income is income that meets the 95 percent test outlined in ORS 307.375, and tenant rent is competitive with other comparable facilities. If the tenant rent is not at market rent, then stabilized market rent is to be used. Periodic donations made solely to keep the facility solvent are excluded from the 95 percent test.

(3) Qualified Operating Gross Income includes the income generated from the following sources:

(a) Meals;

(b) Amortized entrance fees. The present worth of amortized entrance fees is based on both life expectancy and level of care provided according to GAAP. The interest rate is the same as calculated in (6).

(c) Monthly tenant rent;

(d) Pharmacy fees;

(e) Nursing fees;

(f) Income or fees received for space rent from vendors who provide social services, such as a bank, beauty parlor, gift shop, or post office.

(g) Recreational facility income from the publics participation and use of the facility.

(h) Service income from rented storage space, laundry machines, concessions, etc.

(4) Investment Income earnings from invested entry fees or other invested revenues is specifically excluded from the Qualified Operating Gross Income calculation ORS 307.375(2).

(5) For the purpose of determining net operating income, income and expenses must be adjusted to typical market levels for comparable facilities. If actual expenses are at typical market levels for comparable facilities, they may be used to calculate the net operating income. Expenses may include, but are not limited to, the following:

(a) Real Estate Taxes. If real estate taxes are a line item expense, they may not be included in the overall rate.

(b) Repairs and Maintenance. Charges may not include accounted for replacement reserves.

(c) Real Estate Insurance;

(d) Landscaping Maintenance;

(e) Replacement Reserve is based on current replacement costs. Items in this category are short lived and may include built-in appliances, carpeting, roofing, heating, air conditioning, elevator machinery, plumbing fixtures, and electrical fixtures. Reserves to replace personal property may be included in this category;

(f) Payroll;

(g) Management not included in payroll;

(h) Food;

(i) Supplies;

(j) Phones;

(k) Utilities such as gas, electricity, water, sewer, garbage;

(l) Housekeeping not included in payroll;

(m) Advertising. Does not include start-up costs;

(n) Publication and membership dues;

(o) Purchased Services other than those accounted for in listed categories;

(p) Nursing Services not included in payroll;

(q) Liability Insurance;

(r) Security;

(s) Other miscellaneous operating costs.

(6) Overall Rate. The appropriate overall rate is selected from the analysis of sales of comparable for-profit facilities. The overall rate includes the appropriate tax component.

(7) Additional Depreciation. Additional depreciation shall be calculated using age life tables and current cost information from commercial cost publications for the type and quality of structure being appraised. The amount of additional annual depreciation will be capitalized using the rate calculated in (6). This amount is deducted from the estimated real market value.

(8) Personal Property. The current assessed value of personal property is deducted from the estimated value. If there is no personal property account for the facility being appraised, no deduction shall be made.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.490
Hist.: 3-70; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97

150-308.505(6)
Defining "Communication Services"

(1) Irrespective of the origin of the property, it is the policy of the department to treat as "communications services," for purposes of ORS 308.505 and the central assessment statutes, not merely the direct provision of communication services to customers, but also the indirect provision of such communication services through the leasing of communication facilities by tower aggregators.

(2) For purposes of centrally assessed property, "communication services" includes paging services and tower aggregators. Tower aggregators provide towers, poles, buildings or similar facilities that

are used in providing centrally assessed wireless communication service. This rule shall first apply to tax year 2000.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.505
Hist.: RD 9-1997, f. & cert. ef. 12-31-97; REV 2-2000, f. 2-29-00, cert. ef. 3-1-00

150-308.515
Assessment of Properties of Designated Utilities and Companies by Department of Revenue

(1) As required by ORS 308.510(5), 308.515, and 308.517, the Director shall make determinations as to which properties of companies engaged in any of the activities named in 308.515(1)(a) (herein referred to as "utility service") shall be included on the assessment roll required under 308.560 and which shall be included on the several county assessment rolls. To document these determinations, the Department will issue serially numbered property classification memorandums (PCM's) which describe the property and state that it is subject to the assessment jurisdiction of either the Department or the assessor of the county in which it is located.

(2) In reaching its determinations the Department will be guided by the following:

(a) Change in classification of property from state to county assessment or vice versa is made necessary by changes in use of the property. Under the statute, ORS 308.515, the controlling factor determining assessment responsibility is the use, present or intended, of the property. In accordance the Department will classify:

(A) Those properties being used in utility service as subject to the assessment jurisdiction of the Department.

(B) Those properties which are acquired or held for subsequent use in utility service but assigned to and used by another in a non-utility use as subject to assessment jurisdiction of the county assessor.

(C) Those properties which are acquired for use in utility service but not yet placed into such service and where no other use is being made of the property as subject to assessment by the county assessor or the Department of Revenue as may be determined by the department.

(D) Those properties no longer being used in utility service and not being held for future use in utility service as subject to the assessment jurisdiction of the county assessor. The status of a property as of January 1 shall be the determining fact in its classification for that assessment year.

(b) In the case of railroad properties, the law (ORS 308.510(4)(c)) has moved the classification a step away from use by stating "a rail transportation company shall be deemed the user of property situated within its station ground reservations or rights of way notwithstanding the fact that such property may be leased, rented or otherwise assigned by it for the use or benefit of another." Thus in the case of railroad property the determining fact is whether or not a property is "within its station ground reservations or rights of way." In making that determination the following definitions shall apply:

(A) Railroad Right of Way: The land owned or used by a rail transportation company as the site for its railroad. The term "railroad" includes rails, ties, ballast, tunnels, trestles, bridges, cuts, fills, drainage systems, signal systems, communication systems, power systems, equipment and employee service buildings and structures, and all other facilities needed in the business of rail transportation except station facilities. The dimensions of the right-of-way will vary depending on requirements imposed by function and terrain and no fixed size limits can be set.

(B) Railroad Station Ground Reservation: A parcel of land, usually contiguous to a railroad right-of-way, acquired for and used as a station site.

(C) Station Site: All land area reasonably necessary to provide for the transition from and to rail transportation of people and property is logically classifiable as station ground reservation.

(c) The Department will determine whether a particular parcel is includable within one of the definitions on the basis of the following rules:

(A) If the land is owned by a railroad and is being used or is held for use as a station site or as right-of-way as defined above, it shall be classified as station ground reservation or right-of-way.

(B) If the land is owned by a railroad but is leased to another for use as a station site it shall be classified as station ground reservation. Examples would include: leases to freight forwarding, express, and trucking companies for use in assembling small shipments for movement by rail; leases to grain buying and warehousing companies who buy small quantities to accumulate into bulk rail shipments; and leases to companies in the reverse activity of receiving bulk shipments by rail and selling in small quantity.

(C) Land owned by a railroad and not included in items (A) or (B) shall be classified as not being station ground reservation or right-of-way. Examples would include: Leases to retail sales organizations as store or parking lot sites; leases to farmers for agricultural uses (this would not include agricultural permits or casual, transitory or informal agricultural uses along rights-of-way); leases to manufacturing concerns as factory sites. In marginal cases, the Department will make its decision based on the primary use being made of the land.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.515
Hist.: 1-69; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; TC 8-1981, f. 12-7-81, cert. ef. 12-31-81

150-308.515(2)(b)
Property Used for Guide Service

(1) Water transportation property otherwise assessable by the department under ORS 308.515 will be excluded from department assessment if such property is used exclusively in "for hire" transportation of other persons in guide service.

(2) Guide service as used in ORS 308.515(2)(b) is the service provided by an individual or entity who for pay aids or assists, or offers to aid or assist, any person or persons to locate, angle for, hunt or trap wildlife.

(3) Property used exclusively in the provision of guide service is, unless otherwise provided by law, subject to the assessment jurisdiction of the assessor of the county in which it is located.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.515
Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88

150-308.525
Confidentiality of Appraisals of Designated Utilities and Companies by Department of Revenue

The files of designated utilities and companies appraised by Department of Revenue will be safeguarded in the manner stated in OAR 150-192.501.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.525
Hist.: TC 7-1980, f. 11-28-80, cert. ef. 12-31-80

150-308-540
Computation of Changed Property Ratio for Centrally Assessed Property

The ratio of average maximum assessed value to real market value, also known as the changed property ratio, shall be rounded to two decimal places for purposes of assessed value calculation. See OAR 150-308.149(3).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.540
Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-308.550(2)-(A)
Allocation of Mobile Aircraft Property Value

(1) The percent of the unit value of the mobile aircraft property of air transportation and air express companies assessed by the department pursuant to ORS 308.515 allocated to Oregon shall be determined by the following formula: [Formula not included. See ED. NOTE.]

(2) Definitions:

(a) Ground time is the amount of time between the moment an aircraft comes to rest from one flight until it first moves under its own power for purposes of another flight.

(b) Flight time is the amount of time between the moment an aircraft first moves under its own power for the purposes of flight until it comes to rest at the next point of landing. Oregon flight time is the product of the total flight time of a flight originating or terminating in Oregon multiplied by the Oregon percentage of the airport-to-airport distance of the flight.

(c) A departure occurs each time an aircraft takes off from one airport for purposes of flight to another airport.

(d) Tons enplaned and deplaned are the total number of tons (passengers and cargo) loaded on and unloaded from company aircraft. Passengers and cargo entering a carrier's system on interchange flights are considered as enplaning or deplaning at the interchange point.

(e) Equated plane hours are calculated by multiplying the actual plane hours of an aircraft type by the ratio of the average value of that aircraft type to the base value. The base value is defined as the average value of one designated aircraft type for each air transportation company.

(f) Equated departures are calculated by multiplying the actual number of departures for an aircraft type by the ratio of the average value of that aircraft type to the base value.

(3) If, for a particular company, reliable data for all three factors in the formula are not available, the department shall determine the factors, for which the company provided inadequate data according to the best of its information and belief.

[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 2-1987(Temp), f. & cert. ef. 4-3-87; RD 7-1987, f. & cert. ef. 6-5-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-308.550(2); RD 5-1990, f. 11-15-90, cert. ef. 12-1-90

150-308.550(2)-(B)
Procedure for Determining Oregon Property Value for Private Railroad Car Companies

(1) Private car companies shall report the total miles their railroad cars traveled on the railroads in Oregon and the corresponding total system mileage for the prior two calendar years as part of their annual report to the Department of Revenue. If complete information for the most recent year is not available at the time the report is required, the company shall report its best estimate based on the information it has available at that time.

(2) The department shall determine Oregon's equivalent number of railroad cars for allocation purposes by use of the ratio of Oregon mileage to the system total for the prior year. This ratio shall be adjusted for any corrections of the previous estimated mileage report. The resulting ratio shall be applied to the average number of cars in the fleet for which the mileage was reported to determine the average car presence in Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-308.550(2)-(C)
Allocation of Centrally Assessed Electric Company Property Value

Electric companies. The value of the Oregon portion of a unit of property used by a company operating both within and without this state in the business of distributing electricity shall be allocated to this state by multiplying the total value of the unit by a percentage, which shall be the sum of the Oregon production plant percentage, the Oregon distribution plant percentage and the Oregon other plant percentage.

(1) The Oregon production plant percentage shall be the ratio the total original cost of the production plant of the unit bears to the total original cost of the unit times the sum of:

(a) The ratio the Oregon portion of the original cost of the production plant bears to the total unit original cost of the production plant times 75 percent;

(b) The ratio the Oregon portion of the unit's capacity to generate electricity, measured in kilowatts, bears to the unit's total capacity to generate electricity times 10 percent; plus

(c) The ratio the Oregon portion of the unit's total energy generation during the prior year, measured in megawatt hours, bears to the unit's total energy generation during the prior year times 15 percent.

(2) The Oregon distribution plant percentage shall be the ratio the total original cost of distribution plant of the unit bears to the total original cost of the unit times the sum of:

(a) The ratio the Oregon portion of the original cost of distribution plant bears to the total unit original cost of distribution plant times 50 percent;

(b) The ratio the Oregon portion of the unit's energy production sold in the prior year, measured in kilowatt hours, bears to the unit's total energy production sold times 10 percent; plus

(c) The ratio the Oregon portion of the unit's revenue generated from the sale of energy for the prior year bears to the unit's total revenue generated from the sale of energy for the prior year times 40 percent.

(3) The Oregon other plant percentage shall be the ratio the original cost of the remaining plant of the unit bears to the total original cost of the unit times the ratio the Oregon portion of the original cost of the remaining plant bears to the total original cost of the remaining plant of the unit.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.550(2)-(D)
Allocation of Centrally Assessed Gas Distribution Company Property Value

Gas distribution companies. The value of the Oregon portion of a unit of property used by a company operating both within and without this state in the business of distributing natural gas shall be allocated to this state by multiplying the value of the unit by a percentage, which shall be the sum of:

(1) The ratio the Oregon portion of the unit cost bears to the total unit cost times 75 percent;

(2) The ratio the Oregon portion of the unit's total operating revenue for the prior year bears to the unit's total operating revenue for the prior year times 15 percent; plus

(3) The ratio the Oregon portion of the unit's net operating income from the prior year bears to the unit's net operating income for the prior year times 10 percent.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.550(2)-(E)
Allocation of Centrally Assessed Pipeline Company Property Value

Pipeline companies. The value of the Oregon portion of a unit of property used by a pipeline company operating both within and without this state shall be allocated to this state by multiplying the value of the unit by a percentage, which shall be the sum of the Oregon pipeline percentage and the Oregon other property percentage.

(1) The Oregon pipeline percentage shall be the ratio the cost of lines of pipe in the unit bears to the total cost of the unit times the sum of:

(a) The ratio the Oregon portion of the unit cost of lines of pipe bears to the total unit cost of lines of pipe times 75 percent;

(b) The ratio the Oregon portion of pipe line use, measured in barrel miles or thousand cubic foot miles (MCF miles), bears to the unit's total pipe line use times 20 percent; plus

(c) The ratio the Oregon portion of the unit's total terminal activity during the prior year, measured in barrels or thousand cubic feet, bears to the unit's total terminal activity during the prior year times five percent.

(2) The Oregon other property percentage shall be the ratio the cost of all other property in the unit bears to the total cost of the unit times the ratio the cost of the Oregon portion of the other property of the unit bears to the total cost of other property of the unit.

(3) For natural gas pipelines, depreciated original cost shall be used. For other pipelines, undepreciated original cost shall be used.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.550(2)-(F)
Allocation of Centrally Assessed Railroad Company Property Value

Railroad companies. The value of the Oregon portion of a unit of property used in the business of railroad transportation by a company operating both within and without this state shall be allocated to this state by multiplying the value of the unit by a percentage, which shall be the sum of the following factors:

(1) The ratio the Oregon single track mileage of the unit bears to the total single track mileage of the unit times 20 percent.

(2) The ratio the Oregon car miles and locomotive miles traveled in the prior year bears to the total car and locomotive miles of the unit for the prior year times 20 percent. An Oregon car mile is the movement of any car, loaded or unloaded, the distance of one mile.

(3) The ratio the Oregon railway operating revenue for the prior year bears to the total railway operating revenue of the unit for the prior year times 20 percent.

(4) The ratio the Oregon property original cost bears to the total property original cost of the unit times 20 percent.

(5) The ratio the Oregon revenue freight ton-miles for the prior year bears to the total revenue freight ton-miles of the unit for the prior year times 20 percent.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.550(2)-(G)
Allocation of Centrally Assessed Communication Company Property Value

(1) Definitions

(a) "Original Cost" means the cost of tangible property, plant and equipment as reported on the company's financial statements including construction work in progress, property held for future use, land, and leasehold improvements.

(b) "Oregon operating revenue" means gross revenue from customers whose billing address is an Oregon address.

(c) "Oregon customers" means customers whose billing address is in the state of Oregon.

(2) The value of the Oregon portion of a unit of property used by a company operating both within and without this state in the communication business must be allocated to this state by multiplying the value of the unit by a percentage, which is the sum of:

(a) The ratio of the Oregon portion of the unit's original cost to the total unit's original cost, multiplied by 75 percent; plus

(b) The ratio of the Oregon portion of the unit's total gross operating revenue for the prior year to the unit's total gross operating revenue for the prior year, multiplied by 15 percent; plus

(c) The ratio of the total year-end Oregon customers for the prior year to the unit's total year-end customers for the prior year, multiplied by 10 percent.

(3) If a company is not able to provide, or does not provide, the information required to compute the ratio in (2)(a), (b) or (c) of this rule, the department will proportionally increase the percentage of the unit's remaining ratio(s) by the percentage(s) of the ratios not used.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 6-2009, f. & cert. ef. 7-31-09

150-308.550(2)-(H)
Allocation of Centrally Assessed Water Transportation Company Property Value

Water transportation companies. The value of the Oregon portion of a unit of mobile watercraft property used by a company operating both within and without this state in the business of providing water transportation shall be calculated by multiplying the assessable value of the unit by a percentage, which shall be the sum of:

(1) The ratio the Oregon portion of the originating and terminating tons of the assessable unit for the prior year bears to the total originating and terminating tons of the unit for the prior year times 50 percent; plus

(2) The ratio the Oregon portion of the ton-miles of the assessable unit for the prior year bears to the unit's total ton-miles for the prior year times 50 percent.

(3) The assessable unit of mobile watercraft property is defined as the value of all mobile watercraft property owned or used by the company less:

(a) That portion of value of any watercraft that ply the high seas or between the high seas and inland ports, such portion to be based on the ratio the days in service on the high seas or between the high seas and inland ports for the prior year bears to the total days available for service for the prior year (ORS 308.256(2)(b) and 308.515(2)(a)); and

(b) That portion of value of any watercraft engaged in locally assessable activities described in ORS 308.515(2)(b), such portion to be based on the ratio the days in service engaged in locally assessable activities described in 308.515(2)(b) for the prior year bears to the total days available for service for the prior year; and

(c) The value of any vessel undergoing substantial repairs as of the assessment date as defined in OAR 150-308.256(4).

(4) For companies primarily providing passenger or excursion service, trips shall replace tons and trip-miles shall replace ton-miles in sections (1) and (2).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-308.555
Unit Valuation of Centrally Assessed Properties

(1) ORS 308.555 authorizes the department to assess property by valuing the entire property as a unit. Determination of the proper unit of property to be valued is a question of fact to be decided by the appraiser under rules adopted pursuant to 308.655 and the guidelines in the WSATA Handbook, adopted in OAR 150-308.205-(B).

(2) For purposes of determining the assessed value of centrally assessed property appraised as a unit pursuant to ORS 308.505 to 308.665, the following definitions apply:

(a) "Controlling interest" means owning or holding more than 50 percent of the voting stock or shares in a company.

(b) "Holding company" means a company that is formed to own the stock in other companies,

(A) A holding company usually owns enough voting stock in another corporation to influence its board of directors and, therefore, to control its policies and management.

(B) A holding company's operations are the operations of the companies in which it holds stock.

(c) "Parent Company" means a company that owns a controlling interest in another company.

(d) "Unit" means all property, real and personal, tangible and intangible, as described in ORS 308.510, and used or held for future use by a company in providing the services and commodities listed in ORS 308.515.

(e) "Unit valuation" is the valuation of integrated assets functioning as an economic unit at their highest and best use.

(3) The department may consider a variety of facts to determine what property should be assessed as a unit. These include, but are not limited to:

(a) Functional integration, determined by looking at the operation of the property used in the business at its highest and best use,

(b) Integration of management, administration, marketing, financing, use of employees and other resources of the business in which the property is used;

(c) Use of the property that contributes to the service or business listed in ORS 308.515;

(d) How both stock investors and investors acquiring all or a portion of the business assets or stock view investment in the property;

(e) Information in:

(A) Reports filed by publicly traded companies with the Securities and Exchange Commission;

(B) Filings with other governmental or nongovernmental agencies or organizations; and

(C) Other documents or materials used by the business in its service or sales.

(4) When valuing property as a unit:

(a) The department may include property used or held for future use by a parent company, holding company, subsidiary, or any other type of legal entity, including but not limited to partnerships, LLCs or joint ventures, when the department determines that the property of such business is operationally or financially integrated without regard to the physical location of the property, whether within or without the United States.

(b) The department will generally assess the property of each company on the roll (ORS 308.560) in the name of the parent corporation when the company unit includes more than one corporate entity.

NOTE: Publications: The publication referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and 183.355(6).
Stat. Auth.: ORS 305.100 & 308.655
Stats. Implemented: ORS 308.555 & 308.515
Hist.: REV 14-2008, f. & cert. ef. 11-14-08

150-308.560
Contents of the Utility Assessment Roll

For each company assessed, the department will include on the assessment roll according to the best information available, the following information:

(1) The name of the company;

(2) The name of a company contact or authorized agent;

(3) The last known address of the company or authorized agent;

(4) A general property description;

(5) The assessed value (AV), real market value (RMV), AV exceptions, and the RMV of exceptions;

(6) The values apportioned to each county where the property is located, including code areas, locations, county reference number, miles of track, wire or pipe, and values per mile, as applicable;

(7) Any penalty assessed under ORS 308.030;

(8) Any other information the department deems necessary for the counties to perform their duties as it pertains to the value determined for utility companies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.550
Hist.: REV 10-2002, f. & cert. ef. 12-31-02

150-308.605(2)
Contents of Department's Journal

The department's journal shall contain:

(1) A schedule of hearings conducted by the director during review of the tentative roll;

(2) The date the review is completed;

(3) The change property ratio for centrally assessed property;

(4) The name of each company assessed a late filing penalty and the amount of the penalty.

(5) The name of each company receiving a waiver of the late filing penalty from the director; and

(6) Any other information pertaining to the review of the tentative roll that the director deems appropriate.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.605
Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-308.655
Centrally Assessed Property – Appraisal Guidelines

The **2009 Western States Association of Tax Administrators Appraisal Handbook**: Unit Valuation of Centrally Assessed Properties is adopted as the official valuation guide for property assessed by the Oregon Department of Revenue under ORS 308.505 to 308.665 for ad valorem tax purposes.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]
Stat. Auth.: ORS 305.100, 308.655
Stats. Implemented: ORS 308.655
Hist.: TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 2-1990, f. & cert. ef. 3-15-90; Renumbered from 150-308.205-(B), REV 11-2010, f. 7-23-10, cert. ef. 7-31-10

150-308.704
Qualification of Property for Special Assessment as Government Restricted Multiunit Rental Housing

(1) Definitions:

(a) "Qualified income rental housing" means property subject to the occupancy by tenants who meet restricted incomes and rents as described in the government incentive program in which the owner of the property is participating.

(b) "Dwelling unit" means a structure or the part of a structure that is used as a home or residence.

(c) "Contiguous" means having a common boundary to some extent greater than a point. Tax lots are contiguous if separated by public or county roads, state highways, or non-navigable streams or rivers. Tax lots are not contiguous if they are separated by interstate freeways or navigable streams or rivers, except where there is direct connecting access, such as an underpass, for property separated by an interstate freeway.

(d) "Assisted Living Facility" means a building, complex or distinct part thereof, consisting of fully self-contained individual living units where six or more seniors and adult persons with disabilities may reside in homelike surroundings. The facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(e) "Residential Care Facility" means a building, complex or distinct part thereof, consisting of shared or individual living units in a homelike surrounding where six or more seniors and adult persons with disabilities may reside. The facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(f) "Services" means supervision or assistance provided in support of a resident's needs, preferences and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial and physical functioning.

(2) To qualify for special assessment as government restricted multiunit rental housing, all of the following criteria must be met:

(a) The owner must file an application with the assessor in the county where the property is located;

(b) The property must be subject to a government restriction, which limits the use of the housing to qualified income rental housing, as of January 1 of the assessment year.

(c) The property owner must receive a government incentive for agreeing to limit the use of the property to qualified income rental housing. These incentives may include, but are not limited to:

(A) A low-income housing tax credit under section 42 of the Internal Revenue Code;

(B) Financing derived from exempt facility bonds for qualified residential rental projects under section 142 of the Internal Revenue Code;

(C) Financing derived from non-hospital bonds issued by entities that are tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code;

(D) A low interest loan under section 235 or section 236 of the National Housing Act (12 U.S.C. 1715Z or 1715Z-1) or under 42 U.S.C. 1485;

(E) A government rent subsidy;

(F) A government guaranteed loan; or

(G) A rural development 515 low interest multifamily loan.

(d) The property must be residential rental housing consisting of four or more dwelling units situated on the same or contiguous tax lots. If there are multiple residential structures, at least 50 percent of the structures must contain two or more dwelling units; and

(e) The property must not be an assisted living or residential care facility, or provide a program of assisted living or residential care services.

(3) Examples of properties that may qualify for special assessment as having four or more dwelling units include:

(a) Two duplexes on the same tax lot.

(b) Two tax lots, each having one duplex and separated by a local street.

(c) Two duplexes plus two single family units, one of which may be a manager's unit, with each structure on a separate but contiguous tax lot.

(4) Examples of properties that do not qualify for special assessment as having four or more dwelling units include:

(a) A triplex.

(b) Scattered, non-contiguous sites with no more than three units per site.

(c) One duplex plus two single family units.

(d) Single family homes, regardless of how many, whether on a single or contiguous tax lots.

(e) Group homes.

(5) If a single housing project consists of some units that qualify under this rule, such as two duplexes on the same tax lot, plus some units that do not qualify, such as two more duplexes on non-contiguous tax lots, only those units that qualify under this rule may be subject to special assessment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 205.320, 308.027, 308.156, 308.205, 308.234, 308.704, 308.709, 308.712, 308.714, 309.200, 311.806, 309.200 & 457.450
Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 10-2002, f. & cert. ef. 12-31-02; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-308.709
Application and Election Process for Government Restricted Multiunit Rental Housing

(1) The property owner must file an application and election form with the county assessor to obtain a special assessment for government restricted multiunit rental housing (LIH) provided by ORS 308.701 to 308.724. The application and election form must be filed on or before April 1 of the assessment year. The application and election form may be filed after April 1 and on or before December 31, if accompanied by a late filing fee equal to the greater of $200 or one-tenth of one percent of the real market value (RMV) of the property described in the application filed. Any application and election form that is filed late must be accompanied with the late filing fee. If the fee is not paid, the special assessment will not be granted. If the special assessment is denied by the assessor, the late filing fee must be refunded to the applicant.

(2) At the time the application and election form is filed, the property owner must elect the method the assessor is to use to determine the specially assessed value (SAV) of the property.

(a) If the property owner elects the income approach method, the application and election form must be accompanied by income and expense documentation. The required documents are:

(A) The rent roll for the month of December immediately preceding the date of application. The rent roll must show the rents charged for each unit and which units, if any, are vacant; and

(B) Annual income and expense statements for at least the three most recent years. Audited statements should be submitted, but unaudited statements may be provided if audited statements are not available; or

(C) Pro forma income and expense statements, but only if the project is new and historical documents are not available; or

(D) A combination of actual and pro forma income and expense statements for at least three years, if the property is not more than three years old.

(E) For mixed-use property the applicant must provide income and expense statements only for the portion of the property used as government restricted multiunit rental housing. Mixed-use property is property that consists of both government restricted multiunit rental housing and property used for other purposes.

(b) If the property owner elects the ratio method, the application and election form must be accompanied by the rent roll for the month of December immediately preceding the date of application. The rent roll must show the rents charged for each unit and which units, if any, are vacant.

(3) When one of the following events occurs after the initial application and election form has been approved, the owner must submit additional information to the assessor:

(a) The property owner wishes to change the election of the method used to determine the SAV; or

(b) New property has been constructed at the site, or new improvements are made to the government restricted multiunit rental housing; or

(c) The county assessor requests current income and expense statements.

(4) The county assessor will review the application and election form and accompanying documentation and determine if the property qualifies for special assessment.

(a) The application and election form must contain the information required under ORS 308.709 for the assessor to approve the special assessment. If the application and election forms are incomplete, the assessor may request additional information from the applicant in writing, as necessary, for completion or clarification. The applicant must submit the requested information, in writing, to the assessor within 15 days of the date of the request or by the filing deadline, whichever is later, for the assessor to accept the application as a timely filing. If the applicant does not submit the requested information within the time required, the assessor may deny the application.

(b) The assessor must notify the applicant of the determination, in writing, within 120 days of the date the application was filed with the assessor's office.

(A) If the application is denied, the notice to the property owner must include the instructions for appealing a denial of the special assessment by the assessor.

(B) If the application is approved, the assessor must add the following notation to the tax and assessment rolls each year: "LIH special assessment (potential penalty if disqualified)."

Stat. Auth.: ORS 305.100, 306.120, 308.709, 308.724
Stats. Implemented: ORS 308.709
Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 10-2002, f. & cert. ef. 12-31-02; REV 10-2002, f. & cert. ef. 12-31-02; REV 4-2007, f. 7-30-07, cert. ef. 7-31-07

150-308.712
Special Assessment of Government Restricted Multiunit Rental Housing Property

(1) The assessed value (AV) of government restricted multiunit rental housing property is the lower of:

(a) The specially assessed value (SAV);

(b) The maximum assessed value based on the special assessment (MSAV); or

(c) The real market value (RMV).

(2) An owner of government restricted multiunit rental housing property may elect to have the property specially assessed using:

(a) An income approach method using actual income and stabilized expenses; or

(b) A ratio method.

(3) The income approach method: For the initial year of special assessment, the assessor must utilize the property's actual income statements for at least the prior three years if available. Pro forma statements may be used for recently constructed properties. Economic or market based rents cannot be used. A combination of actual and pro forma statements may be used.

(a) The goal of the income approach is to determine the value of only the real property. No personal property value should be included. The assessor may remove personal property value by one of the following methods:

(A) Include revenues and expenses for both the real and personal property. After the net operating income has been capitalized, deduct the value of the personal property; or

(B) Remove all income and expense generated by the personal property assets prior to capitalization.

(b) In determining the SAV, no income should be included for government income tax credits or mortgage interest subsidies.

(c) The assessor must use actual income (revenues) and stabilized expenses rather than market or economic rents. However for recently built or recent conversions to government restricted multiunit rental housing, a combination of pro forma and actual rental income may be used.

(d) Actual revenues included are those that result from the operation of the property. They include the rent paid by tenants and any monthly rent subsidies. Also, rent for parking or other amenities must be included. Revenue not directly related to the property, such as interest income, should be excluded.

(e) Stabilized expenses are those that would be expected to be typical for the property, not those that reflect unusual or extraordinary circumstances. The assessor may use averages for the three years and may express expenses on a per-unit basis or as a percentage of revenue. Expenses for a particular year should be adjusted if they are atypical. The goal is to find the typical level of expenses.

(f) Expenses to include are those directly related to the operation of the property including, but not limited to, repairs and maintenance, utilities, government required tenant services, management, and insurance. Certain expenses such as depreciation, mortgage interest, payments to developers, and property taxes must be excluded. Reserves for replacements should be included, but any expense in the repair and maintenance category should be disallowed if it comes from the reserve account.

(g) The net operating income is determined from the above steps by subtracting the stabilized annual expenses from the actual annual revenues.

(h) The capitalization rate is estimated as follows:

(A) Factors to be considered in selecting a rate include the risks associated with multiunit rental housing subject to government restriction. These include diminished ownership control, income-generating potential, and liquidity. The assessor must also consider any other factors or risks typically taken into account when estimating a capitalization rate.

(B) The selected capitalization rate must be equal to or greater than the rate used by the assessor for similar unrestricted properties.

(C) To the selected rate, add the effective property tax rate for the code area where the property is located, as described in OAR 150-308.205-(G). This is the overall rate to use for capitalization.

(D) The value determined from the income approach is calculated by dividing the overall capitalization rate into the net operating income. This is the SAV. Notwithstanding the result of the calculation, the SAV of the real property land and improvements may not be less than $1,000 per dwelling unit.

(4) The ratio method: This method utilizes a ratio of restricted to market rents.

(a) The assessor estimates the RMV of the property as if unrestricted.

(b) The actual annual total rent, including subsidies, is determined.

(c) The annual market rent for the property, if unrestricted, is estimated. If insufficient county data is available, the assessor may look to regional data.

(d) The ratio of the actual rent to the market rent is calculated.

(e) The unrestricted value from step (4)(a) is multiplied by the ratio from step (4)(d). This is the SAV. Notwithstanding the result of the calculation, the SAV of the real property land and improvements may not be less than $1,000 per dwelling unit.

(5) Other issues of value, including unusual physical or functional circumstances affecting the property, are not considered in determining the SAV. They are appropriately addressed in estimating the property's RMV.

(6) Certain properties may have a mixed use. For example, a portion of the property may be used as government restricted multiunit rental housing property, while another portion may be commercial or retail. The special assessment applies only to the portion that is used as government restricted multiunit rental housing property. The assessment of the remainder of the property is unaffected by this rule.

(a) For mixed-use properties, a portion of the land value may be subject to special assessment as government restricted multiunit rental housing property. The remainder of the land value is not subject to this special assessment.

(b) The portion of the total land value subject to special assessment equals the portion that the gross square footage of the real property improvements used for government restricted multiunit rental housing bears to the total gross square footage of all the real property improvements, both restricted and unrestricted.

(7) The SAV must be allocated between land and improvements.

(a) The portion of the SAV allocated to the land is equal to the RMV of the land at its highest and best use.

(b) The remaining SAV is allocated to the improvements.

(c) If the SAV is equal to or less than the RMV of the land, a minimum value will be placed on the improvements and the remaining value will be assigned to the land.

(8) For the initial year of application, the MAV of the specially assessed property (MSAV) is found by multiplying the SAV determined using the method chosen by the property owner by the changed property ratio (CPR). The assessor must use the same CPR that is used for similar unrestricted multiunit housing.

(9) Following the initial year, the SAV may be redetermined using the income approach method or the ratio method (whichever the property owner elected) as follows:

(a) The property owner may request a redetermination of the SAV. The owner must make a written request to the assessor by April 1 of the assessment year and must provide necessary income statements.

(b) The assessor may decide to redetermine the SAV. No later than April 1 of the assessment year, the assessor will notify the property owner in writing and request income statements for the three most recent years (if not already provided).

(c) If the SAV is not redetermined under (9)(a) or (9)(b), the assessor may leave the SAV unchanged or may use an appropriate trend or index.

(10) For years after the initial year, the MSAV is 103% of the prior year's AV or 100% of the prior year's MSAV, whichever is greater.

(a) If omitted property is assessed or there is a lot line adjustment, the MSAV is calculated as provided in ORS 308.149 to 308.166.

(b) If new improvements are made to the property, and the owner applies for special assessment of the new improvements, the MSAV of the new improvements as determined by this rule is added to the existing MSAV.

(c) If the property is disqualified from special assessment, and the property is not requalified, a new MAV, based on RMV, will be determined under ORS 308.149 to 308.166.

(d) If the property is disqualified from special assessment, and the property is later requalified, the MSAV will be determined using the same method as prescribed in this rule for the initial application.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 205.320, 308.027, 308.156, 308.205, 308.234, 308.704, 308.709, 308.712, 308.714, 309.200, 311.806, 309.200 & 457.450
Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 10-2002, f. & cert. ef. 12-31-02; REV 10-2002, f. & cert. ef. 12-31-02; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-308.714-(A)
Special Assessment Disqualification Process

(1) The assessor must disqualify property from special assessment as government restricted multiunit rental housing if:

(a) The property is no longer multiunit rental housing subject to a government restriction on use; or

(b) An event described in ORS 308.146(3)(b) or (c) occurs with respect to the multiunit rental housing; or

(c) The owner requests disqualification.

(2) The property owner must notify the county assessor, in writing, within 60 days of a disqualifying event.

(3) Property disqualified from special assessment must be valued by ordinary appraisal methods in the tax year immediately following the disqualifying event.

(4) For any tax year following the tax year of disqualification, a property owner may reapply to the county assessor for special assessment if:

(a) The multiunit rental housing property again becomes subject to a government restriction on use; or

(b) An event described in ORS 308.146(3)(b) or (c) caused the disqualification.

(c) The property was voluntarily disqualified from special assessment and the owner is filing a new application under the conditions described in the voluntary disqualification rule.

(5) The following penalties apply if the property owner fails to notify the assessor within 60 days of the disqualifying event:

(a) If the property is disqualified because the multiunit rental housing is no longer subject to a government restriction on use, the penalty is the difference between the taxes imposed and those that would have been imposed had the property not been specially assessed, plus any applicable interest.

(b) If the property is disqualified because new property is constructed or new improvements are made to the qualified property, no penalty will be charged. The new property or improvements will be assessed as omitted property.

(c) If the property is disqualified because of an event described in ORS 308.146(3)(b) or (c), the penalty is the difference between the taxes imposed and those that would have been imposed had the property not been specially assessed, plus any applicable interest.

(d) If the property is disqualified at the owner's request and none of the disqualifying events in (1)(a) or (1)(b) exist, there is no penalty.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 205.320, 308.027, 308.156, 308.205, 308.234, 308.704, 308.709, 308.712, 308.714, 309.200, 311.806, 309.200 & 457.450
Hist.: REV 6-2001, f. & cert. ef. 12-31-01

150-308.714-(B)
Process for Voluntary Disqualification from Special Assessment Program and Subsequent Application

(1) An owner may choose to remove their property from special assessment as government restricted multiunit rental housing at any time. The voluntary disqualification from special assessment becomes effective as follows:

(a) If the request for withdrawal from the program is filed with the assessor between January 1 and June 30 inclusive, the property will be removed from special assessment for the tax year beginning July 1 of the same calendar year.

(b) If the request for withdrawal from the program is filed with the assessor between July 1 and December 31 inclusive, the property will be removed from special assessment for the tax year beginning July 1 of the next calendar year.

(2) If a property is voluntarily disqualified from special assessment, the owner may file a new application and election form with the county assessor, on or before April 1 of any assessment year within 10 years immediately following the first tax year the property was first qualified for special assessment. If the application is approved, the property will be specially assessed for the next tax year.

(3) If a property has been voluntarily disqualified from special assessment, the property can qualify only one more time for special assessment. This subsequent qualification must occur within the 10 year period following the first tax year the property was first qualified for special assessment. Any applications for special assessment received by the assessor after the 10-year period will be denied.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 205.320, 308.027, 308.156, 308.205, 308.234, 308.704, 308.709, 308.712, 308.714, 309.200, 311.806, 309.200 & 457.450
Hist.: REV 6-2001, f. & cert. ef. 12-31-01

150-308.865
Payment of Taxes on Manufactured Structure That Allows Change from Real Property to Personal Property Status

When a manufactured structure that is currently assessed as real property under ORS 308.875 is being moved, the tax collector must allocate the taxes between the manufactured structure and the remainder of the property. The full payment of the taxes on the value attributable to the manufactured structure releases the manufactured structure from the property tax lien.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.865
Hist.: RD 5-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-308.875-(A)
Manufactured Structure Classified as Real or Personal Property

(1) When the records in the assessor's office or the ownership document issued by Building Codes Division of the Department of Consumer and Business Services (DCBS) do not identify the same ownership for a manufactured structure as for the land upon which the structure is located, the assessor must classify the manufactured structure as personal property. However, if the taxpayer submits documentation establishing that the ownership of the manufactured structure and land upon which the structure is located is the same, the assessor must classify the manufactured structure as real property.

Example 1: The land is in the name of Pat Public, Inc., a corporation, and the manufactured structure is in the name of Pat Public. Because a corporation is a different legal entity than an individual, the ownership is not the same, so the manufactured structure must be classified as personal property.

Example 2: A husband and wife are owners of a parcel of land upon which a manufactured structure is located. The ownership document for the manufactured structure is in the husband's name only. The ownership is not the same and the manufactured structure must be classified as personal property.

Example 3: Pat Public owns a manufactured structure and is buying on contract the parcel of land upon which the structure is located. For purposes of ORS 308.875 the ownership is the same and the manufactured structure must be classified as real property.

(2) When the owner of a manufactured structure has a leasehold estate of 20 years or more, and the lease specifically permits the owner to record that lease in the county deed records, the owner may complete an application as prescribed by DCBS to have the home classified as real property. If the assessor determines that the manufactured structure qualifies for recording as required by ORS 446.626, and the lease has subsequently been recorded in the county deed records, the assessor must then classify the home as real property.

(3) When the owner of a manufactured structure is a member of a manufactured dwelling park nonprofit cooperative formed under ORS 62.800 to 62.815 that owns the land on which the manufactured structure is located, the owner may complete an application as prescribed by DCBS to have the home classified as real property. If the assessor determines that the manufactured structure qualifies for recording as required by ORS 446.626, the assessor must then classify the home as real property.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.875
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 5-1996, f. 12-23-96, cert. ef. 12-31-96; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

150-308.875-(B)
Real and Personal Manufactured Dwellings to be Assessed in Like Manner

All manufactured dwellings are assessable.

(1) Under ORS 308.875, the owner of a personal property manufactured dwelling need not file a personal property return on the structure.

(2) The personal property assessment cancellation provided in ORS 308.250 does not apply to such dwellings.

(3) They shall be assessed at 100 percent of real market value.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.875
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93

DIVISION 308A

LAND SPECIAL ASSESSMENTS

150-308A.056
Farm Use Definitions, Inactivity Due to Illness, and Description of Lands in Farm Use

(1) This rule applies to land in both exclusive farm use zones and non-exclusive farm use zones that may qualify for special assessment under ORS 308A.062 or 308A.068.

(2) Definitions:

(a) "Farm unit" means a farming enterprise which includes all parcels being farmed by a single operator, whether the operator owns or leases the farmland.

(b) "Farm use" is defined in ORS 308A.056 and applies to land both inside and outside exclusive farm use zones.

(c) "Illness" means sickness, disease, injury, or disorder of body or mind which prevent the farmer or immediate family member from performing necessary farm operations.

(d) For purposes of subsection (2)(c): "Immediate family member" means the farmer's spouse, children, or any person for whom the farmer has a legal responsibility including, but not limited to, guardianship of a dependent parent or child.

(e) "Land" means land in its natural state, including any site developments (see ORS 307.010).

(A) "Land" includes all mines, minerals, quarries, dikes, banks, drainage tile, water rights, and the like. Since ORS 308A.056 relates only to land used for farming, any mineral reserves under the land continue to be assessed at real market value as defined by ORS 308.205. Minerals include oil and gas. Severed mineral interests, even though underlying zoned farmland, are assessed to the owner in accordance with ORS 308.115.

(B) For the purpose of assessment of land in farm use, "land" does not include buildings, structures, improvements (unless their contribution is an integral part of the income attributable to the land), machinery, equipment, land improvements for homesites, fixtures erected upon or affixed to the land itself, or land used for a non-farm residence or other non-farm purpose.

(f) "Wasteland" includes but is not limited to swamps, rock outcroppings, gullies, unusable overflow lands, and drainage ways.

(A) Wasteland does not include tillable lands left idle or uncultivated and non-tillable grazing lands left unused when the accepted farming practice is to utilize the land.

(B) Wasteland does include land described in paragraph (1)(f)(A), if the owner can show that it is uneconomical to utilize the land as part of the farm unit. Utilizing the land is uneconomical if the cost to raise crops or animals exceeds the value of the crops or animals. Examples in which it would not be economical to utilize the land include:

(i) An unfenced area of grazing land where the annualized cost of fencing would exceed the income derived from the land.

(ii) An area of a farm that was only profitable through irrigation that is now unused because the cost of electricity to operate the irrigation pumps increases expenses beyond the income that can be derived from that area of land.

(C) Wasteland caused by the taxpayer, owner, or person in control of the property is not entitled to special farm use assessment. Examples of taxpayer-created wasteland include "mined out" land where gravel, soil, or other minerals have been extracted, and mine tailing refuse areas.

(3)(a) The law seeks to give the benefits of ORS 308A.062 and 308A.068 to that farmland which is operated primarily for the purpose of obtaining a profit in money.

(b) The assessor must consider all requirements of ORS 308A.056 and be convinced that the land is used in a manner that is reasonably designed and intended to obtain a profit in money by accepted farming practices. If the primary purpose of the current use of the land is not to obtain a profit in money, the land is not farm use land. This primary purpose of the land must be ascertained from overt acts. All pertinent facts will be considered to determine if property qualifies as farm use land. Pertinent information may include:

(A) Present and past use of the land.

(B) If the farming operation is conducted by another for the owner, the provisions of the oral or written agreement including the term, area let, consideration, and provisions for termination.

(C) Participation in governmental or private agricultural programs or activities.

(D) Productivity of the land.

(E) Number of livestock or poultry (by type).

(F) Amount of last harvest of each crop.

(G) Gross income from crops, livestock, and livestock products.

(H) Uses of the land for other than farming operation.

(I) Ratio of farm or agricultural use as against other uses of the land.

(4)(a) Farm inactivity for one year or less due to illness of the farmer or an immediate family member does not disqualify the property from farm use special assessment or continuation of abatement.

(A) Proof of illness must be provided to the assessor by a written statement from a licensed medical practitioner. The statement must identify the nature of the illness, the onset of the illness, and the extent of its debilitating nature.

(B) The timing of the illness must prevent farming practices.

(b) For meeting the farm income requirements of ORS 308A.071 and 308A.119, the year of farm inactivity due to illness is not counted as one of the five years for income or abatement determination.

(5) Notwithstanding section (3), any part of a farm unit that is employed in or supports a non-farm use does not qualify for special assessment. Examples of non-farm use include, but are not limited to:

(a) Land under retail stores, except for farm stands offering agricultural products for sale as described in ORS 215.213 and 215.283.

(b) Land under processing facilities, except as allowed by ORS 215.213 and 215.283.

(c) Land under areas used to encourage the use or enjoyment of agricultural products such as tasting rooms, banquet halls, public gathering areas, or public entertainment.

(d) Land under structures such as communication towers, and improvements that support the structures.

(e) Land under structures used for power generation or transmission such as wind turbines, substations, crane pads, and improvements that support the structures.

(f) Private roads not used primarily to support the farming operation such as those used to access structures listed in subsections (d) and (e).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.380 & 308A.056
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.380-(C); REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

150-308A.056(1)(g)
Disposal by donation to a local food bank or school.

(1) Definitions for this rule

(a) "Local food bank" means any organization located in the state of Oregon, that is a charitable or not-for-profit organization that collects food and distributes it, without charge, to the needy, including children and families, homeless, unemployed, elderly or low income people. For the purposes of ORS 308A.056(1)(g) and this rule, "local food bank" includes regional food banks as defined under OAR 813-220-0005(6).

(b) "School" means a public or private educational institution, or a publicly or privately funded early childhood education program located in the state of Oregon.

(2) For the donation to a local food bank or school of products or by-products raised for human or animal use to constitute a "farm use" under ORS 308A.056, the owner, renter or operator of the land to be qualified for farm use special assessment shall document the donation in writing and shall submit that documentation to the county assessor, if requested.

(a) The documentation required by this subsection shall contain, at a minimum:

(A) The name, address, and phone number of the owner, renter or operator applying for or maintaining the land in special assessment.

(B) The description, date, and quantity of the donation.

(C) The description of the land upon which the product or by product was raised including either the county assessor's tax lot number or tax account number.

(D) The signature of the director, supervisor, or other appropriate official, whether paid or volunteer, of the local food bank or school receiving the donation.

(E) The name and address of the local food bank or school receiving the donation.

(F) A signed statement by the owner, renter or operator of the land for which special assessment is requested or maintained verifying that the information provided is accurate.

(b) The owner, renter or operator may satisfy the documentation requirements of section (2) by submitting a completed Form 150-101-240 to the county assessor.

(c) If the owner, renter or operator does not produce the documentation described in this subsection in response to a request from the county assessor, then the land may be disqualified from special assessment.

(3) Nothing in ORS 308A.056(1)(g) or this rule shall constitute an exception to the income requirements for nonexclusive farm use zone farmland, as set forth in ORS 308A.071, and the value of donated products or by-products shall not be included in the calculation of either "gross income" under ORS 308A.071(7)(b), or "income from consumed products" under OAR 150-308A.071(1). Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308A.056
Hist.: REV 3-2014, f. & cert. ef. 7-31-14

150-308A.062
Assessment of Farmlands Within Exclusive Farm Use (EFU) Zones

(1)(a) Zoned farm use land means land that is zoned as farm use land pursuant to ORS 215.010 to 215.190.

(b) Real market value is the basis for the assessment of farmland not qualified to be assessed at farm use value. Real market value is defined in ORS 308.205.

(2) Qualification and Disqualification Dates:

(a) To be entitled to farm use assessment, land must be qualified as of January 1 each year. Often, qualifying farm use land is not farmed during the winter months which include the qualifying date of January 1. If land is not employed in farm use on January 1, the assessor may look at the prior year's usage of the land to determine qualification for January 1.

(b) Farm use disqualifications take effect July 1 following the disqualification.

(3) Appeal on the question of qualification for special assessment as farm use land: An appeal from a decision of the assessor concerning qualification for special assessment as farmland under ORS Ch. 308A is made directly to the Magistrate Division of the Tax Court under 305.275(1) (also see 305.280). It is not made through an appeal to the county Board of Property Tax Appeals.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.370 & 308A.062
Hist.: 12-63; 1-66; 2-68; 3-70; 9-71; 11-73; 12-75; 12-31-77; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1983, f. 12-20-83, cert. ef. 12-31-83; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.370

150-308A.068
Assessment of Farmlands Outside of Exclusive Farm Use (EFU) Zones

(1)(a) To qualify for assessment at its farm use value, land not within an exclusive farm use zone:

(A) Must be currently employed in a qualifying farm use;

(B) Must have been used for farm use for the two years preceding the current assessment year;

(C) Must have met the income requirement for three out of the last five years and;

(D) Must have an application filed with the assessor meeting the requirements of ORS 308A.077.

(b) Real market value is the basis for the assessment of farmland not qualified to be specially assessed at farm use value. Real market value is defined in ORS 308.205.

(2) Qualification and Disqualification Dates:

(a) To be entitled to farm use assessment, land must be qualified as of January 1 each year. Most land is not farmed during the winter months including January 1. If land is not employed in farm use on January 1, the assessor may look at the prior year's usage of the land to determine qualification for January 1.

(b) All farm use disqualification takes effect July 1 following the disqualification.

(3) Effect of lease or option to buy surface rights. If any owner of land outside an EFU zone grants and has outstanding a lease or option to buy surface rights of such land that permits other than farm use of all or a portion of the land, that land subject to such other use is not qualified for special farm use assessment under ORS Ch. 308A. Leases for hunting, fishing, camping or other recreational use or the exploration of geothermal, mineral or other subsurface resources will not disqualify the land if the exploration, use, or possession does not interfere with the farm use of the farmland. The income derived from such leases will not be included for the income test.

(4) Appeal on the question of qualification for special assessment as farm use land: An appeal from a decision of the assessor concerning qualification for special farm use assessment under ORS Ch. 308A is made directly to the Magistrate Division of the Tax Court under 305.275(1) (also see 305.280). It is not made through an appeal to the county Board of Property Tax Appeals.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.380 & 308A.068
Hist.: 12-63; 1-66; 2-68; 3-70; 9-71; 11-73; 3-76; 12-31-77; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.380-(B)

150-308A.071
Gross Income Requirement

(1) *Income From Consumed Products*. For purposes of the income requirement for farmland or a farm parcel outside an exclusive farm use zone, gross income includes the value of any crop or livestock used by the owner personally or in the farming operation. The owner must keep records accurately reflecting both the value and the use of the crop or livestock in a manner consistent with generally accepted accounting practices. The value of any crop or livestock used by the owner personally or in the farming operation is the amount of money the product would have been sold for in the normal marketing of the crop or livestock by the taxpayer. However, the value of products consumed, by the owner personally or in the farming operation, must constitute no more than 49 percent of gross income as required under ORS 308A.071.

(2) *Adjusted Gross Income From Livestock*. In determining gross income from livestock, the purchase cost must be deducted from the gross sales price.

(3) *Burden of Proving Income*. The burden of proving that property that is not within an exclusive farm use zone meets the gross income requirements of ORS 308A.071 is upon the owner or person claiming special assessment. This burden l is met if information establishing sufficient gross income is supplied to the county assessor as provided below. A failure to provide the required income information to the county assessor constitutes grounds for disqualification under 308A.116(1)(c).

(4) *Income Information*. The following procedures apply if the assessor lacks sufficient information on March 1 to support a determination that land not in an EFU zone qualifies for special farm use assessment.

(a) On or before March 1, the assessor must send notice to the owner or person claiming special assessment of the need to provide income information for property subject to special assessment. The assessor must include an income information questionnaire with the notice. The property owner must use the questionnaire to provide income information to the county assessor. The property owner must provide the income information to the county assessor no later than April 15.

(b) The assessor must send the notice and the questionnaire to the last known address of record of the owner or person claiming special assessment for the subject property. The notice and questionnaire must be in a form approved by the Department of Revenue.

(c) If the information provided to the county assessor is sufficient to determine whether or not the subject property is qualified for special assessment, the assessor must take the appropriate action.

(d) If the information provided to the county assessor is insufficient to make a determination as to the qualification of the subject property for special assessment, or if no information is provided, the assessor must send a notice to the last known address of record for the owner or person claiming special assessment. The notice must be in a form approved by the Department of Revenue and must include:

(A) A statement of the assessor's intent to disqualify the subject property; and

(B) A statement that within 30 days after the date of the mailing of the notice, the owner or person claiming special assessment may appear and show cause why the property should not be disqualified.

(e) In determining whether the subject property qualifies for special assessment, the assessor must take into consideration information obtained through the income information questionnaire, the show cause hearing and the county assessor's records.

(f) If property is disqualified from special assessment solely because no income information was provided by April 15, or within the 30 days of assessor's notice of intent to disqualify, the property owner may file an appeal with the Magistrate Division of the Tax Court.

(A) "Good and sufficient cause" has the meaning given in OAR 150-307.475. The failure of the county assessor to provide the notice required in subsection (a) of this rule on or before March 1 constitutes good and sufficient cause for the owner's failure to provide timely income information.

(B) The procedural requirements contained in this rule are in addition to the requirements of ORS 308A.718.

(C) Nothing contained in this rule alters the right of a person claiming special assessment to deferral and abatement of additional tax, pursuant to ORS 308A.119.

(D) Nothing contained in this rule precludes the assessor from continuing special assessment on farmland if the assessor determines that the property meets the qualifications.

(5) The assessor may send a copy of the income information received by the assessor under subsection (3) of this rule to the Department of Revenue.

(6) *Examples: Satisfying income requirements*:

(a) A ten acre parcel in an area not zoned EFU has never been used for farm purposes. For this parcel to qualify for special farm use assessment, the owner must develop an income history from farm uses of the parcel. The parcel will meet the income requirements of ORS 308A.071(2)(a) if it produces at least $1,000 gross income in each of the last three consecutive years or in any three of the last five consecutive years.

(b) A ten acre parcel was segregated from a larger farm one year ago. The land was not farmed during the year following segregation. In order to qualify for farm use assessment, the parcel must be farmed for two successive years (ORS 308A.068(1)) and meet the income requirement of at least $1,000 in one of the two years (assuming the large farm met the income requirement before the ten acre parcel was segregated).

(c) A four acre parcel in an area not zoned EFU has been farmed continually. The income has never exceeded $300. In order to qualify for special farm use assessment, the parcel must produce at least $650 in gross income per year for any three years during any consecutive five year period.

(d) A twenty two acre parcel in an area not zoned EFU includes a ten acre farm woodlot, four and one-half acres of three year old cherry trees, five acres of pasture, two acres of wasteland and a one-half acre non-farm homesite. The five acres of pasture must have produced at least $650 gross income in one of the last three years (assuming the property met the income requirement in the two years preceding the planting of the cherry trees) to remain qualified for special assessment. The one-half acre non-farm homesite (at market), the immature cherry orchard (see ORS 308A.056(3)(c)), the farm woodlot (see 308A.056(3)(h), and the wasteland (see 308A.074)) are not counted in determining the number of acres to be considered under 308A.071(2)(a). The wasteland in a non-EFU zone does not qualify because it is not currently employed under 308A.056(3), and should not be in the calculation for the income test.

NOTE: In order for the two acres of wasteland to be assessed at its farm use value under ORS 308A.074, and the homesite to be valued under ORS 308A.256, the owners must meet an adjusted gross income test and file an annual application.

(7) The farmland owner or the operator of the farm unit must file the required excise or income tax returns including a Schedule F or a schedule showing rental income or expenses of each farmland owner or the operator of the farm unit.

(a) The assessor may require the farmland owner or farm unit operator provide a copy of the income tax returns and schedules showing farm income. Failure to provide required income information including copies of the required tax returns and schedules is grounds for disqualification.

(b) Copies of income tax returns and schedules of farm income are confidential and must be safeguarded in accordance with OAR 150-192.501.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.372 & 308A.071
Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.372

150-308A.074
Wasteland

"Wasteland" has the same meaning as defined in OAR 150-308A.056(1)(b).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308A.074
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

150-308A.080
Acquired Land as Part of Farming Unit

Land not in an exclusive farm use zone (non-EFU) that is acquired by an owner of a qualifying farm unit may be added to the farm unit if:

(1) Newly acquired land is put to a farm use in a timely manner consistent with accepted farming practices. There is no requirement that a previous owner used the land for farming.

(2) The owner, described in ORS 308A.077(2)(b), files an application with the county assessor on or before April 1 preceding the first tax year for which special farm use assessment is requested.

(a) The first year the acquired property may be eligible for special assessment is the calendar year following acquisition.

Example: Non-EFU property acquired February 10, 1999. Calendar year 2000 is the first year after acquisition. Therefore, the first year that this property could receive special assessment is tax year 2000-01 and applications for tax year 2000-01 special farm use assessment are due April 1, 2000.

(b) There is no requirement that the taxpayer seek or receive special farm use assessment for the property for its first eligible tax year.

Example: Non-EFU property acquired February 10, 1999. Although the acquired property was put into farm use immediately after purchase, the owner decided to wait three years before applying for special assessment. For this property to be placed under special assessment for tax year 2003-04, the taxpayer must apply by April 1, 2003.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.374 & 308A.080
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.374

150-308A.092
Valuation of Certain Agricultural Land to Reflect Value for Farm Use Only

(1) Certain farm properties are set aside under a government payment program such as the federally administered Conservation Reserve Program (CRP). The payments received for farmlands

placed in these conservation programs must not be used as income for computing farm use values. Income data from similar lands that are not included in the conservation programs should be used instead to compute farm use values. New farm use values must be computed each year as though the land in the conservation programs was being used for a farm use.

NOTE: Acreage that is not in an exclusive farm use zone, and is under a farm-related government conservation program, is not subject to the gross income requirements.

(2) Values for farm use are to be determined on the basis of highest and best agriculture use, regardless of how the land is currently used and employed in agriculture.

Example 1: The land is capable of raising wheat, but the owner elects to pasture the property. The highest and best agricultural use of the property is as wheat land, so the farm use value would be based on wheat land.

Example 2: The land is capable of raising wheat, but the owner adds site improvements to enable the planting of an orchard. The highest and best agricultural use is now as orchard land, so the farm use value would be based on orchard land.

(3) If the owner of land assessed as farm use land contends the assessor's farm use value is not correct, the value may be appealed to the county Board of Property Tax Appeals as provided by ORS 309.100. An appeal from an adverse decision of the board may be filed with the Magistrate Division of the Tax Court as provided by 305.275(2) (also see 305.280).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.345 & 308A.092
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.345; REV 3-2014, f. & cert. ef. 7-31-14

150-308A.107
Calculation of MSAV When SAV Soil Classification is Changed

(1) Definitions:

(a) "MSAV" means maximum assessed value for property subject to special assessment (maximum specially assessed value).

(b) "SAV" means specially assessed value.

(c) "MSAV tables" are the tables that provide a maximum assessed value per acre equal to 103% of the maximum assessed value per acre from the previous assessment year. The county assessor is required to develop these tables for each assessment year under ORS 308A.107(3)(b).

(2) When an SAV soil classification as provided by the assessor in each county is changed, the MSAV must use corresponding soil classification values from the MSAV Table if:

(a) There is a physical change such as, but not limited to:

(A) Irrigation is added.

(B) Irrigation is removed.

(C) Soil movement caused by slides, erosion, flooding, wind, etc.

(D) Soil is depleted indefinitely due to extended over use of crop.

(E) Soil is enhanced due to extensive additives to the soil.

(F) Trees are removed so that cultivation can take place and previous classification was based in part on the inability to cultivate.

(G) Rocks and other debris are removed to enhance cultivation.

(H) Site improvements are added including but not limited to drainage system, fill, contouring, leveling, and diking.

(b) There are specific non-physical changes such as:

(A) Comprehensive soil reclassification due to a new published government agency soil survey.

(B) Land class acreage adjustments to implement a GIS mapping system.

(C) The assessor reasonably determines that a property's land is no longer in the same land class that it was in during the prior assessment year. The assessor's determination that the land is no longer in the same land class cannot be arbitrary, but must be based on preexisting criteria for the respective land classes. The preexisting criteria for the respective land classes must be clear, objective, consistently applied and uniform within the county. Land classification changes must be the result of the reasonable application of the preexisting criteria to the actual condition of the land.

(3) The assessor must calculate the corresponding MSAV for new SAV soil classes using the following procedure:

(a) Divide the average MSAV for all soil types by the average SAV for all soil types to derive a changed property ratio.

(b) Multiply the SAV value of the new soil type by the changed property ratio to obtain the MSAV for the new soil class.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.370 & 308A.107
Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.370(5)

150-308A.113
Disqualification of Exclusive Farm Use Farmland; Site Inspection and Notation

(1)(a) Before Exclusive Farm Use (EFU) land is disqualified from farm use assessment due to discovery by the assessor that the land is no longer being devoted to a farm use, the assessor must:

(A) Make a reasonable effort to contact the owner, owner's agent or person using the land;

(B) Make a site inspection of the property; and

(C) Request the recent history of the property's use.

(b) The assessor must make a record of the inspection that includes when the inspection was made, who made the inspection, copy of contact letter(s) or record of other means of contact, information from the person contacted, and notations of the conditions found. Notations about the conditions found may include the farm uses being made of the property, areas having no apparent farm use, vegetation on the property and its condition, whether the property is fenced and the fence's condition, and other conditions of the property that indicate a farm use or lack of farm use. The record of inspection must be retained in the assessor's office for at least three years.

(2) If property disqualification is effective after June 30, the EFU property will remain valued for farm use on the assessment and tax roll until the following July 1.

(a) Disqualification for non-farm use occurs as of the January 1 assessment date and is effective as of June 30 if the disqualification notice is mailed on or before August 14.

(b) If EFU property disqualification is effective on or before June 30 for any reason other than for non-farm use, to be valid the notice must be mailed within 30 days after the date that land is disqualified.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.397 & 308A.113
Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.397

150-308A.116
Disqualification of Non-Exclusive Farm Use (Non-EFU) Farmland; Site Inspection and Notation

(1)(a) Before non-EFU land is disqualified from farm use assessment due to discovery by the assessor that the land is no longer being devoted to a farm use, the assessor must;

(A) Make a reasonable effort to contact the owner, owner's agent or person using the land;

(B) Make a site inspection of the property; and

(C) Request the recent history of the property's use.

(b) The assessor must make a record of the inspection that includes when the inspection was made, who made the inspection, copy of contact letter(s) or record of other means of contact, information from the person contacted, and notations of the conditions found. Notations about the conditions found may include the farm uses being made of the property, areas having no apparent farm use, vegetation on the property and its condition, whether the property is fenced and the fence's condition, and other conditions of the property that indicate a farm use or lack of farm use. The record of inspection must be retained in the assessor's office for at least three years.

(c) If the inspection indicates a farm activity being conducted which may not provide sufficient income to satisfy the income test, the assessor must demand that the landowner complete an income questionnaire.

(2) If property disqualification is effective after June 30, the non-EFU property will remain valued for farm use on the assessment and tax roll until the following July 1.

(a) Disqualification for non-farm use occurs as of the January 1 assessment date and is effective as of June 30 if the disqualification notice is mailed on or before August 14.

(b) If non-EFU property disqualification is effective on or before June 30 for any reason other than for non-farm use, to be valid the notice must be mailed within 30 days after the date that land is disqualified.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.390 & 308A.116
Hist.: 8/64, 1/66; 2/68; 3/70; 9/71; 11/73; 12/31/77; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.390

150-308A.250
Definition of Specially Assessed Homesites

(1) "Homesite" as defined in ORS 308A.250(3) includes site developments as defined in OAR 150-307.010(1)(2)(a)(A)and amenities associated with the raw, undeveloped land such as topography that affords the site a particular view, river frontage, property access, and utility access.

(2) A forest homesite qualified under ORS 308A.253(1) must be located on a parcel of land with greater than 10 acres of specially assessed forestland, that is zoned exclusive farm use (EFU), forest use, or farm and forest use.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.229 & 308A.250
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.229

150-308A.253
Application for Specially Assessed Homesite

(1) An annual application must be filed with the assessor on or before April 15 of each year to receive the special assessment on a qualified homesite associated with a farm lot or parcel in a non-exclusive farm use (non-EFU) zone.

(2) An application is not required to receive the special assessment on a qualified homesite situated on:

(a) A farm use lot or parcel in an exclusive farm use (EFU) zone;

(b) A forestland lot or parcel in an EFU, forest use, or mixed farm and forest use zone and classified by the assessor as highest and best use forestland, designated forestland, or small tract forestland (STF); or

(c) A lot or parcel that is subject to a wildlife habitat special assessment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308A.253
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-308A.256
Qualified Specially Assessed Homesite Valuation

(1) Definitions:

(a) "Parcel" is a quantity of land that is capable of being described in a single description by a closed traverse, or as one of a number of subsections or sections in a township(s), or as lots, blocks, or tracts in a subdivision. A "parcel" may consist of one or more tax lots.

(b) "Contiguous" means having a common boundary to some extent greater than a point. Parcels are contiguous if separated by public or county roads, state highways, or non-navigable streams or rivers. Parcels are not contiguous if they are separated by interstate freeways, or navigable streams or rivers, except where there is direct connecting access, such as an underpass, for property separated by an interstate freeway.

(c) "Site Developments" has the same meaning as in OAR 150-307.010(1)(2)(a)(A).

(d) "Land Improvements" is synonymous with "site developments."

(e) "Same Ownership" — to be considered the "same ownership," separate land accounts (tax lots) must have a common name in the property title. For example, a parcel owned by a wife just in her name is under the same ownership as a parcel she owns jointly with her husband. Properties do not have the "same ownership" if one parcel is owned by a husband and wife and the other parcel is owned by a corporation even though the corporation is owned by the husband and wife.

(f) "MSAV" means maximum assessed value for property subject to special assessment (maximum specially assessed value).

(2) Land comprising homesites for dwellings being used in conjunction with farm use in EFU zones, qualifying homesites outside the EFU zones, and qualified forest homesites must be valued at the special value provided by ORS 308A.256. Land comprising a non-qualifying homesite must be assessed at its real market value as defined in 308.205 pursuant to 308A.259.

(3) The method for determining the value for a qualified homesite is the same whether the homesite is located within an exclusive farm use (EFU) zone, an area not zoned for exclusive farm use (non-EFU), or for forest homesites as defined in ORS 308A.253(1).

(a) The first step in valuing a qualified homesite is to determine the total number of acres of the "parcel" and contiguous acres under the same ownership.

(b) The second step is to determine the bare land average per acre real market value (RMV) of the parcel. To do this:

(A) First, determine the total bare land RMV (including riverfront, view, etc.) for the parcel and contiguous acres under the same ownership on which the homesite is located.

(B) Second, divide the total bare land RMV of the parcel and contiguous acres under the same ownership by the total number of acres in the parcel and contiguous acres under the same ownership.

(C) The result is the average RMV for one acre of the parcel and contiguous acres under the same ownership.

(c) The third step is to determine the specially assessed value (SAV) of the "land improvements." The SAV of land improvements are to be valued at $4,000, or the depreciated replacement cost of the items that make up the land improvements, whichever is less.

(d) The average RMV of one acre of the land plus the land improvement SAV equals the total "homesite" SAV. However, the land improvement value must be carried as a separate item on the land record as specified in OAR 150-307.010(1)(2)(a)(B).

(4) Calculation of homesite MSAV.

(a) For the 1997–98 tax year, the MSAV on homesites qualified for the 1995–96 tax year and before equals the homesite's SAV for the 1995–96 tax year reduced by 10 percent.

(b) For the 1997–98 and subsequent tax years, the MSAV of any newly qualified homesite equals the product of the residential rural property class 4-X-X changed property ratio multiplied by the farm or forest homesite SAV. The MSAV for a homesite first qualified for the 1996–97 tax year is calculated under this subsection for the 1997–98 tax year.

(c) Once the MSAV of a homesite has been established by subsection (a) or (b) above, the MSAV increases 3% each year thereafter.

(5) The assessed value of a qualified farm or forest homesite equals the lesser of the homesite's SAV or the homesite's MSAV.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.377 & 308A.256
Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.377

150-308A.315(4)
Ratio Calculation for Open Space Lands

(1) An open space ratio must be applied to the open space special assessed value of newly designated open space lands to determine a maximum specially assessed value. The Department of Revenue will annually calculate a statewide ratio for open space lands.

(a) Counties with 10 or more open space accounts must develop and apply their own ratio.

(b) Counties having less than 10 open space accounts must use the statewide ratio.

(2) The ratio is calculated by dividing:

(a) The total current year maximum specially assessed value of land for all open space accounts (prior year's maximum specially assessed value multiplied by 103 percent), by

(b) The total current year specially assessed value of land for the same open space accounts.

(3) Only land that is specially assessed as open space may be used in the open space ratio calculation.

(4) Property that may not be used in developing the open space ratio calculation includes:

(a) Land that is valued under another special assessment program;

(b) Land that does not qualify for open space assessment;

(c) Any portion of an account that is assessed at market value, such as buildings;

(d) New open space accounts; and

(e) Disqualified accounts.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308A.315
Hist.: RD 9-1997, f. & cert. ef. 12-31-97; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02, Renumbered from 150-308.765

150-308A.703
When to Impose Additional Tax

(1) Additional Tax Computation:

(a) Additional taxes computed for 1991–92 tax year and thereafter equal the difference between the taxes assessed against the land in that year and the taxes that would have been assessed against the land had the land not been in farm use.

(b) Additional taxes computed for the years of special assessment prior to the 1991–92 tax year equal the difference between the real market value and the specially assessed value for the last year of special assessment prior to the 1991–92 tax year times the tax rate for that tax year times the number of remaining years the special assessment was in effect.

(2) Under certain circumstances, farm use special assessment may be disqualified after July 1 and advance collection of additional taxes made. Disqualifications made under these circumstances are for the next tax year, therefore, the property will remain at its value for farm use on the tax roll until the following July 1. The collection of the additional tax is provided for in subsection (3). The specific circumstances for this type of disqualification are as follows:

(a) For non exclusive farm use (Non-EFU) zoned farmland:

(A) Subdivision plats under Chapter 92;

(B) At the owner’s request.

(b) For exclusive farm use (EFU) zoned farmland, a non-farm dwelling under ORS 215.236.

(3)(a) Collection of Additional Tax: Advance collections of the additional tax made under the provisions of ORS 311.370 are entitled to the discount allowed by 311.505 if the assessor can compute the exact amount of the additional tax at the time the taxes are paid. If the assessor is unable to determine the exact amount due, the discount is allowed when final settlement is made at the time taxes are regularly due, as provided by 311.370.

(b) Any additional tax entered on the tax roll becomes part of the tax extended against the property and is collected in the same manner as other real property taxes. ORS 311.505 governs whether a discount is allowed or interest is charged.

(4) Distribution of Additional Tax: The total amount of the additional tax added to the tax roll must be apportioned between the taxing districts in which the property is located.

(a) The apportionment must be based on the ratio that the billing tax rate of each district bears to the total billing tax rates on the property, as shown on the tax roll on which the additional tax is entered.

(b) In preparing the certificate of the tax roll under ORS 311.105, the assessor must add the additional tax due to each taxing district to the total amount to be raised for each district under 311.105. The amount of additional tax due to each taxing district must be included in the percentage distribution schedule computed by the tax collector under 311.390.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308A.703
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

150-308A.706
No Additional Tax; Notation Remains

(1) In any case where additional tax is deferred under ORS 308A.706, the assessor must continue to enter the notation “potential additional tax liability” on the assessment and tax roll.

(2)(a) When specially assessed farmland situated within an exclusive farm use (EFU) zone is transferred to a government ownership making it exempt, the assessor must continue to enter the notation “potential additional tax liability” on the assessment and tax roll.

(b) If the use of the land changes to a use inconsistent with a purpose to returning the land to farm use, the additional tax will not be imposed but will remain a lien since the government owner is exempt from taxation.

(3) If the disqualification results from the failure of the land to meet the gross income requirement, the additional taxes will not be imposed as long as the land continues to be used as farmland.

(4) If disqualification results solely because the land is no longer being devoted to a farm use and if the land is not being used for another use, the additional tax will not be imposed and the assessor must continue to enter the notation “potential additional tax liability” on the assessment and tax roll.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308A.706
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

150-308A.712
Deferred Additional Tax (ORS 308A.706); When to Collect

(1)(a) When a non-exempt owner acquires exclusive farm use (EFU) farmland that was exempt because it was government owned, any amount designated by the county assessor as potential additional taxes must be added to the next general tax roll by the tax collector if the land is used for purposes inconsistent with returning the land to farm use.

(b) Non-EFU farmland liens are collected regardless of use when a non-exempt owner acquires farmland that was disqualified under ORS 308A.116(1)(b) and had liens attached under 308A.703(5).

(2) For additional information on collection and distribution of additional tax, see OAR 150-308A.703(3) and (4).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308A.712
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

150-308A.718
Disqualification Notification Procedures

(1) Notice of Disqualification:

(a) A notation must be made on the assessment and tax roll on or before June 30 to indicate that a disqualification of farmland, forestland, or a homesite as listed in ORS 308A.718 has taken place. The assessor must mail notice to the owner or person claiming special assessment within 30 days after the date that land is disqualified.

(b) If the disqualification occurs because the land is no longer in farm or forest use, as described under ORS 308A.113(3) (Exclusive Farm Use), 308A.116(6) (Non-Exclusive Farm Use), 321.366 (Western Oregon forestland), or 321.845 (Eastern Oregon forestland), the disqualification is effective only if the notice of disqualification is mailed on or before August 14.

(2) The notice to the person claiming special assessment must state:

(a) That the subject property has been disqualified from special assessment;

(b) That the property will be assessed under ORS 308.156;

(c) The amount of the additional tax liability that will be imposed or if the land is not used for another use the amount of the potential additional tax liability (ORS 308A.706(1));

(d) Provisions and timing for change of type of special assessment under ORS 308A.724; and

(e) Appeal rights.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.399 & 308A.718
Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 9-1997, f.

& cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.399; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

DIVISION 309

EQUALIZATION OF PROPERTY TAXES

150-309.022(1)
Training for Board of Property Tax Appeals (BOPTA) Members

(1) Each person appointed as a member of a BOPTA pool must complete training approved by the department in the year they are first appointed and at least every other year thereafter. If there is a break in service for any member of any pool, the first year of the new appointment is considered the same as their original appointment year. Training must be specific to BOPTA.

(2) BOPTA pool members that have completed training approved by the department are eligible to sit on a board. However, if an untrained member is required to sit on a board in order to establish a quorum, the member must read the current BOPTA Manual prior to sitting on a board and sign an affidavit stating they have done so. The affidavit is to be made a part of the record of the board and a copy sent to the department.

(3) The department may approve various types of training for board members based upon educational effectiveness, cost and accessibility to members. Approved training may include but not be limited to the following: in-service training sponsored by the department; individual workbook with examination; EdNET; or interactive computer-based multimedia training.

(4) Notwithstanding Section (1) of this rule, for years in which no petitions are filed, board members are not subject to BOPTA training requirements for that year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.022
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 10-2002, f. & cert. ef. 12-31-02

150-309.024
Record of Board of Property Tax Appeals Meetings

An administrative record of the proceedings of the board of property tax appeals must be kept by the county clerk.

(1) The record must be kept in a manner that meets the retention requirements of OAR chapter 166.

(a) The record of board proceedings may be either a written summary or audio recording.

(b) The records must be organized in a manner that facilitates retrieval of a particular proceeding such as by date of meeting, name of petitioner, or assigned number.

(c) The record may be maintained as a separate record called Board of Property Tax Appeals Proceedings.

(2) The administrative record of the board must include, but is not limited to:

(a) A copy of the order appointing board members to the pools described in ORS 309.067 or a copy of the minutes of the meeting of the county governing body during which the pools were appointed;

(b) Oaths of office of members;

(c) Verification of training;

(d) Designation of legal counsel, if appropriate;

(e) Affidavit of publication of notice of session and copies of all published notices;

(f) Record of appointment of board appraiser, if applicable;

(g) Daily or weekly agendas; and

(h) Summary of actions required by OAR 150-309.360.

(3) The individual record of each meeting held during which the board makes a decision or obtains material that will be used in making a decision, must include, but is not limited to:

(a) The date of the meeting;

(b) A list of those present, including all members and any person who presents evidence;

(c) The substance of any discussion on any matter;

(d) All material presented as evidence;

(e) All motions and who made them;

(f) Results of all votes and how each member voted;

(g) Petitions, marked with date received and assigned number;

(h) Authorizations to represent or powers of attorney;

(i) Defective petition notices, if applicable;

(j) Hearing notices, if applicable;

(k) The board's order, which must contain the original or facsimile signatures, including orders issued pursuant to stipulations filed at or after the time the board convenes;

(L) Stipulations filed at or after the time the board convenes;

(m) Stipulations filed with the clerk of the board under ORS 308.242(3); and

(n) Requests to withdraw a petition. Publications: The publication referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and 183.355(6).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.024
RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-02, Renumbered from OAR 150-309.012(5); REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.026(2)-(A)
Limitations on Increase in Value by Board of Property Tax Appeals

(1) For purposes of this rule, "property tax account" means the administrative division of property used by the assessor for listing the property on the assessment roll.

(2) The board of property tax appeals (BOPTA) lacks jurisdiction under ORS 309.026 to increase the total real market value (RMV), the total specially assessed value (SAV), the maximum assessed value (MAV), or assessed value (AV) of property because the statute specifies that BOPTA may only hear petitions to reduce the value of property.

(3) When BOPTA receives a petition requesting an increase in the value of property, the board must act on the petition in the following manner:

(a) When BOPTA receives a petition requesting an increase or resulting in an increase in the total RMV, SAV, MAV or AV of property in a property tax account, the board must dismiss the petition for lack of jurisdiction.

(b) When BOPTA receives a petition requesting an increase in the RMV of either the land or improvement component, the board may increase that component provided the change does not result in an increase to the total RMV, SAV, MAV, or AV of the property in the property tax account.

(4) When BOPTA receives a petition requesting a reduction in the value of property, the board must act on the petition in the following manner:

(a) When BOPTA receives a petition requesting a reduction in total RMV that does not specify a reduction in value of either the land or improvement component, the board may increase or decrease either component provided the net result sustains or reduces the total RMV, SAV, MAV or AV of the property in the property tax account.

(b) When BOPTA receives a petition requesting a reduction in either the land or improvement component of the RMV of property and no change to the other component, the board may act only on the component for which the reduction is requested.

(c) When BOPTA receives a petition requesting a reduction in either the land or improvement component of the RMV of property and the petition is silent as to the requested value of the other component, the board must sustain the value of the component for which the petition is silent unless subsection (4) (a) of this rule applies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.026
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-309.026(2)(e); RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.026(2), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; REV 6-2009, f. & cert. ef. 7-31-09

150-309.026(2)-(B)
BoPTA Lack of Jurisdiction for Designated Utilities and Companies Assessed by the Department

The board of property tax appeals (BoPTA) must dismiss, for lack of jurisdiction, petitions for the reduction of the assessed, specially assessed, real market, and maximum assessed value of designated utilities and companies assessed by the Department of Revenue under ORS 308.505 to 308.665 and 308.805 to 308.820, commonly referred to as centrally assessed property. The process for appealing the value of centrally assessed property is described in 308.595(3). The notification requirements of 309.100(5) do not apply to dismissal for lack of jurisdiction identified in this rule.

Stat. Auth.: ORS 305.100, 306.115 (1)
Stats. Implemented: ORS 309.026
Hist.: REV 2-2005, f. 6-27-05, cert. ef 6-30-05

150-309.067(1)
Nonoffice-holding Residents Appointed to Board of Property Tax Appeals (BOPTA) Pools

As used in ORS 309.020(5) and 309.067(1)(b), a nonoffice-holding resident is a county resident who is not:

(1) A member of the county governing body;

(2) A member of the governing body of any taxing district within the county;

(3) An elected official of the county;

(4) A person employed or hired by the county or any taxing district within the county;

(5) A former county assessor, or any appointee acting in the place of the assessor, that held the office or appointed position during the assessment or tax year subject to appeal to BOPTA; or

(6) A person previously employed in or hired by the office of the assessor during the assessment or tax year subject to appeal to BOPTA.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.067
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94, Renumbered from 150-309.010(1)-(d); RD 9-1997, f. & cert. ef. 12-31-97; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; Renumbered from 150-309.067(1)(b), REV 17-2008, f. 12-26-08, cert. ef. 1-1-09

150-309.072
Records Included in Journal of Governing Body

The following records from sessions of the board of property tax appeals shall be made a part of the journal of the county governing body:

(1) The date the members were appointed;

(2) The positions to which the members were appointed;

(3) A record of the date the board convened and the date the board adjourned.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.072
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97

150-309.100(2)-(A)
Filing Petitions With The Board of Property Tax Appeals (BOPTA)

(1) Only the county clerk or deputy clerk, acting as the clerk of BOPTA, has authority to accept petitions to BOPTA. No other county office can accept petitions.

(2) Petitions received prior to the filing dates must be returned to petitioner together with a notice of the proper filing dates. Petitions cannot be filed and clerks cannot accept petitions prior to the filing dates specified in ORS 309.100(2).

(3) Petitions to the board of property tax appeals filed under ORS 309.100 and transmitted electronically by facsimile (FAX) will be accepted as valid petitions to the board. If the FAX is unreadable with regard to any information required under OAR 150-309.100(3)-(A), the petition is deficient under 150-309.100(3)-(B).

(4) A faxed petition will be considered timely filed if it is received in the office of the county clerk by midnight of the filing deadline as evidenced by the electronic acknowledgment of receipt produced by the county's FAX machine.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100
Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100-(A), REV 10-2002, f. & cert. ef. 12-31-02

150-309.100(2)-(B)
Withdrawing Petitions Filed with a Board of Property Tax Appeals

(1) For purposes of this rule, 'petitioner' and 'representative' have the meaning given in OAR 150-309.100(3)-(C).

(2) A petition filed with a board of property tax appeals may be withdrawn as described below for any reason prior to the time the board issues the order for the petition. A request for withdrawal must be in writing and filed with the clerk of the board.

(3) A petition signed by a petitioner may be withdrawn by:

(a) The petitioner; or

(b) A representative, if the representative provides written authorization signed by the petitioner after the date the petition was signed.

(4) A petition signed by a representative may be withdrawn by:

(a) The petitioner;

(b) The representative who signed the petition; or

(c) Another person representing the petitioner if that representative provides written authorization signed by the petitioner after the date the petition was signed by the original representative.

(5) The board must issue an order of dismissal for each petition for which a request for withdrawal has been submitted unless a stipulation has been filed under ORS 308.242(3) prior to the time the board convenes.

(6) The clerk of the board must keep the request for withdrawal and the board's order in the administrative record of the board described in OAR 150-309.024.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1), REV 10-2002, f. & cert. ef. 12-31-02; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.100(3)-(A)
Contents of Board of Property Tax Appeals (BOPTA) Petitions

(1) For purposes of this rule, "petitioner" is used as defined in OAR 150-309.100(3)-(C).

(2) The purpose of a petition is to inform BOPTA and the assessor of the nature of the claim for relief. For this reason, petitions must include the following information:

(a) Petitioner's name and address.

(b) Facts on which the appeal is based.

(c) The value of the property as requested by petitioner.

(d) The value on the current tax roll that is being appealed. If a copy of the tax statement is attached, the value being appealed need not be included on the petition.

(e) The assessor's account number for the property. The assessor's account number may be a unique identification number or a map and tax lot number. If a copy of the tax statement is attached, the account number need not be included on the petition.

(f) For personal property, a list of the individual items, or categories and schedules that identifies the property being appealed and the values requested.

(g) The name of petitioner's authorized representative (if applicable).

(h) The mailing address of the petitioner or the petitioner's authorized representative where the hearing notice and order are to be mailed.

(i) Notation of whether the petitioner or petitioner's authorized representative wishes to be present at the hearing.

(j) A written declaration that the contents of the petition are true and made subject to the statutory penalties for false swearing.

(k) The signature of petitioner or petitioner's authorized representative.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-

309.100(2) to 150-309.100(3); RD 2-1992, f. 5-28-92, cert. ef. 6-1-92; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-309.100(3); RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; Renumbered from 150-309.100, REV 10-2002, f. & cert. ef. 12-31-02

150-309.100(3)-(B)
Board of Property Tax Appeals (BOPTA) Defective and Amended Petition Process

For purposes of this rule, "petitioner" is used as defined in OAR 150-309.100(3)-(C).

(1) The clerk of BOPTA will review the filed petitions for compliance with OAR 150-309.100(3)-(A).

(2) If the petition is defective, the clerk will provide written notice to the petitioner unless a representative is named on the petition. If a representative is named on the petition, the clerk will provide written notice to the petitioner's representative. The notice may be personally delivered or mailed to the mailing address on the petition. If the petitioner's representative has not provided a mailing address and the notice cannot be personally delivered, the clerk will provide notice of the defective petition to the petitioner.

(3) The notice must include the following information:

(a) The nature of the defect,

(b) The time allowed by section (4) or section (6) of this rule to correct the defect, and

(c) A statement that failure to correct the defect within the time allowed will result in dismissal of the appeal without further notice.

(4) If the board clerk provides notice of a defective petition by mailing or personal delivery more than 20 days before the last day of the board session described in ORS 309.026, the petitioner or petitioner's representative has 20 days from the date the notice of defective petition was mailed or personally delivered, or until the last day for filing a petition with BOPTA, whichever is later, to correct the defect. Time is computed from the first day following the date the written notice was mailed or personally delivered and includes the last day unless the last day falls on a legal holiday, Saturday, or Sunday. The time is then extended to the next working day. Corrected petitions may be faxed to the county clerk and will be considered timely filed under the guidelines listed in Section (4) of OAR 150-309.100(2)-(A).

(5) If the board clerk provides notice of a defective petition by mailing or personal delivery within 20 days of the last day of the board session described in ORS 309.026, the board clerk may give the notice described in section (3) of this rule by any practical means such as telephone, fax, or letter. In this circumstance, the petitioner or petitioner's representative has until 3:00 p.m. of the last day of the board session to file an amended petition correcting the defect. However, if the petitioner or petitioner's representative appears at the hearing, all corrections must be made at that time.

(6) The board must dismiss the petition as defective if the petitioner or petitioner's representative does not correct the petition within the time periods prescribed in Sections (4) and (6) of this rule.

(7) In addition to amending a petition to comply with OAR 150-309.100(3)-(A) under (4) above, any petition may be amended up to and including the time of the hearing for the following reasons:

(a) To add or delete land or improvements that are components of the account originally appealed.

(b) To add a separate account that together with the original account appealed creates a "parcel" within the meaning of OAR 150-308A.256(1)(a). A petition may not be amended to include a separate account that is not part of an identified parcel.

(c) To add a manufactured structure account that is sited on the original account under appeal.

(d) To designate or change an authorized representative.

(e) To change the value requested.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100
Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1)-(A), REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-309.100(3)-(C)
Those Authorized to Sign Petitions to the Board of Property Tax Appeals (BOPTA)

(1) For purposes of appeals filed with BOPTA,

(a) "Petitioner" means an owner of the property or person with an interest in the property that obligates the person to pay taxes imposed on the property.

(b) "Representative" means a person described in section (4) or (5) of this rule.

(2) If the petitioner is a business or other legal entity, a person who can legally bind the business or other legal entity may sign the petition. For example:

(a) For a corporation: officers such as president, vice-president, secretary, treasurer, CEO, or managing officer.

(b) For a limited liability company (LLC): a member or the manager of an LLC.

(c) For a church: a pastor, rector, deacon, president of the board, or senior board member.

(d) For an association: the president or managing officer.

(e) For a partnership: a general partner.

(f) For a sole proprietorship: the owner.

(g) For a trust: a trustee, managing member, or managing agent.

(h) For any business entity: an employee regularly employed in the tax matters of the business.

(3) If the petitioner is a person who holds an interest in the property that obligates the person to pay the taxes imposed on the property, proof of the obligation must accompany the petition to the board. An interest that obligates the person to pay the taxes:

(a) Includes a contract, lease, or other intervening instrumentality; but,

(b) Does not include mortgage agreements in which the mortgagee (the company that holds the mortgage) agrees to pay the taxes.

(4) An attorney at law authorized to practice in Oregon may represent a petitioner. Written authorization to represent is not required. The attorney's assigned Oregon State Bar Association number must be included on the petition.

(5) The following persons may sign a petition and act as the petitioner's representative before BOPTA if they have written authorization from the petitioner or proper court appointment. The petition must be accompanied by a power of attorney, court appointment, or other signed authorization that specifically grants that person the authority to represent the petitioner in tax matters.

(a) Any relative of an owner of the property. For purposes of this rule, the term "relative" means any of the following:

(A) A spouse;

(B) A son, grandson, daughter, granddaughter, stepson or stepdaughter;

(C) A brother, brother-in-law, sister, sister-in-law, stepbrother, or stepsister;

(D) A father, mother, stepfather, stepmother, or grandparent;

(E) A nephew or niece; or

(F) A son-in-law, daughter-in-law, father-in-law or mother-in-law.

(b) A person duly qualified to practice as a certified public accountant or public accountant in the State of Oregon. The accountant's Oregon certificate or license number must be included on the petition.

(c) A legal guardian or conservator who is acting on behalf of an owner of the property.

(d) A real estate broker or principal real estate broker licensed under ORS 696.022.

(e) A state certified appraiser or state-licensed appraiser licensed under ORS 674.310 or an appraiser registered under ORS 308.010.

(f) The lessee of the property.

(g) A person who holds a general power of attorney signed by an owner of the property. The person filing the petition must provide a copy of the general power of attorney with the petition.

(6) A board must issue a formal order dismissing any petition it receives that is not signed by a person authorized under ORS 309.100 or this rule.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100

Hist.: Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-309.100(2)(c); RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 2-1992, f. 5-28-92, cert. ef. 6-1-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-309.100(2)-(C), REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.100(5)
BOPTA Hearing Notice Mailed to Representative

If a person listed under ORS 309.100(4)(a) is authorized to represent a petitioner at a board of property tax appeals hearing and the representative has requested to be present at the hearing, the BOPTA clerk must mail or personally deliver the hearing notice to the representative. If the representative has not provided a mailing address and the notice cannot be personally delivered, the clerk will provide notice of the hearing to the petitioner.

Stat. Auth.: ORS 305.100 & 306.115
Stats. Implemented: ORS 309.100
Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.100-(D)
Definition of Person Who Holds an Interest in the Property and Procedures for Transfers of Ownership or Interest

This rule supplements the definition of "petitioner" found in OAR 150-309.100(3)-(C).

(1) The petitioner in an appeal to the board of property tax appeals (BOPTA) under ORS 309.100 must possess or acquire legal standing to appeal during the petition filing period. The petition filing period begins the date following the date the tax statements are mailed for the current tax year and ends December 31 or the last day for filing a petition under ORS 305.820.

(2) For purposes of appealing to BOPTA, a person who holds an interest in the property as described in subsection (3) of this rule, that obligates the person to pay the taxes imposed on the property shall be defined as a person or entity that:

(a) Holds an interest in the property that obligates the person or entity to pay all or a portion of the taxes imposed on the property for the current tax year at the time the petition is filed; or

(b) Has held an interest in the property that obligated the person or entity to pay all or a portion of the taxes imposed on the property for the current tax year after July 1 but prior to the time the petition is filed; or

(c) Will hold an interest in the property by the last day for filing a petition with BOPTA that will obligate the person or entity to pay all or a portion of the taxes imposed on the property for the current tax year.

(3) Standing to appeal to BOPTA as a person who holds an interest other than an ownership interest must be established through an intervening instrumentality such as a contract or lease that proves the person or entity is obligated to pay all or a portion of the taxes imposed on the property for the current tax year. Escrow instructions signed by a seller in a transaction that is consummated during the period from July 1 through the last day for filing a petition with BOPTA may also be used to establish such an interest.

(4) When an ownership or other interest is transferred on or after July 1 but prior to the end of the petition filing period or a question arises regarding ownership or the existence of a present obligation to pay taxes, BOPTA must determine whether the petitioner has standing to appeal. The following examples are intended to give guidance to the clerk for purposes of determining whether a Notice of Defective Petition should be sent under OAR 150-309.100(3)-(B) and to the board in its final determination regarding the standing of the petitioner:

Example 1: The clerk of the board receives a petition on November 5 and reviews the petition on November 20 according to the guidelines in OAR 150-309.100(3)-(C) and this rule. When the clerk reviews the petition, the county records indicate that the petitioner sold the property on October 30. Because the petitioner did not own the property when the petition was filed, the petitioner must establish standing as a person who holds an interest in the property that obligates the petitioner to pay the taxes imposed on the property for the current tax year. The petitioner can do so by submitting a copy of the escrow instructions or other document that shows the petitioner must pay all or a portion of the property taxes for the current tax year.

Example 2: The clerk of the board receives a petition on October 29 and reviews the petition on November 19 according to the guidelines in OAR 150-309.100(3)-(C) and this rule. When the clerk reviews the petition, the county records indicate that the petitioner sold the property on August 13. Because the petitioner did not own the property when the petition was filed, the petitioner must establish standing as a person who holds an interest in the property that obligates the petitioner to pay the taxes imposed on the property for the current tax year. Even though the petitioner sold the property prior to the beginning of the petition filing period, the petition will be allowed if the petitioner has a present obligation to pay the taxes as demonstrated by a copy of the escrow instructions or other document that shows the petitioner must pay all or a portion of the property taxes for the current tax year.

Example 3: The clerk of the board receives a petition on December 4. The clerk reviews the petition on December 10. The petitioner has included a copy of an earnest money agreement to purchase property with a projected closing date of December 28. The clerk sends a Notice of Defective Petition on December 17 asking the petitioner to provide proof that the petitioner owned the property on December 31 or the last day for filing a petition under ORS 305.820. The petitioner is given 20 days as provided in OAR 150-309.100(3)-(B) to provide proof of ownership. The clerk also has the option of waiting until after December 31 to send the notice to allow more time for county ownership records to be updated. If proof is provided (or county records are updated) that confirms the petitioner owned the property by December 31, the petitioner has standing to appeal to BOPTA as the owner of the property.

Example 4: The clerk of the board receives a petition on December 23. The petitioner includes a copy of an earnest money agreement to purchase property with a projected closing date of January 19. The language of the earnest money agreement does not include a present obligation for the petitioner to pay the taxes imposed on the property. The petitioner lacks standing to appeal because the petitioner will not own or hold an interest in the property that obligates the petitioner to pay the taxes imposed on the property until after the deadline for filing a petition with BOPTA.

(5) Lenders that hold an interest in property as security against a loan generally lack standing to appeal to BOPTA. See OAR 150-309.100(3)-(C) subsection (3)(b). However, in the event of a default or foreclosure proceeding, the lender may acquire standing if specific language in the contract allows or requires the lender to assume the tax obligation or through actual assumption of ownership prior to the deadline for filing a petition.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.100
Hist.: REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

150-309.110-(A)
Board of Property Tax Appeals (BOPTA) Procedures When Roll Changed after Petition is Filed

(1) If the assessor reduces the value of property under ORS 308.242(2) after a petition has been filed with BOPTA, but prior to January 1 of the tax year, the following procedures apply if a stipulation is not filed with the board prior to the time the board convenes:

(a) The board will schedule a hearing and notify the petitioner of the time and place the board will meet to resolve the petition.

(b) If the value requested in the petition is higher than or equal to the adjusted value, the board must issue an order dismissing the petition.

(c) If the value requested in the petition is lower than the adjusted value, the board must review the adjusted value and issue an order sustaining or correcting the adjusted value.

(2) If the assessor reduces the value of property under ORS 311.205 after a petition has been filed with BOPTA, the board will act on the petition in the following manner:

(a) The board will schedule a hearing and notify the petitioner of the time and place the board will meet to resolve the petition.

(b) If the value requested in the petition is higher than or equal to the adjusted value, the board must issue an order dismissing the petition.

(c) If the value requested in the petition is lower than the adjusted value, the board must review the adjusted value and issue an order sustaining or correcting the adjusted value.

(3) Not withstanding (1)(b) and (2)(b) of this rule, the board will issue an order to sustain or reduce the adjusted value if the petitioner amends the value requested pursuant to section 5 of OAR 150-309.100(3)-(B) prior to or during the board hearing.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110

Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-309.110(1)-(E), REV 17-2008, f. 12-26-08, cert. ef. 1-1-09; REV 4-2014, f. & cert. ef. 8-11-14

150-309.110(1)
Contents of Board Order for Property not Specially Assessed

(1) Orders issued by the board of property tax appeals for property that is not specially assessed must contain the following information when the petitioner has appealed the real market value of the property:

(a) The real market value of each component (land, improvements, manufactured structure) and the total real market value of the property on the current tax roll.

(b) The real market value of each component (land, improvements, manufactured structure) and the total real market value of the property as found by the board.

(c) The real market value of the exception on the current tax roll, if applicable.

(d) The real market value of the exception as found by the board, if applicable.

(e) The total maximum assessed value of the property on the current tax roll.

(f) The total maximum assessed value as found by the board.

(g) The total assessed value on the current tax roll.

(h) The total assessed value as found by the board.

(2) Orders issued by the board of property tax appeals for property that is not specially assessed must contain the following information when the petitioner has appealed the assessed value of the property, but has not appealed the real market value of the property:

(a) The total maximum assessed value of the property on the current tax roll.

(b) The total maximum assessed value as found by the board.

(c) The total assessed value on the current tax roll.

(d) The total assessed value as found by the board.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110
Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; Administrative correction 12-14-98; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-309.110(1)-(A)
Mailing of Board Orders

(1) The clerk of the board will keep the order containing the original or facsimile signatures as the official record of the action of the board.

(2) The clerk of the board must mail a copy of the original order to the mailing address shown on the petition unless the order is personally delivered at the hearing.

(3) If a person listed under ORS 309.100(4)(a) is authorized to represent a petitioner at a board of property tax appeals hearing, the clerk of the board must mail or deliver a copy of the original order of the board to the representative. In such a case, the clerk of the board is not required to mail or deliver a copy of the order to the petitioner. If the representative has not provided a mailing address and the order cannot be personally delivered, the clerk will mail the order to the petitioner.

(4) Copies of orders mailed to petitioners or petitioners' representatives must be mailed within five days of the date issued and no later than five days after the board has adjourned.

(5) Copies of orders must be delivered to the officer in charge of the roll and the assessor on the same day they are mailed or delivered to the petitioner or the petitioner's representative.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110
Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1997, f. & cert. ef. 12-31-97; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-309.110(1)-(C)
Adjustments to Personal Property Value

Whenever the board of property tax appeals reduces personal property value, the order shall list the real market value of the individual items or categories/schedules as submitted on the petition, and the values ordered by the board.

Example 1: If the petitioner is appealing the value of a single item of personal property, the order shall list the real market value on the tax roll of the item being appealed; the real market value of the item as corrected or sustained by the board; the total real market value on the tax roll of all property assessed to the account; and the total real market value of all property assessed to the account as corrected or sustained by the board.

Example 2: If the petitioner is appealing all of the items in a schedule as listed in the personal property return filed under ORS 308.290, the board's order shall show the total real market value on the tax roll of the personal property listed in the schedule; the total real market value for the schedule as corrected or sustained by the board; the total real market value on the tax roll of all property assessed to the account; and the total real market value of all property assessed to the account as corrected or sustained by the board.

Example 3: If the basis of the appeal is the model year, purchase date and price, or the valuation factor used to arrive at the value of any or all of the items in all five schedules, the board's order shall state the basis for any changes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 9-1997, f. & cert. ef. 12-31-97

150-309.110(1)-(D)
Disposition of Appeals of Property Assessed as an Undivided Interest

(1) Any owner of property assessed as an undivided interest may petition the board of property tax appeals for a reduction in the value of the property under ORS 309.100. An appeal filed by an owner of property assessed as an undivided interest will be treated as an appeal on behalf of all the owners of all the undivided interests in the property. The owner filing the appeal will be considered the primary petitioner.

(2) When the board receives a petition of the value of property assessed as an undivided interest, the board must:

(a) Determine the real market value of the whole property as if it were under single ownership.

NOTE: The assessor may issue separate tax statements for each undivided interest in real property (ORS 308.125), but the value attributed to each interest is not an issue that can be brought before the board.

(b) If the real market value determined under (a) is reduced, apportion the value by the proportional share of each undivided interest. Apportion a maximum assessed value and assessed value for each interest.

(c) Issue an order in the name of the primary petitioner that addresses both the value of the whole property and the value attributed to each interest. Mail a copy of the order to all other persons owning a percentage interest in the property.

(3) Refunds resulting from appeals of the value of property assessed as an undivided interest will be distributed according to the procedure outlined in Section (4) of OAR 150-311.806-(A).

(4) Notwithstanding (1) above, if the property is subject to a timeshare plan, an appeal of the value of the property must be filed by the managing entity as agent for the owners of the property as specified in ORS 94.808(3).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-309.115
Adjudicated Value Calculation for Centrally Assessed Property

Properties assessed under ORS 308.505 to 308.660 (centrally assessed property), which have adjudicated values, must be adjusted during the subsequent five year period to reflect changes in value due to additions, retirements, and economic trends.

(1) Because of the complex interactions of the numerous variables involved in the unitary appraisal of centrally assessed properties, the adjustment due to additions, retirements, and economic trends will be determined in the following manner:

(a) An appraisal of the property will be made by the department for the year for which the adjudicated value was established and for each of the subsequent years, following the methods and procedures used to develop the adjudicated value at the trial or hearing where the adjudicated value was determined.

(b) If no method or procedure was developed in reaching the adjudicated value, the methodology used should be consistent with that used for all similar properties. The value determined by the department's appraisal for the current assessment year will be divided by the value determined by the department's appraisal (not adjudicated value) for the assessment year immediately prior. This ratio will be applied to the "adjudicated" value of the prior assessment year to develop the "adjudicated" value for the current year's assessment.

(2)(a) If no method or procedure was developed in reaching the adjudicated value, an alternate procedure will be used for closely regulated public utility properties. The properties to which this alternate procedure applies must meet both the following conditions:

(A) The property must be used to provide or distribute electricity, natural gas, or local telephone exchange service to the public; and

(B) Rates charged and revenues received by the property owners are regulated by an Oregon regulatory agency based on depreciated historical cost.

(b) The alternate procedure for determining the current year adjudicated value for the properties described in (a) is as follows:

(A) The book value of the unit of property, both within and outside Oregon, will be determined by the department for the year in which the adjudicated value was established and for each of the subsequent years.

(B) The book value for the current year will be divided by the book value for the prior year.

(C) The ratio determined above will be multiplied by the prior year adjudicated value (system basis) to develop the current year adjudicated value (system basis).

(D) The current year adjudicated value (system basis) will be allocated to Oregon using the department's allocation methods used for similar properties.

(E) Adjustments will be made to the allocated value by adding taxable property not included in the system value or by subtracting noncentrally assessable property included in the system value. Adjustments must be made at the same percentage of book value as found for the current year adjudicated value (system basis).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.115
Hist.: REV 8-2000, f. & cert. ef. 8-3-00

150-309.115(1)-(C)
Adjudicated Value Applied to Component Appealed

When the Board of Property Tax Appeals, the Department of Revenue, or the tax court issues a final order correcting the real market value of property that includes both land and improvements, and the final order corrects only the land component or only the improvement component, ORS 309.115 only applies to the component corrected as a result of the appeal.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.115
Hist.: REV 6-2003, f. & cert. ef. 12-31-03

150-309.115(2)
Trending and Indexing an Adjudicated Value

(1) "Adjudicated value" means a real market value that has been corrected by a final order of the Department of Revenue, the board of property tax appeals, the tax court or other court, and is adjusted only as allowed under ORS 309.115 for the subsequent five tax years.

(2) A single trend or index applied to all properties of a certain class in a market area shall be applied in the same manner to adjudicated values in the same property class and market area. For purposes of this rule, a market area may be identified to exist within a county or include properties in multiple counties. This section applies, but is not limited, to ratio studies conducted under ORS 309.200 and economic studies conducted for industrial properties appraised by the Department of Revenue under 306.126.

(3) Assessors may develop valuation models to determine the real market value of property in the same property class and in the same defined market area that rely on applying trending, indexing, and depreciation factors to multiple, identifiable property characteristics on file.

(4) The assessor shall apply the same adjustments to adjudicated values as those applied to values of other properties in the same property class in the same defined market area where valuation modeling for multiple property characteristics is used to calculate real market value.

(5) The adjudicated value in section (4) must be calculated using the method in either subsection (a) or (b) of this section. The methods in subsections (a) and (b) in this section are mathematically equivalent, although differences due to rounding may occur. Such differences are de minimus.

(a) Adjust the prior year's adjudicated value proportionately to the change in value produced by the valuation model.

(A) Calculate the ratio of the real market value produced by the valuation model in the current year to the real market value produced by the valuation model in the prior year.

(B) Apply the ratio in paragraph (A) to the prior year's adjudicated value.

Example 1: Real property is originally listed on the 2013–14 tax roll with an RMV of $100,000. The county board of property tax appeals reduces the RMV to $85,000. The county applies a valuation model, which is recalculated each year, to all like properties in the market area. The table below shows the real market values produced by the valuation model, the ratio to the real market value produced by the valuation model for the prior year to those values, and the result of multiplying the prior year's adjudicated value by the ratio for each tax year. [Table not included. See ED. NOTE.]

(b) Adjust the real market value produced by the valuation model for the current year proportionately to the correction ordered in the first year of adjudication.

(A) Calculate the ratio of the adjudicated value to the real market value produced by the valuation model in the first year of adjudication,

(B) Apply the ratio to the real market value produced by the valuation model for the current year.

Example 2: The facts are the same as for Example 1. The table below shows the real market values produced by the valuation model, the ratio of the adjudicated value to the original real market value produced by the valuation model in the first year of adjudication, and the result of multiplying the real market value produced by the valuation model by the ratio for each tax year. [Table not included. See ED. NOTE.]

(6) Notwithstanding section (5), if the adjudicated value is the result of correcting a specific error in the description of property characteristics used in the valuation model, the real market value produced by the valuation model for the corrected property characteristics is the adjudicated value for the subsequent five years.

Example 3: The Department of Revenue reduces the real market value of a home based on evidence that the square footage is less than the square footage shown on the architectural plans as used by the assessor. The real market value found by the department is based upon a price per square foot used by the assessor in the valuation model multiplied by the corrected square footage. The adjudicated value in subsequent years is the price per square foot determined by that year's valuation model multiplied by the corrected square footage ordered by the department.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.115
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; Renumbered from 150-309.115(2)(b) by REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-309.115(2)(b) [Renumbered to **150-309.115(2)**]

150-309.115(2)(e)
Additions, Remodeling and Rehabilitation

For purposes of ORS 309.115(2)(e), "additions, remodeling and rehabilitation" does not include maintenance. Maintenance includes, but is not limited to, painting and replacement of defective components with components of like utility.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.115
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.115(2)(f) by REV 6-2003, f. & cert. ef. 12-31-03

150-309.200-(A)
Assessor's Ratio Study for Tax Purposes: Definitions

(1) Appraisal area is an area in a county generally composed of one or more school districts, a city or other political subdivision, or any other logical division established by the county assessor for conducting an orderly reappraisal of taxable property as required by ORS 308.234.

(2) A market area is a group of properties that generally shares important characteristics that influence value. Each market area should contain a sufficient number of accounts to ensure an adequate sale sample for analysis.

(3) Appraisal ratio is the percentage relationship between the real market value for the prior year and an estimate of the current year's real market value made by a qualified appraiser for a particular property.

(4) Appraisal ratio study is a statistical compilation of appraisal ratios for a representative group of properties in the county randomly selected on a property class basis to produce an indication of the ratio of the prior year's real market value to the current year's real market value for all taxable properties in a particular class of property within the county, in a particular class of property within an appraisal area, or in a particular class of property within a market area.

(5) Assessor's ratio study is required to be filed with the clerk of the board of property tax appeals.

(6) Class is a classification of property described in OAR 150-308.215(1)(4).

(7) Current assessment roll is the roll being prepared for the tax year beginning July 1, of the current calendar year.

(8) Current real market value is the property's real market value, or for specially assessed properties the statutory value, as of the January 1, assessment date for which the roll is being prepared.

(9) New construction is a new structure or structures added to the current assessment roll or value added by completion of construction, remodeling, renovation or other physical improvement of existing property.

(10) Properties added to the roll are any properties on the current assessment roll which were not assessed on the prior year's roll. They include value added by changed status of specially assessed properties and value added through partitioning or subdividing properties.

(11) Qualified appraiser is an appraiser registered pursuant to ORS 308.010 or who is licensed or certified under 674.310.

(12) Ratio study is a study which estimates:

(a) The percentage relationship between the total prior year's real market value of each class of taxable property on the prior assessment roll and the total current real market value of the same properties in each class on the current assessment roll; and

(b) The percentage relationship between the total prior year's real market value of each class of taxable property on the prior assessment roll and the total current real market value of the same properties in each class on the current assessment roll within each appraisal area, or market area.

(13) Sales ratio is the percentage relationship between the real market value for the prior assessment year and the selling price for a particular property.

(14) Sales ratio study is a statistical compilation of sales ratios designed to produce an indication of the real market value ratio of each property class, and the real market value ratio of each property class within each appraisal area, or market area.

(15) Taxable property includes all locally assessed property, real and personal, not exempt from taxation (whether appraised by the assessor or the Department of Revenue). It does not include properties assessed by the Department of Revenue pursuant to ORS 308.505 to 308.660.

(16) Real market value ratio is the percentage relationship between the prior year's real market value of a class of taxable property on the prior assessment roll and the current real market value of the same property on the current assessment roll.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.200
Hist.: 12-19-75; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 2-1996, f. 12-23-96, cert. ef. 12-31-96; RD 9-1997, f. & cert. ef. 12-31-97

150-309.200-(B)
Contents of the Assessor's Certified Ratio Study

The Assessor's Certified Ratio Study shall be prepared in accordance with OAR 150-309.200-(C), completed according to instructions provided by the Department of Revenue, and consist of the following items:

(1) Table of Contents.

(2) Certification of assessor's ratio study and adjustment program.

(3) Analysis of valuation methods and procedures.

(4) Introduction (purpose of report, format of the report, etc.).

(5) Reconciliation of real market value forecast analysis.

(6) Time trend analysis.

(7) County map showing appraisal areas.

(8) Listing of property class codes and descriptions. If the county has not yet converted to basic property class codes, as required by OAR 150-308.215(1), provide a cross reference listing.

(9) Ratio computations, conclusions and identification of each study area whether an adjustment will be made or not, with supporting data in conformance with the current edition of the Assessor's Ratio Procedures Manual:

(a) Pertinent sales listings and supplemental studies.

(b) Computations of statistical data and conclusion explanations.

(10) Summary of the valuation plan indicating those areas to be revalued, reappraised, or recalculated.

(11) Summary of adjustments pages for all planned adjustments to bring all properties to 100% real market value (including all areas with no planned adjustments).

(12) An after ratio study for areas revalued, reappraised or recalculated. The after ratio study is a sales to real market value ratio study that is designed to test whether or not a county's annual valuation program has produced real market values that meet the statutory requirement to bring all properties to 100% of real market value.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.200
Hist.: 12-19-75; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 2-1996, f. 12-23-96, cert. ef. 12-31-96; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99

150-309.200-(C)
Preparation of the Sales Ratio Study

(1) The collecting, recording, confirming, analyzing, and formatting of the sales data used in the sales ratio study and any other data to be used in preparing the certified ratio study must be done under the supervision of the county assessor in conformance with the current *Assessor's Ratio Procedure Manual and Data Exchange Manual* published by the department.

(2) Deviations from the procedures contained in the manual must be approved by the department.

(3) The sales data file, if electronically maintained, must have the format required by OAR 150-306.125(1).

(4) Counties must prepare and complete a Certified Ratio Study for all property classes each year on or before July 1. The assessor must file a copy of the study with the department no later than July 1 of each year. The department will consider an extension for cause, to last no later than August 1, if a request is filed in writing with the department prior to July 1.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.200
Hist.: 12-19-75; TC 17-1979, f. 12-20-79, cert. ef. 12-31-79; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; REV 6-2001, f. & cert. ef. 12-31-01

150-309.360
Administration of Appeals Process

(1) The Board of Property Tax Appeals clerk shall summarize orders on a form provided by the Department of Revenue.

(2) The completed form shall be sent to the Department of Revenue within 45 days after adjournment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.360
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97

DIVISION 310

LEVY OF PROPERTY TAX; TAX REDUCTION PROGRAMS

150-310.055
Adjustment of Operating Tax Rate Limitation for Gap Bonds

(1) For purposes of this rule the following definitions apply:

(a) A "Qualifying Taxing District Obligation," also known as "Gap Bond," means any portion of a local taxing district 1997–98 levy that was used to repay:

(A) Principal and interest for any bond issued before December 5, 1996, and secured by a pledge or explicit commitment of ad valorem property taxes or a covenant to levy or collect ad valorem property taxes;

(B) Principal and interest for any other formal, written borrowing of moneys executed before December 5, 1996, for which ad valorem property tax revenues have been pledged or explicitly committed, or that are secured by a covenant to levy or collect ad valorem property taxes;

(C) Principal and interest for any bond issued to refund an obligation described in paragraph (A) or (B) of this section.

(b) "Operating Tax Rate Limit" means the maximum rate of operating taxes certified by the Department of Revenue that a district may impose.

(c) "Operating Taxes" means ad valorem property taxes that are subject to a permanent rate limit under section 11, Article XI of the Oregon Constitution, or statutory rate limit under ORS 310.236(4), if applicable.

(2) Any taxing district whose Operating Tax Rate Limit was established in 1997–98 and whose operating levy certification for 1997–98 included levy amounts for Gap Bonds which were part of a tax base or other permanent continuing levy authority must have its Operating Tax Rate Limit increased for the tax year following the repayment of the debt obligation as outlined in this rule.

(3) In the year in which the Gap Bond debt is repaid the district must send a letter at least 30 days prior to the end of the fiscal year to the county assessor of each county in which the district imposes taxes with a copy directed to the: Property Tax Division, Oregon Department of Revenue, PO Box 14380, Salem Oregon 97309-5075. At a minimum, the letter must include the following information:

(a) Name of the taxing district;

(b) Levy amount identified as Gap Bonds on the 1997–98 M-50 Form;

(c) Amount of Gap Bond debt paid by that levy which has been retired during the current tax year.

(4) Within 30 days of receipt of its copy, the Department of Revenue must send a letter to the district and a copy of the letter to the county assessor(s): The letter must include the following information:

(a) The name of the district;

(b) The Operating Tax Rate Limit before recalculation;

(c) The new Operating Tax Rate Limit increase after recalculation;

(d) The tax year for which the new Operating Tax Rate Limit increase will first apply.

(5) The Department of Revenue must calculate the increase in the Operating Tax Rate Limit for the district by:

(a) Calculating the percentage the Measure 5 operating tax was reduced in the Measure 50 calculations to arrive at the Measure 50 tax without compression.

(b) Applying the reduction percentage in subsection (a) above to the Gap Bond or portion of Gap Bond authority.

(c) Adding the resulting amount remaining after the reduction calculation in (b) above to the Measure 50 (M5O) tax without compression.

(d) Dividing the new total amount calculated in subsection (c) by the 1997–98 assessed value used to calculate the operating rate limit of the taxing district to arrive at the new Operating Tax Rate Limit. The rate will be carried out seven places and truncated.

(6) The final Operating Tax Rate Limits after all Gap Bond debt is repaid and the calculations, as done by the Department of Revenue, are shown in the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 310.055
Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2000, f. & cert. ef. 8-3-00; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01

150-310.060-(A)
Notice of Property Tax Levy to the Assessor

(1) "Entity" means a taxing district with the authority to levy ad valorem tax or any other tax on property that is required or authorized to be placed on the assessment and tax roll for the current fiscal year, a unit of government with the authority to place an amount on the assessment and tax roll, or a nongovernmental unit with the authority to place an amount on the assessment and tax roll.

(2) On or before July 15 of each year any entity placing an amount on the assessment and tax roll shall file the following with the county assessor:

(a) Two copies of the notice of categorization and certification, (form LB-50, ED-50 or UR-50),

(b) Two copies of the ordinances or resolutions to adopt the budget, to make appropriations, to levy the taxes, and to categorize the taxes.

(3) If the documentation described in subsection (2) cannot be filed by July 15, the entity must submit to the assessor by July 15 a written request for an extension of time to file (see OAR 150-294.555(2)-(A) for details). The entity must file the required documents by the date extended.

(4) If any of the items of documentation are not submitted, or not complete in their entirety, notice to the assessor shall be considered incomplete and the entity must be notified by the assessor. The assessor must not place the tax levy or any other amount on the tax roll for any entity until the assessor has received the required copies of all documentation.

(5) The assessor must transmit one copy of the notice of categorization and certification (form LB-50, ED-50 or UR-50) and one copy of the ordinances or resolutions to the Department of Revenue within seven days of receipt of the complete documentation from the entity.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 310.060
Hist.: 10-73; TC 18-1979, f. 12-20-79, cert. ef. 12-31-79; RD 15-1982, f. 12-6-82, cert. ef. 12-31-82; RD 11-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 150-310.060; RD 12-1987, f. 12-18-87, cert. ef. 12-31-87; RD 2-1994, f. 12-15-94, cert. ef. 12-31-94; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02

150-310.060(4)
Guidelines for Nongovernmental Units Using Assessment and Tax Roll

(1) "Property tax moneys" includes ad valorem taxes, taxes on property, as defined in ORS 310.140(1), and other amounts specifically authorized by law to be included on the roll that is certified for collection under 310.060. Property tax moneys shall be deposited in the unsegregated tax collections account as required under 311.385.

(2) An entity that is not a governmental unit that has specific statutory authority to place an amount on the assessment and tax roll must notify the county assessor of the amount no later than July 15 of each year as required under ORS 310.060. Notice of the amount must be on the forms prescribed by the Department of Revenue.

(3) Unless otherwise providedby law, the provisions of ORS 311.806 do not apply when any entity that is not a governmental unit certifies an amount specifically authorized by law to be included on the assessment and tax roll, and the amount on individual properties is calculated by the entity. Any claim for refund of such amount due to an error in calculation of the amount shall be made to the entity. The entity shall pay any refunds it determines to be due to errors in calculation of the amount out of the funds available to the entity. Such refunds shall not be paid from the unsegregated tax collections account, and the assessor shall not be required to redetermine the amount of other taxes imposed on the property for which the refund is made.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.060
Hist.: RD 4-1993, f. 12-30-93, cert. ef. 12-31-93

150-310.060(7) [Renumbered to **150-294.311(6)**]

150-310.070-(A)
Excessive and Illegal Levies

(1) If any municipal corporation submits a tax levy to the assessor which exceeds constitutional or statutory limitations, the Department of Revenue shall notify the assessor and the excessive portion of the levy shall not be entered on the tax roll.

(2) If the Department of Revenue determines that the levy otherwise fails to meet the requirements provided by law, then upon the notification by the Department of Revenue the assessor shall not enter any tax levy upon the tax roll that does not meet statutory requirements.

(3) Upon discovery that a levy fails to meet the requirements provided by law, the Department of Revenue shall notify, by mail, the municipal corporation and the county assessor of the defects. The assessor shall change the levy in accordance with proper instructions. The municipal corporation shall comply by submitting a revised Form LB-50 reflecting the changes in the levy, plus an amended resolution and budget document to reflect the reduced revenue and appropriated expenditures.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 280.060
Hist.: RD 15-1982, f. 12-6-82, cert. ef. 12-31-82; RD 11-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 150-310.070

150-310.090
Tax Rate Computation

(1) The county assessor shall compute the tax rate for each district that levies an ad valorem tax by dividing the district's levy after offsets by the assessed value used to compute the tax rate. The computed tax rate shall be carried to seven decimal places and truncated. A separate tax rate shall be calculated for each category of levy of a taxing district.

(2) In the event that total taxes extended against a property exceed the limitation imposed on a category of taxes defined by Subsection (1) of Section 11b, Article XI of the Oregon Constitution, the taxes imposed upon such property in that category shall be reduced evenly by the percentage necessary to meet the limitation for that category as defined in this rule.

(3) For each property in the county, those taxes to be imposed for the purpose of funding the public school system, but not to pay principal and interest on exempt bonded indebtedness, shall be limited to the amount provided in the following schedule for each $1,000 of real market value of the property: [Schedule not included. See ED. NOTE.]

(4) For each property in the county, those taxes to be imposed for the purpose of funding other government operations, but not to pay principal and interest on exempt bonded indebtedness, shall be limited to $10 for each $1,000 of real market value of the property.

(5) If the taxes in either category to be imposed on any property exceed the limit established for that category in Subsection (3) and (4) of this section, the assessor shall reduce the taxes by applying a reduction percentage. The reduction percentage shall be calculated by subtracting the limit for the category from the total taxes to be imposed in that category and dividing the difference by the amount of the combined tax in the category. The assessor shall then subtract from the taxes that would otherwise be imposed, that proportion of the taxes in the category obtained by multiplying the reduction percentage times the taxing unit's total tax within the category.

(6) After application of the reduction percentage to the taxes within each category, the total amount of taxes to be imposed on the property in either category may be different from the maximum amount that may be imposed due to rounding. In such a case, the tax amount for the district that has the greatest amount of taxes in that category shall be adjusted so that the amount of taxes to be imposed is equal to the maximum that may be imposed.

(7) The reduction percentage shall be carried to at least seven (7) digits.

(8) Alternately, the county may use the reciprocal of the reduction percentage to determine the amount of taxes that may be imposed on a property. When using the reciprocal, the amount of taxes imposed is calculated by multiplying the taxes extended by the reciprocal percentage. The result is the amount of taxes imposed.

(9) The difference between the taxes imposed and the taxes extended is the amount of loss reported by the assessor under ORS 311.105(A).

(10) When computing additional taxes for specially assessed properties that were disqualified prior to June 30, 1991, no compression of taxes is required. If specially assessed property is disqualified for tax year beginning on or after July 1, 1991, the provisions of ORS 310.165(4) apply for computing the additional taxes. The maximum tax will be based on the real market value of the property for each year of special assessment. [Example not included. See ED. NOTE.]

[ED. NOTE: Schedules and examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 310.090
Hist.: RD 12-1987, f. 12-18-87, cert. ef. 12-31-87; 6-1988(Temp), f. & cert. ef. 9-2-88 thru 12-31-88; RD 9-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1991, f. 12-30-91, cert. ef. 12-31-91

150-310.110
Joint District Apportionment Formula

(1) When a taxing district extends into more than one county and it levies a dollar amount ad valorem levy, the total of the levy must be apportioned among the counties in which it lies according to the assessed value to be used to compute the tax rate of the district in each county. The percentage of value in each county must be calculated to enough digits so that the tax rate for that levy will be the same in each county when truncated at the seventh (7th) digit.

(2) Separate apportionments must be done for each category of levy subject to the limits of Section 11b, Article XI of the Oregon Constitution.

(3) Example:
The example district lies in two counties and has a levy subject to the School Operations limit. The levy is $1,000. The example shows only one category of levy, if the district has more than one category, separate allocations would be done for each category of levy. [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 310.110
Hist.: RD 12-1987, f. 12-18-87, cert. ef. 12-31-87, Renumbered from 150-310.105; RD 3-1991, f. 12-30-91, cert. ef. 12-31-91; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 10-2002, f. & cert. ef. 12-31-02

150-310.110(1)
"Levy" Defined

(1) For purposes of this section, when a taxing district is a school district in one of the three equalization counties as described in ORS 334.350 to 334.410, "ad valorem taxes levied by the district" means taxes actually extended on the roll by a district submitting a certified levy to the assessor.

(2) Only districts which individually levy ad valorem taxes shall be included in the apportionment formula.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 310.110
Hist.: RD 12-1987, f. 12-18-87, cert. ef. 12-31-87; RD 3-1991, f. 12-30-91, cert. ef. 12-31-91

Elderly Rental Assistance Program

150-310.630(4)
Definition of Gross Rent

"Gross rent" means the amount actually paid during the calendar year for the occupancy of a homestead in Oregon in that calendar year. This includes charges for the use of appliances and furnishings. Advance rental payments are not included in gross rent in the month paid but for the month actually used. Delinquent rental payments are not considered rent unless the delinquent payment is made within the same calendar year as the period that the rent was incurred in. Cleaning deposits, key deposits, or other rental deposits are not considered paid for the occupancy of a homestead and are not part of gross rent. Gross rent does not include housing provided "for the convenience of the employer," since no rent is actually paid.

Examples: (a) "A," an apartment manager, is required to live in an apartment provided by his employer. "A" cannot file for a property tax refund since he is not actually paying rent.

(b) "A," a minister, is required to live in a house provided by the church. "A" cannot file for a property tax refund since he is not actually paying rent.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 11-73; 12-31-77, Renumbered from 150-310.630(7); TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 8-1980, f. 11-28-80, cert. ef. 12-31-80, Renumbered from 150-310.630(9); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 310.630(8)

150-310.630(5)
Definition of Homestead

(1)(a) *General*. The homestead must be the "principal dwelling" of the person claiming elderly rental assistance. The principal dwelling is the primary place the taxpayer physically occupies for day-to-day living on December 31 of the year for which the claim is filed. The homestead is limited to the principal dwelling and the land area of the tax lot or the tax lots that the principal dwelling is built on. The number of acres is not significant in determining the land area included in the homestead.

(b) *Temporary absence*. The right to elderly rental assistance will not be lost by temporary absence from the homestead except in those instances where the homestead is temporarily rented to another party. Temporary absence is defined in OAR 150-310.630(11).

(c) Persons who rent from their children or other relatives qualify for assistance if they do, in fact, have a landlord-tenant relationship.

(2) *Nursing Home Residents*. Residents of a nursing home may file for elderly rental assistance based on the amount of rent that was paid, not to include medical expenses, assuming the claimant meets the qualifications specified under ORS 310.635.

(a) If the nursing home resident's spouse owns the home that the spouse resides in, the nursing home resident may file for elderly rental assistance based only on the nursing home rent and the nursing home resident's household income.

(b) If the nursing home resident's spouse rented a separate residence, each spouse may file a separate claim for elderly rental assistance, assuming each meets the qualifications specified under ORS 310.635. Each spouse's claim for elderly rental assistance will be based on the rent actually paid by that spouse. The household income limitations of ORS 310.630 will be applied separately to each spouse.

(3) *Multiple Family Units*. A multiple family unit may contain more than one homestead if a landlord-tenant relationship exists. The Department may segregate the value of the tenant's dwelling area from the total property value to determine the homestead of the owner-occupant. The dwelling area occupied by the tenant will qualify as a homestead and the tenant may file for elderly rental assistance based on the rent actually paid for that unit. Any person who operates a boarding house or rents rooms will be considered as maintaining a multiple family unit.

(4) *Subleasing of a Living Unit*. If a person who rents a dwelling area subleases part of that dwelling area to another person, the original renter must reduce the total rent paid by the amount of rent received from the subleasee in determining the amount of net rent that may be claimed for elderly rental assistance.

(5) *Business Property*. If the principal dwelling contains business property, and if the taxpayer claims a business expense based upon the use of such property, the value of the business property must be segregated out. The elderly rental assistance claim must be based only on the portion of rent paid for the residence.

(6) Mobile Home Residents. Taxpayers who reside in a mobile home and who rent either the land or the mobile home, or both, will qualify for elderly rental assistance if they meet the qualifications specified under ORS 310.635. The amount of the assistance will be based on the rent paid. The assistance will not include any property taxes paid on property that is owned by the taxpayer.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 12-71 as 150-310.631; 4-72; 12-72; 11-73; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-310.630(3); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; Renumbered 150-310.630(5); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97, Renumbered from 310.630(5); REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 310.630(4)

150-310.630(8)(a)-(A)
Pensions

As used in ORS 310.630(8)(a)(A), "exempt pensions" does not include certain distributions from qualified retirement plans. Distributions that are excluded from adjusted gross income because they have been transferred or "rolled over" into an individual retirement arrangement (IRA) are not considered to be "exempt pensions." Such amounts should not be added to adjusted gross income for purposes of determining household income.

Example: Roseanna received a lump-sum distribution from her employer's qualified pension plan. Within 60 days of the distribution, Roseanna transferred all of the funds to an IRA. The amount of the lump-sum distribution is not included in household income.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95, Renumbered from 150-310.630(7)(a)-(A); RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 310.630(7)(a)-(A)

150-310.630(8)(a)-(C)
Inheritances

As used in ORS 310.630(8)(a)(C), "inheritances" include only property that passes by will or statutes of intestate succession. However, inheritances do not include any property that passes from a deceased spouse to a surviving spouse who lived together in the same household. An inheritance is considered to be received on the date of distribution of the property rather than on the date of the death of the decedent.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 12-31-77, 12-31-78, 12-31-84; Renumbered from 150-310.630(8) to 150-310.630(8)-(A); 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86, Renumbered from 150-310.630(8)-(A); RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 310.630(7)(a)-(C)

150-310.630(8)(a)-(D)
Gifts

(1) "Household income" includes all gifts, grants and scholarships in excess of $500 regardless of whether they are taxable or nontaxable.

(2) Gifts include the transfer of property for less than adequate and full consideration in money or money's worth. The amount of the gift is the difference between the amount of the consideration and the market value of the gifted interest in the property. A transfer of property where possession or enjoyment is postponed until some future date is a gift when the donee actually receives the property. However, gifts do not include any transfer of property passing between husband and wife who are living together in the same household.

Example 1: Mike conveys real property to Leonard, but reserves a life estate for Mike. There is a gift to Leonard when Mike dies. The amount of the gift is the market value of the property on the date of Mike's death.

Example 2: Dee creates a joint bank account with Jennifer. All of the funds in the account are furnished by Dee. There is a gift to Jennifer when Jennifer draws upon the account for Jennifer's benefit to the extent of the amount withdrawn. There is also a gift to Jennifer when Dee dies and the remaining balance of the account passes to Jennifer.

Example 3: Mary creates a joint interest with Elizabeth in real property held not as tenants in common but with right of survivorship. This act is not a gift because of the cross contingent remainders that are indestructible by either tenant. Upon the death of Mary, the vesting of the total property is a gift to Elizabeth in the amount of the total market value of the property.

(3) Gifts include the creation of joint tenancy in real or personal property. The amount of the gift is the value of the joint tenancy in the real or personal property. The value of the joint tenancy is the real market value of the interest in the property. However, for purposes of this rule, a taxpayer may treat the value of the gift either as the real

market value of the taxpayer's interest in the property or as the taxpayer's proportional share of the real marker value of the property as a whole.

Example 4: Susan creates a joint tenancy in personal property under ORS 105.920 with Linda. Linda receives the right to one-half of the income from the property, or one-half the use of the property, and the right to sever the joint tenancy. The creation of the joint tenancy is a gift to Linda. For household income purposes, Linda's one-half interest in the personal property is valued at either real market value or one-half of the total real market value of the personal property. Later, upon the death of Susan, Linda becomes the sole owner of the property. The transfer of Susan's one-half interest in the personal property is a gift to Linda, again valued at either real market value or one-half of the total real market value of the personal property.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 12-31-77; 12-31-78; 12-31-84; Renumbered from 150-310.630(8) to 150-310.630(8)-(A), 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86, Renumbered from 150-310.630(8)-(A); Renumbered from 150-310.630(8)(a)-(D) to 150-310.630(7)(a)-(D), RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 150-310.630(7)(a)-(D)

150-310.630(8)(a)-(O)
Welfare Payments — Excludable Amounts

(1) Welfare payments for medical care, drugs, and medical supplies are excludable from household income if the recipient doesn't receive such payments directly.

(2) Welfare payments for in-home services authorized and approved by the Department of Human Services or any of its divisions are excludable from household income. "In-home services" include but are not limited to home care services, nursing tasks, housekeeper services, meal preparation, assistance with shopping and transportation, and personal care services.

(3) Welfare payments for direct or indirect reimbursement of expenses paid or incurred for participation in work or training programs are excludable from household income. These payments include but are not limited to reimbursements for tuition, books, supplies, and transportation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 10-7-85, 12-31-85, Renumbered from 150-310.630(8)-(B) to 150-310.630(8)(a)-(O); 12-31-86; 12-31-89, Renumbered from 150-310.630(8)(a)-(O) to 150-310.630(7)(a)-(O); RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 150-310.630(7)(a)-(O); REV 4-2009, f. & cert. ef. 7-31-09

150-310.630(8)(b)-(F)
Limitation of Losses in Computing Household Income

To determine household income, each source of income (loss) must be considered separately. A business, a farm, rents, royalties, and income from the disposition of tangible or intangible property are separate sources of income or loss. To determine household income, combine all income or loss from each separate source. If any net loss results from such combination, the net loss is limited to $1,000.

Example 1: In 1997, Elizabeth had retirement income of $7,000, a farm loss of $5,000 and a net operating loss deduction of $2,000. Elizabeth's household income is figured below: [Example not included. See ED. NOTE.]

Net operating loss carrybacks or carryovers do not decrease household income for tax years beginning after December 31, 1981. In addition, the farm loss is limited to $1,000.

Example 2: Assume the same facts as in Example 1 above. In addition to the farm loss, Elizabeth is a partner in a partnership. The partnership's main activity is farming. In 1997, the partnership had income of $10,000. Elizabeth's share of the partnership income is $6,000. Elizabeth's household income is figured below: [Example not included. See ED. NOTE.]

The farm income from the partnership is netted with Elizabeth's farm loss. This would also be the case if Elizabeth is a shareholder in an S Corporation that is primarily engaged in farming.

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 12-31-77; 12-31-78; 12-31-84; Renumbered from 150-310.630(8) to 150-310.630(8)-(A), 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86, Renumbered from 150-310.630(8)-(A); Renumbered from 150-310.630(8)(b)-(F) to 150-310.630(7)(b)-(F), RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 310.630(7)(b)-(F)

150-310.630(9)
Definition of Contract Rent

Contract rent means the amount actually paid during the calendar year for the occupancy of a homestead in Oregon in that calendar year. This includes charges for the use of appliances and furnishings. Advance rental payments are not included in contract rent in the month paid but for the month actually used. Delinquent rental payments are not considered rent unless the delinquent payment is made within the same calendar year as the period for which the rent was incurred. Cleaning deposits, key deposits, or other rental deposits are not considered paid for the occupancy of a homestead and are not part of contract rent. Contract rent does not include housing provided "for the convenience of the employer," since no rent is actually paid.

Examples: (a) "A," an apartment manager, is required to live in an apartment provided by his employer. "A" cannot file for a property tax refund since he is actually paying contract rent.

(b) "A," a minister, is required to live in a house provided by the church. "A" cannot file for a property tax refund since he is not actually paying contract rent.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 11-73; 12-31-77, Renumbered; TC 8-1980, f. 11-28-80, cert. ef. 12-31-80

150-310.630(11)
Definition of "Residing in" Oregon

(1) A taxpayer is "residing in" Oregon on December 31 if their principal dwelling was located in Oregon on December 31. However, a taxpayer will be considered to be residing in Oregon if their principal dwelling was in Oregon on December 31 and they were away on a temporary absence. Temporary absences include absences for vacations, hospitalization and business travel. The term "residing in" does not require domicile. See OAR 150-310.630(5) for definition of principal dwelling.

(2) Renters don't have to be renting on December 31 to be considered as residing in Oregon on that date.

Examples: (a) "A" rented an apartment in Eugene, Oregon, from January 1 to September 30. From October 1 through December 31, "A" lived with a family in Portland, Oregon. "A" is residing in Oregon on December 31.

(b) "A," a renter, lived in Oregon until August. Then the taxpayer moved to Idaho. "A" visited friends in Oregon during Christmas vacation and was in Oregon on December 31. "A" isn't residing in Oregon on December 31.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: Repealed by TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 12-1982(Temp) f. & cert. ef. 12-16-82; RD 14-1982, f. 12-6-82, cert. ef. 12-31-82; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-310.630(13); RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 150-310.630(10)

150-310.635
Claimant Filing Rules for Elderly Rental Assistance

(1)(a) *General Rule*. With respect to the calendar year for which the claim is filed, only renters residing in Oregon on December 31 are eligible claimants. A taxpayer who is a homeowner on December 31 of the calendar year for which the claim is filed does not qualify for elderly rental assistance. A claim may be filed only for a principal dwelling located in Oregon that is subject to Oregon property tax.

(b) "*Household Income*" *Limitation*. To qualify for elderly rental assistance, a claimant's household income must be less than $10,000. Household income does not include the income of other related or unrelated individuals living with the taxpayer. Unless a husband and wife are living apart permanently on December 31, their income must be combined to determine their household income limit. "Household income" is defined in ORS 310.630.

(c) "*Household Asset*" *Limitation*.

(A) A taxpayer who has not attained the age of 65 by December 31 of the year for which the claim is filed must have household assets with a value of no more than $25,000 on the same December 31 to be considered an eligible claimant. Unless a husband and wife are living apart permanently on December 31, the value of their assets must be combined to determine if the value of household assets is no more than $25,000. For the purpose of this rule, a husband and wife filing a joint homeowner or renter refund claim are not subject to this limitation if at least one spouse is age 65 or over on December 31.

(B) As used in this rule, "household assets" means those assets as defined in ORS 310.651. Household assets include, but are not limited to the following:

(i) Real property (excluding the value of the homestead).

(ii) Tangible personal property used in a trade or business.

(iii) Intangible personal property such as stocks, bonds, certificates of deposit, and other evidence of debt as defined in ORS 310.651.

(C) The claimant must complete the Household Assets List on the refund claim form to verify that the value of the household assets on December 31 of the year of the claim does not exceed $25,000. Completion of the Household Assets List is not required if at least one spouse on a joint claim is age 65 or over on December 31.

(d) *Joint Claim for Spouses*. In general, a husband and wife residing at the same principal dwelling on December 31 must file a joint elderly rental assistance claim for the calendar year. A joint claim will be treated as a claim filed by a single taxpayer. The department will not issue separate payments for a joint claim.

(2) A claimant who has rented more than one dwelling during the calendar year may file a claim for all rent paid during the calendar year if the claimant is residing in Oregon on December 31. "Residing in" Oregon is defined in OAR 150-310.630(11). Each roommate in a household may file an elderly rental assistance claim for any period during the year. The roommate's claim should be based on the household income of that claimant, the portion of rent paid by the claimant during the calendar year, and the value of the household assets of that claimant on December 31. Rent does not include advance rent or deposits for keys, cleaning, or security. See ORS 310. 635 for computation of the refund.

(3) *Examples*.

For the purpose of the following examples assume "A" and "B" are not husband and wife.

(a) "A" and "B" sold their home in August and together moved into a rented home for the remainder of the year. "A" and "B" may each file an elderly rental assistance claim as a renter for the period August through December. "A's" claim must be based only on "A's" household income, household assets, and the portion of rent "A" paid. "B's" claim must be based only on "B's" household income, household assets, and the portion of the rent "B" paid.

(b) "A" owns a home for the entire calendar year. "A" rents the home to "B" from January 1 to December 1. On December 2, "A" moves into the house with "B" for the remainder of the year. "B" may file a claim for elderly rental assistance for the calendar year if "B" is residing in Oregon and is not a homeowner on December 31.

(c) "A" rented an apartment by herself from January through July. In August "A" and "B" moved into another apartment together. "A" and "B" both paid half of the rent for the new apartment during August through December. "B" paid no rent before moving into the apartment with "A." Both "A" and "B" qualify for elderly rental assistance. "A" and "B" must file their elderly rental assistance forms as follows:

(A) "A" may file a claim showing the rent and utilities she paid. "A" may claim the rent she paid from January through July at her old address. She may claim only her own rent and utilities (the amount she actually paid) at the new address from August through December. "A" should consider only her own assets for purposes of the household assets limitation.

(B) "B" may file a claim showing only the rent she paid at the new address from August through December. "B" should show only her own household income and will consider only her own assets for purposes of the household asset limitation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.635

Hist.: 11-73; 4-74; 9-74; 3-16-78; 12-31-79; 9-16-82; 12-31-82; 12-31-89; 12-31-90; 12-31-91; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97, Renumbered from 150-310.640; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01

150-310.635(7)
Government Entity

For purposes of this statute, a government entity includes all local, state, and federal agencies or governing bodies.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.635

Hist.: RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97, Renumbered from 150-310.637

150-310.657
Determination and Payment of Elderly Rental Assistance Claims

(1) Elderly Rental Assistance claims filed on or before July 1 of each year will be processed on or before November 15 of the same year. If the department determines that the claimant is eligible for elderly rental assistance, the department will determine the amount to which the claimant is entitled under ORS 310.635 and 310.692.

(a) If the department grants a claim for elderly rental assistance in whole or in part, payment will be made on or before November 15 of the year in which the claim is filed. If the department denies a claim, in whole or in part, the department will notify the claimant on or before November 15 of the year in which the claim is filed.

(b) Prior to payment on or before November 15 of each year, the department will determine the total amount of eligible claims to be paid in that year and, if necessary, will prorate the payments as provided in ORS 310.692.

(c) After the claims, determined by the department to be eligible for payment on or before November 15 of each year, have been paid, no payments will be made until the following year. Amended claims or appeals to claim denials, that result in additional elderly rental assistance will be included in the total amount of eligible claims to be paid in the following year and will be subject to any proration determined for that year.

Example 1: Mrs. Jones files a 2001 Form 90R on June 15, 2002. The department processes the form and a prorated check is issued to her on November 15, 2002. Mrs. Jones files an amended 2001 Form 90R on November 29, 2002 and the department determines that she is eligible for an additional payment. Her additional claim amount is processed with timely filed 2002 claims eligible for payment on or before November 15, 2003, and is subject to any proration determined for claims paid in 2003.

Example 2: Mr. Smith files a 2001 Form 90R on June 15, 2002. The department processes the form and determines that Mr. Smith is not eligible for elderly rental assistance, because he did not spend more than 20 percent of his total household income on rent and utilities. The department notifies him of the denial of his claim, and Mr. Smith appeals to the Magistrate Division of the Tax Court. Mr. Smith provides additional utility receipts and the Magistrate determines that he is eligible for elderly rental assistance. However, the appeal is resolved after all of the funds allocated for elderly rental assistance payments in 2002 have already been paid. In that case, Mr. Smith's claim amount is processed along with timely filed 2002 claims eligible for payment on or before November 15, 2003 and is subject to any proration determined for claims paid in 2003.

(2) Eligible claims for elderly rental assistance filed after July 1 are included with other claims eligible to be paid in the next year and will be subject to any proration determined for claims paid in that following year.

Example 3: Mrs. Lee files a 2001 Form 90R on July 15, 2002. Since Mrs. Lee filed her 2001 form after July 1, 2002, her form is processed in the following year along with timely 2002 forms. If she is eligible for elderly rental assistance, her claim amount is eligible for payment in November 2003 and is subject to any proration applicable to payments made in 2003.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.657

Hist.: REV 3-2002, f. 6-26-02, cert. ef. 6-30-02

DIVISION 311

COLLECTION OF PROPERTY TAXES

150-311.105(1)(b)
Applying Offsets to Ad Valorem Tax Levies

Offsets due to a district shall be deducted from the total of all ad valorem levies within each category certified by the district on the basis of the ratio that each category of levy bears to the total amount of all levies of the district.

Example: A county levies for general government, school operations (county school fund), and exempt debt service. This illustrates allocation of an offset of taxes paid under ORS 311.160 (1⁄4 of 1% offset).

Offset allocation formula: [Formula not included. See ED. NOTE.]

[ED. NOTE: Formulas referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.105

Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91

150-311.150
Form of Roll Changes and Notations

(1) The following procedures may be used to implement the alternate method for making roll notations and changes.

(2) Where the law speaks to corrections, additions, changes to or notations on the roll, whether made by written, electronic or other means, the county may enter these roll changes by using alpha-numeric identifiers that are supported by a voucher for each roll entry. The alpha-numeric identifier shall reference the supporting voucher.

(3) The voucher shall be numbered, dated, state what roll change is to be made, provide sufficient evidence indicating the propriety of or the law substantiating the roll change, and identify the tax account or accounts affected. The voucher shall be approved by the officer in charge of the roll or an authorized deputy.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.150
Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84

150-311.160(2)
Interest Calculation for Large Value Appeals Under ORS 308.020

(1) For purposes of computing the amount due when a final order is entered in a 1⁄4 of 1 percent appeal (ORS 308.020(1)), or a 1⁄10 of 1 percent appeal (308.020(2)), the additional tax shall be considered a separate tax.

(a) The additional tax shall be considered to have become due on November 15 of the year in question and February 15 and May 15 of the following year, as normal trimester amounts would have become due.

(b) Interest shall begin to accrue on the additional tax as of the above due dates.

(c) There shall be no discount allowed on the additional tax.

(d) The total of the additional tax plus the interest thereon shall be billed to the taxpayer. The billing shall note that this is an additional tax to reflect an order under ORS 311.160.

(2) If the final order results in a value which is greater than the value asserted by the Department of Revenue, the additional value found by the court shall be considered to be a new assessment. Since neither the Department of Revenue nor the taxpayer had advance knowledge of this value or the resulting tax obligation, there was no opportunity for the taxpayer to pay the tax and stop interest from accruing.

(a) The roll shall be corrected under ORS 311.205(1)(c).

(b) Interest shall be computed per ORS 311.206.

(c) There shall be no discount allowed on the additional tax.

(d) The taxpayer shall be notified per ORS 311.205(3).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.160
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 2-1997(Temp), f. & cert. ef. 9-15-97 thru 3-9-98; RD 9-1997, f. & cert. ef. 12-31-97

150-311.160(4)
Method for Applying Estimated Payment

Estimated tax payments by an owner of property who is appealing under the 1⁄4 of 1 percent provisions of ORS 308.020(1) or the 1⁄10 of 1 percent provisions of 308.020(2) and being collected under 311.160(3) shall be handled as follows:

(1) The estimated payment is deposited in a special account; interest earned on the amount in the special account (set up by the treasurer under ORS 311.160(3)) is credited to the special account.

(2) Upon settlement of the appeal, the adjudicated value is added to the roll and tax calculated.

(3) Interest is charged on this additional tax from the date the tax originally would have been due through date of estimated payment.

(4) The estimated payment including accrued interest is applied first to the first trimester and its accrued interest from the due date to the date of the estimated payment.

(5) Balance of the estimated payment account is applied to the second trimester amount due and accrued interest, then to the third installment.

(6) Should the estimated payment account including interest accrued on that amount not be enough to clear the new tax due, interest accrues on any trimester balance due according to statute.

(7) Should the estimated payment account including interest accrued be more than the amount of the additional tax, the excess plus the applicable accrued interest shall be refunded to the payor with no additional accrued interest that would otherwise be due under ORS 311.812.

(8) An estimated payment does stop further interest accrual on that portion of the additional tax covered by the payment.

Example: Major utility company says the value of its property in county X for tax year 1988-89 is $1 million and the Department of Revenue says it is $5 million. The $4 million value difference triggers the one-quarter of one percent statute. Tax on the $4 million is $100,000.

(**NOTE:** Taxpayer pays the tax due on the undisputed value timely.)

Taxpayer decides to make an estimated payment of $50,000 on November 10, 1989. The settlement is finalized in May, 1990; the total value is determined to be $4,000,000. Since the tax of $25,000 on the undisputed value of $1 million was paid timely, tax is computed on the value difference of $3 million and is determined to be $75,000.

The first installment of the additional tax, $25,000, would have been due November 15, 1988; the second installment, $25,000, February 15, 1989, and the third installment of $25,000, May 15, 1989.

The estimated payment of $50,000 plus interest earned then would be applied to the first installment of $25,000 plus accrued interest from November 15, 1988, to November 10, 1989, THE DATE THE ESTIMATED PAYMENT WAS MADE. The balance of the estimated payment would be applied to the second installment plus accrued interest. Any tax remaining on the second trimester tax due as well as the third trimester balance would accrue interest from the trimester due date to the date of payment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.160
Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95

150-311.205(1)(a)
What Is a Clerical Error

(1) Clerical errors are those procedural or recording errors which do not require the use of judgment or subjective decision making for their correction. A clerical error is an arithmetic or copying error or an omission on the roll or misstatement of property value that is apparent from assessor office records without speculation or conjecture, assumption or presumption, and that is correctable without the use of appraisal judgment or the necessity to view the property.

(2) Clerical errors are those which, had they been discovered by the assessor prior to the certification of the assessment and tax roll of the year of assessment, would have been corrected as a matter of course.

(3) An error is a clerical error or omission on the roll if all the facts necessary to correct the error or omission on the roll are contained in the records and could be readily determined by an impartial person examining these records.

(a) Records include, but are not limited to, field notes, the assessment roll, tax cards, deeds, vouchers and appraisal cards and jackets, which are regularly maintained by the assessor's office and used to determine value.

Example 1: "A" owns a parcel of land with a house on it. "A" divides the land and sells part to "B," but retains that part of the land with the house. The assessor places the value of the house on "B's" land. The value of the house was placed upon the wrong tax lot. It was not, in the words of 311.207 "from any cause been omitted, in whole or in part, from assessment and taxation on the current assessment and tax rolls …" It's on the roll but on the wrong account. Thus, the property was never actually omitted from the roll but clerically placed on the wrong parcel of land.

This comes within the definition of clerical error because it can be corrected solely from the records of the assessor as these records reflect the correct situation which, if discovered by the assessor before certification of the assessment and tax roll, would have been corrected as a matter or course and is correctable without the use of appraisal judgment or the necessity to view the property.

Example 2: A tract of land was zoned agricultural prior to April. Late in April of the same year, this property was rezoned to residential, appraised, and billed accordingly. In July of the same year, the Planning Commission again caused the property to be rezoned to agricultural. When it was reappraised in a later year, the appraiser overlooked the rezoning and appraised the tract on the basis of a residential zone, thus giving it a higher valuation.

Evidence shows that at the last appraisal the appraisal jacket of the taxpayer's property had the residential zone still on the outside but that there was a note inside of the appraisal jacket indicating the agricultural zoning. Had the appraiser looked inside of the jacket, the appraiser would have seen the latest rezoning note and would not have relied on the residential zone on the outside of the jacket.

This comes within the definition of clerical error because it can be corrected solely from the records of the assessor as these records reflect the correct situation which, if discovered before certification of the assessment and tax roll, would have been corrected as a matter of course. The correction can be made without the use of appraisal judgment or the necessity to view the property because the correct value (i.e., value based on an agricultural zone) appears in the records of the assessor.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.205
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91

150-311.205(1)(b)-(A)
Error Corrections and Valuation Judgment Under 311.205

(1) Except as provided in ORS 311.205(1)(b), and section (3) of this rule, the officer may not correct an error or omission on the roll of value of land; improvement; personal or other property; or of any part, parcel or portion of land, improvement, personal or other property, if the correction requires that the officer exercise judgment to determine the value, formulate an opinion as to value, or inquire into the state of mind of the appraiser. Mistakes of this nature may be:

(a) Thinking that a house has a basement when it does not;

(b) Making a mathematical error when computing the square footage, the acreage, or some other factor; or

(c) Errors made in calculating a real market value. For example, in appraising bare land, the appraiser may simply multiply the number of acres by the per acre value for that class of land. The appraiser may also then make adjustments to that result for size, shape, configuration, or other factors which affect the value of bare land. If the appraiser makes a mistake in any of these computations or assumptions of fact, these are mistakes that have entered into the appraiser's determination of judgment and are not subject to correction.

Example 1: Taxpayer owned some 33.07 acres of land. The assessor mistakenly carried the property on the roll as 37.63 acres. The assessor arrived at a value per acre for each classification and then multiplied the per acre value times the number of acres in the tract. Although the assessor used unit values in arriving at a total assessment, the assessor may also have made some adjustments in the final figure for special features or qualities peculiar to the property. The figures may be wrong but the assessor's judgment of the parcel's value may be right. Because it is the total assessment that is subject to question, and because more elements than simply the matter of acreage can be used to arrive at a total assessment, this is a case of value judgment and is not correctable.

Example 2: A taxpayer sold two acres of his 8.33 acre parcel. Upon notice of that sale, the assessor's office started the administrative process of setting up a new account and revising the value of the old account. The new account cards for the two-acre parcel were set up and the value put on the roll. However, in the administrative process, no change in the acreage and value was made on the old appraisal envelopes and cards for the remaining 6.33 acres. Consequently, the remaining 6.33 acres were placed upon the roll at the same values used prior to the sale. There are two errors to consider here. One is the fact that the assessor placed the original 8.33 acreage on the roll at the same value used prior to the sale. This is an error in valuation judgment, not a clerical error. Although this may appear to be a mathematical error due to the failure of one of the clerks, it could just as well be the assessor mistaken in fact and judgment. The situation is similar to that of an assessor mistaken as to the number of acres or the number of square feet in a given property. The figures may be wrong but the assessor's judgment of the parcel's value may be right. Simply "subtracting" the prorated value of the two-acre parcel from the value of the 8.33 acre parcel does not necessarily result in the real market value for the 6.33 acre parcel. The appraiser must also look to the highest and best use, lay of the land, and other considerations that would affect value. In these circumstances, the statutory scheme requires that the taxpayer be sufficiently cognizant of his property values to object and appeal if necessary. Since both the appraisal cards and the assessment roll were not changed, it must be presumed that the assessor intended those values to be used, subject to appeal. The second error is the failure of the assessor to reduce the acreage on the original parcel from 8.33 to 6.33 acres. This is a clerical error because the correct facts are evident from the assessor records and there is no speculation or conjecture as to value.

Example 3: A parcel of land has been carried on the roll for several years as five acres. The parcel sells and the buyer requires a survey. The surveyor arrives at a measurement of 4.72 acres. This is an error in valuation judgment and is not correctable under ORS 311.205(1)(a) as a clerical error or under 311.205(1)(c) as an error or omission on the roll of any kind. Because it is the total assessment that is subject to question, and because more elements than simply the matter of acreage can be used to arrive at a total assessment, this is a case of value judgment and is not correctable. The assessor may correct the acreage on the next assessment and tax roll and reappraise the parcel for value, if necessary.

(2) If it is unclear whether an error or an omission on the roll is a clerical error or an error in valuation judgment, the error or omission on the roll shall be considered an error or omission in valuation judgment. For example, an error in acreage or square footage in the appraiser field notes or a failure to value or list a component upon physical reappraisal may not be corrected because the error may not necessarily have resulted in an error of real market value as finally determined and carried to the assessment and tax roll.

(3) As provided in ORS 311.205(1)(b), the officer in charge of the roll may correct an error in valuation judgment when a timely appeal has been filed in the Magistrate Division or Regular Division of the Oregon Tax Court alleging that the value on the roll is incorrect, if the correction results in a reduction of the tax owed on the account. The officer may not correct an error in valuation judgment under 311.205(1)(b) in response to an untimely appeal or an appeal that is otherwise not within the jurisdiction of the tax court.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.205
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; Renumbered from 150-311.205(1)(b), REV 6-2003, f. & cert. ef. 12-31-03; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08

150-311.205(1)(b)-(B)
Roll Correction for Nonexistent Property

Property or improvements, which did not exist, but were included on the assessment roll at the time of the last appraisal shall be corrected, when discovered, under ORS 311.205(1)(b) and 311.206.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.205
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-311.205(1)(c); REV 6-2003, f. & cert. ef. 12-31-03, Renumbered from 150-311.205(1)(c)-(A)

150-311.205(1)(b)-(C)
What is an "Error or Omission on the Roll of Any Kind"

(1) The officer may correct an error or omission on the roll of any kind if the correction does not require the exercise of valuation judgment. "Valuation judgment" includes but is not limited to selection of appraisal methodology or the estimation of functional and economic obsolescence adjustments. Errors or omissions that may be corrected under this subsection include, but are not limited to:

(a) The elimination of an assessment to one taxpayer of property belonging to another on the assessment date.

Example 1: If a deed of a sale is never recorded, the assessor records would not reflect the new ownership. Because the records do not reflect the correct information, it is not correctable as a clerical error but is correctable as an error or omission on the roll of any kind.

(b) The assessment of property more than once for the same year or assessment of nonexistent property.

(c) The placement of property on the assessment and tax roll of the wrong county or assessment on behalf of the wrong jurisdiction.

Example 2: A utility company reported certain wire and pipe mileage as being in one code area when it was in fact located in another area.

(d) The elimination or partial elimination of an assessment of property that is entitled to exemption from taxation or special assessment or entitled to partial exemption from taxation.

(e) The elimination or partial elimination of an assessment of personal property resulting from an error made by the taxpayer on a personal property return if the personal property is entitled to exemption or is otherwise not taxable.

(f) The correction of a value changed on appeal.

(g) The application of an incorrect trending or indexing factor.

Example 3: The trending factor developed for the property class in the area is 115. Through a transposition, a factor of 151 is incorrectly applied. This is a correctable error.

(h) The use of the wrong property classification.

Example 4: The property is an improved single family residential property that is classified 1-0-1. The property was incorrectly classed as a 2-0-1 and therefore received the wrong trend factor. Both the property classification and the trend factor may be corrected.

Example 5: The assessor has assessed farm property at market value on the belief that the zoning was not Exclusive Farm Use. Later the assessor discovers the land was in an Exclusive Farm Use Zone and should have been assessed at its farm use value. Because the records of the assessor failed to reflect the proper status of the property , this is not correctable as a clerical error. Because a correction can be made without the use of appraisal judgment, this is not a case of valuation judgment under ORS 311.205(1)(b) and is correctable as an error or omission on the roll of another kind.

(i) The correction of an error or omission in the computation or application of the tax rate.

Example 6: A tax rate error is correctable. A water district shares boundaries with a city. The city annexes property from the water district. The boundary change information was not filed timely with the assessor and the Department of Revenue and should not have been considered in the calculation of the taxes. The county should make the correction to the tax calculation and refund or assess the properties in the districts as appropriate so they have been assessed the correct amount of tax

(j) The correction of an error or omission on the roll that arises from inaccurate reporting of assets, or of facts about assets by a taxpayer on a return filed under ORS 308.290.

Example 7: A taxpayer reports a machinery asset on both its real and personal property accounts. The cost is double-reported for valuation purposes.

Example 8: A taxpayer reports assets transferred to the site at their net book value rather than original cost. The cost is inaccurately reported for valuation purposes.

This error or omission may be corrected only if the incorrect calculation of value was a result of a simple mathematical extension and does not require a new valuation judgment.

(A) The error or omission may be corrected if the taxpayer subsequently provides accurate asset information, and if no additional or different valuation judgment is required to make the correction.

(B) When a correction of inaccurate reporting of assets or of facts about assets by a taxpayer results in a reduction of tax and a refund under ORS 311.806, no interest is paid under 311.812.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.205
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150.311.205(1)(c)-(B) by REV 6-2003, f. & cert. ef. 12-31-03

150-311.205(3)
Corrections to County Assessment and Tax Rolls Made Under ORS 311.206

When a county makes a change to the roll under ORS 311.205(1)(c) in response to direction from the Department of Revenue the change must be considered as being done by order of the department for purposes of 311.206. No additional notices to the taxpayer are required.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.205
Hist.: REV 8-2000, f. & cert. ef. 8-3-00

150-311.206-(A)
Taxes Added to the Tax Roll as a Result of Error Correction; Including a Special Rule for Computing Interest

(1) When taxes other than levies under ORS 310.065 are added to the tax roll under 311.205 or the taxes already on the tax roll are increased under 311.205, the amount due for each installment shall be computed as follows:

(a) For tax years prior to 1991, the added or increased taxes shall be combined with the tax originally extended on the roll for the year(s) in question.

(b) For tax years 1991–92 and later, the limitation(s) imposed by section 11b, Article XI of the Oregon Constitution must be determined for the year(s) to which the tax will be added.

(A) If there is no change in value and the amount originally billed equals or exceeds the calculated limitation, new billing is not required.

(B) If the value is increased and the amount originally billed is less than the new calculated limitation, a new billing is required reflecting the correction.

(C) The additional taxes due shall be calculated based on the total taxes as corrected for the year being corrected and shall be the net amount due after the limitation is imposed.

(c) All payments received apply to the combined tax.

(2) For the purpose of determining the extent each installment has been paid, the additional or increased tax shall be added to the tax, if any, already extended to the same account.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.206
Hist.: 12-19-75; 12-31-77; RD 9-1983, f. 12-20-83, cert. ef. 12-31-83; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91 REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-311.206

150-311.206-(B)
Definition of “Distribute in the Same Manner as Other ad Valorem Property Taxes Imposed on the Property” for Error Corrections

“Distributed in the same manner as other ad valorem property taxes imposed on the property” means to be deposited into the unsegregated tax collections account under ORS 311.385 for the year of billing. The amount of additional ad valorem taxes or penalties attributable to each district must be determined based on the percentage that the total ad valorem property billing tax rate of the district bears to the total billing tax rates for the code area in the year in which the additional taxes are billed. Any non ad valorem taxes, including penalties, must be attributed to the district for which the tax was imposed. In preparing the percentage distribution schedule under 311.390 the tax collector must include any additional taxes resulting from an error correction under 311.205 in the calculation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.206
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

150-311.216
Property Subject to Assessment as Omitted Property

(1) Omitted property includes any real or personal property, or part thereof, that has been omitted from the certified assessment and tax roll for any reason. Omitted property may include, but is not limited to, a separate freestanding structure or improvement, an addition that increases the square footage of a structure or improvement, a remodel which increases a structure’s real market value, or real or personal property machinery and equipment.

(2) Property may be added to the roll under ORS 311.216 if:

(a) Omitted due to the assessor’s lack of knowledge of its existence,

(b) Improvements are added to or made a part of a property after that property has been physically appraised, and are later discovered by the assessor,

(c) Improvements have been included in error on another account,

(d) Omitted from a return filed pursuant to ORS 308.290, including understatement of costs for new property or improvements to property, or

(e) Omitted for any other reason.

(3) Improvements which are in existence and are an integral part of property which is physically appraised may not later be revalued and added as omitted property under ORS 311.216. Undervaluation of a property due to the assessor’s failure to consider a portion of the property is not omitted property correctable under 311.216.

(4) When omitted property is discovered and its contribution to an account’s value is added under ORS 311.216, the value of the previously existing portion of the account cannot be adjusted.

Example 1: Two years after a reappraisal, a homesite is developed, and a new single family residence is constructed. The new construction and the site development are discovered on the next physical appraisal. The assessor adds the value of the single family residence and the site development as omitted property under ORS 311.216.

Example 2: “A” owns a parcel of land with a cabin on it. “A” divides the parcel and sells part to “B”, but retains the part with the cabin. The assessor incorrectly places the value of the cabin on “B’s” account. When the error is discovered, “B’s” value can be corrected under ORS 311.205, and “A’s” account must be corrected under ORS 311.216 as omitted property.

Example 3: During a physical appraisal the assessor adds no value contribution for a reinforced concrete floor, and a manger with steel stanchions in a loft barn. The assessor later realizes that the loft barn is undervalued. The reinforced concrete floor and manger with steel stanchions may not be added as omitted property under ORS 311.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.216

Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-311.207; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-311.223(4)
Date Roll Corrected

For purposes of ORS 311.223(4) and 311.229 the "roll is corrected" on the date the assessor sends the notice to the taxpayer's last known address by first class mail as required in 311.223(2).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.223
Hist.: REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-311.229
Definitions

(1) "Distributed in the same manner as other ad valorem property taxes imposed on the property" means to be deposited into the unsegregated tax collections account under ORS 311.385 for the year of billing. The amount of additional ad valorem taxes or penalties attributable to each district must be determined based on the percentage that the total ad valorem property billing tax rate of the district bears to the total billing tax rates for the code area in the year in which the additional taxes are billed. Any non ad valorem taxes, including penalties, must be attributed to the district for which the tax was imposed. In preparing the percentage distribution schedule under 311.390 the tax collector must include any additional taxes resulting from adding omitted property in the calculation.

(2) "Prior to completion of the next general property tax roll" for the purposes of accepting prepayments pursuant to ORS 311.370 means prior to the date on which the roll is next delivered by the assessor to the tax collector as provided in 311.115.

Stat. Auth: ORS 305.100
Stats. Implemented: ORS 311.229
Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02

150-311.234
Procedure to Correct MAV When Square Footage Error Exists

(1) For Purposes of OAR 150-311.234, "Current RMV," as used in subsection (4)(b), is defined as the RMV for the tax year of the petition. For example, a petition submitted in August 2002 will use the roll values for the 2002–2003 tax year to calculate the adjustment.

(2) The assessor may correct the maximum assessed value of the property as provided under ORS 311.234(2). To correct the maximum assessed value (MAV) of a property for an error in square footage, the assessor must receive a petition from either the current owner of the property or other person obligated to pay taxes imposed on the property. The petition must be filed with the county assessor on or before December 31 of the current tax year on a form prescribed by the department.

(3) The correction to MAV by the assessor must be in proportion to the error in square footage.

(4) The proportion of error and resulting MAV are calculated as follows by the assessor:

(a) For properties described by a single component (for example, land only), use the following procedure to adjust MAV.

NOTE: An example is incorporated into the steps with the following assumptions:
The assessor's records show that a parcel has 435,600 sq. ft. (10 acres), when, in fact, it only has 392,040 sq. ft. (9 acres).
The existing MAV is $50,000.
Step 1: Divide the correct square footage by the square footage as currently shown in the assessment records to determine the proportional square footage error.
Example: 392,040 sq. ft. / 435,600 sq. ft. = 0.90.
Step 2: Multiply the proportional square footage error (Step 1) by the existing MAV for the property to determine the corrected MAV for the property.
Example: 0.90 X $50,000 = $45,000, which is the corrected MAV for the property.

(b) For properties described by multiple components (for example, land and buildings, or more than one building or structure, or buildings and machinery), use the following procedure to adjust MAV.

NOTE: An example is incorporated into the steps with the following assumptions:
A property consists of a 3-acre land parcel and two buildings.
Building 1 was incorrectly valued as having 2,000 square feet, when in fact it has only 1,500 square feet.
Current Real Market Value (RMV) of the building with the error is $80,000.
The square footage on the land and other building is correct.
The property's total RMV is $400,000.
The property's total MAV is $300,000.
Step 1: Determine which component has the square footage error.
Example: Building 1 is the component with the error in square footage.
Step 2: Determine the portion of the property's total RMV that is contributed by the component with the square footage error.
Example: Building 1 RMV is given as $80,000.
Step 3: Calculate the ratio of the RMV of the component with the error to the RMV of the entire property.
Example: Building 1 RMV ($80,000) divided by Total RMV ($400,000) = 0.20.
Step 4: Multiply the property's total MAV by the ratio obtained from Step 3 to determine the MAV attributable to the component with the error in square footage.
Example: $300,000 x .20 = $60,000.
Step 5: Subtract the MAV attributable to the component with the error in square footage (Step 4) from the property's total MAV to determine the base MAV.
Example: $300,000 - $60,000 = $240,000.
Step 6: Divide the correct square footage of the component by the square footage of the component as currently shown in the assessment records to determine the proportional square footage error ratio.
Example: 1,500 sq. ft. / 2,000 sq. ft. = 0.75.
Step 7: Multiply the proportional square footage error ratio (Step 6) by the MAV attributable to the component with the square footage error (Step 4) to determine the corrected MAV attributable to the component.
Example: 0.75 x $60,000 = $45,000, which is the corrected MAV attributable to the component.
Step 8: Add the corrected MAV attributable to the component (Step 7) to the base MAV (Step 5) to determine the corrected MAV for the entire property.
Example: $45,000 + $240,000 = $285,000, which is the corrected MAV for the property.

(5) For a building that is valued by summing the individual value contributions from distinct portions of that building, the particular building portion affected by the square footage error may be considered as a separate component such as in (4)(b) above when making the correction to MAV. Examples of this type of building include but are not limited to a warehouse with attached offices or a house with an attached garage.

(6) Notwithstanding that a property's MAV has been corrected due to a square footage error, the corrected MAV remains subject to adjustments required by ORS 308.146 to 308.166.

(7) Roll corrections pursuant to ORS 311.234 are to be made using the procedures in 311.205.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.234
Hist.: REV 2-2002, f. 6-26-02, cert. ef. 6-30-02

150-311.250
Contents of Property Tax Statements

The tax statement shall contain:

(1) The name of the county;

(2) The fiscal year being billed;

(3) The property type;

(4) The account number;

(5) For real property, an identifier which meets one of the requirements of ORS 308.240(1);

(6) For real property:

(a) The real market value of land, the real market value of improvements, and the total real market value of the account for the prior year and for the current year; or

(b) If the property is subject to special assessment, the specially assessed value of the account for the prior year and for the current year.

(7) For real property the total assessed value of the account for the prior year and for the current year;

(8) For personal property, the total real market value and the total assessed value for the current year;

(9) If the property is subject to additional taxes or a penalty upon disqualification from special assessment or exemption, notice to that effect;

(10) The amount of delinquent taxes including interest to the due date of the tax statement;

(11) The name of each entity and the total amount of taxes expressed in dollars and cents imposed on the property by the entity for general governmental purposes, for education purposes and for purposes not subject to the limits of section 11b, Article XI of the Oregon Constitution;

(12) The amount of late filing penalties;

(13) The total amount of current taxes and other charges due on the described property by category;

(14) The net amount of taxes for full payment, two thirds payment or one third payment by the due date;

(15) The place where payments of taxes are to be made;

(16) A warning that foreclosure proceedings will be commenced against real property accounts with an unpaid balance for specified tax years; and

(17) A notice that value may be appealed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.250
Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98

150-311.250(4)
Prepayment of Property Taxes

Unless authorized by law, no prepayments of property taxes which have not been certified by a taxing district, shall be collected or accepted.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.250
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98, Renumbered from 150-311.250(5)

150-311.356(3)(c)
Written Direction Required for Payment Application from Agents Who Pay Taxes on Behalf of Taxpayer

An agent who pays taxes on behalf of any taxpayer may provide written instructions with any payment as to how the payment is to be applied. An agent includes but is not limited to a mortgagee, beneficiary under a deed of trust, or vendor under a land sale contract. If no written directions accompany the payment the tax collector shall apply the payment as specified in ORS 311.356.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.356
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90

150-311.395(1)(d)
Monthly Tax Distributions to Districts

(1) The tax collector shall make a monthly statement of property tax moneys collected during those periods requiring quarterly statements if:

(a) The unsegregated tax collections account balance is more than $10,000 for any tax year; or

(b) A taxing district requests monthly distributions of taxes.

(2) Distribution shall be made to all governmental units by preparing the statement described in subsection (1) of this rule. The appropriate percentage distribution schedule shall be used for each tax year for which tax moneys are being distributed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.395
Hist.: RD 8-1992, f. 12-29-92, cert. ef. 12-31-92

150-311.507(1)(d)
Discount on Taxes as a Result of Addition of Current Year Value under ORS 311.208

(1) When value is added to the roll under ORS 311.208 any additional taxes due are eligible for the discount allowed under 311.507 if paid on or before the 15th of the month next following the month billed.

(2) Discount must be allowed on the payment of taxes resulting from additional value added to the current assessment and tax roll if the payment is sufficient to pay all outstanding taxes on the account plus the tax resulting from the additional value.

(a) A 3 percent discount is allowed on the entire additional property tax amount if it is paid on or before the 15th of the month following the month of the correction.

(b) A 2 percent discount is allowed on two-thirds of the additional property tax amount if it is paid on or before the 15th of the month following the month of the correction. The remaining one-third amount is due on or before the May trimester due date; otherwise interest will accrue on the balance due as specified in ORS 311.208.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.507
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150-311.507, REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-311.508(1)
Twenty Five Percent of One-Fourth of One Percent Payments

When the tax collector receives payment of any amount collected due to a final order on an appeal described in ORS 308.020, 25 percent of the interest charged and collected for periods beginning on or after July 1, 1989 shall be deposited and credited to the County Assessment and Taxation Fund created under Section 7, Chapter 796, Oregon Laws 1989. The remaining balance of the payment shall be deposited as described in OAR 150-311.160.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.508
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90

150-311.520
Date Property Becomes Exempt when Foreclosed by City for Delinquent Assessment Liens

For purposes of determining the tax exemption of the property under ORS 307.090 and the exemption of interest and penalty under ORS 311.520, a city acquires title to the property immediately following the sale of the property to the city as a result of foreclosure for delinquent assessment liens.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.520
Hist.: RD 5-1989, f. 12-18-89, cert. ef. 12-31-89

150-311.520-(A)
Interest on City Foreclosed Property

(1) When a city sells real property for which there are unpaid principal amounts of taxes owing under ORS 311.520(1), interest begins to accrue on the principal amount beginning on the 16th of the month following the sale. Interest would accrue as provided in ORS 311.505(2). For example:

(a) City sells property with 1990 taxes owing on the property on July 1, 1993. Interest would begin on those taxes on July 16, 1993.

(b) City sells property with 1990 taxes owing on the property on July 17, 1993. Interest would begin on those taxes on August 16, 1993.

(2) When a city sells real property for which there are unpaid principal amounts of taxes owing under ORS 311.520(1), the property may be included in the first foreclosure list prepared after the transfer of the property to the taxable owner if three or more years have elapsed from the original date of delinquency of the taxes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.520
Hist.:

150-311.525
"Certificate of Delinquency" Defined

"Certificate of Delinquency" means certificates sold for the amount of delinquent property taxes, penalties and accrued interest. Counties no longer issue certificates of delinquency. The notice of delinquent taxes served by the tax collector under ORS 311.545 is not a certificate of delinquency.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.525
Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85

150-311.525-(A)
Interest on State of Oregon Foreclosed Property

(1) When the State of Oregon sells real property for which there are unpaid principal amounts of taxes owing under ORS 311.525,

interest begins to accrue on the principal amount beginning on the 16th of the month following the sale. For example:

(a) The State of Oregon sells property with 1990 taxes owing on the property on July 1, 1993. Interest would begin on those taxes on July 16, 1993.

(b) The State of Oregon sells property with 1990 taxes owing on the property on July 17, 1993. Interest would begin on those taxes on August 16, 1993.

(2) When the State of Oregon sells real property for which there are unpaid principal amounts of taxes owing under ORS 311.525, the property may be included in the first foreclosure list prepared after the transfer of the property to the taxable owner if three or more years have elapsed from the original date of delinquency of the taxes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.525
Hist.:

150-311.633
Fee for Service of Warrant Under ORS 311.605 to ORS 311.635

The fee for service of a warrant is not property tax money. When money is collected for service of a warrant it shall be deposited to the County General Fund.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.633
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87

150-311.635
Charges on the Personal Property Warrant

Interest shall not be charged on nor added to the fee for service of a warrant allowed under ORS 311.633.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.635
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-311.670(1) [Renumbered to **150-311.670(1)(a)**]

150-311.670(1)(a)
Homestead Requirements

(1) For property to qualify for tax deferral under ORS 311.666 to 311.701, the property must be the homestead of the applicant while the property taxes are being deferred. This means all individual or joint applicants must live on the property.

(2) The only exception to section (1) is for situations in which the applicant is required to live away from the homestead by reason of the applicant's health. "By reason of health" means that the applicant needs to be away from the property in order to facilitate or obtain medical care or to provide the applicant's basic life needs. Basic life needs include but are not limited to preparation of meals, personal hygiene, or daily care of oneself.

(3) If the applicant in the deferral program is not living at the homestead for reasons of health, the applicant must provide a letter from a medical provider stating the applicant is unable to provide medical care or basic life needs for himself or herself.

(4) Neither the applicant nor the medical provider is required to give a specific date by which the applicant will return to the homestead.

(5) If the applicant is absent from the homestead by reason of the health of the applicant, the Oregon Department of Revenue will continue paying the property taxes as long as the property remains otherwise eligible or until one of the events under ORS 311.684 occurs.

Example 1: Jack and Jane are co-applicants and have been participants in the Senior Deferral program for five years. During a snowstorm in February, Jack fell and broke a hip. Jack has been sent to a nursing home for physical therapy and rehabilitation. Jane notified the department of the situation through a letter from Jack's doctor. Because Jack and Jane both meet the homestead requirement, the Oregon Department of Revenue will continue to pay the property taxes to the county through the deferral program.
Example 2: Same basic scenario as in Example 1. Jane, Jack's co-applicant, moves closer to the nursing home so she doesn't have so far to travel to visit him. All applicants must either live on the property or meet "by reason of health" requirements. Because Jane does not meet the "by reason of health" exception and does not live on the property, the property will not qualify for the deferral program. Both co-applicants must meet the homestead requirements.

(6) An applicant who is away from the homestead by reason of health may rent or lease the homestead to another individual or individuals. This activity will not affect the payment of the property taxes by the department unless it causes the household income to exceed the maximum income allowed for the year in question.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.670
Hist.: REV 17-2008, f. 12-26-08, cert. ef. 1-1-09; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13; Renumbered from 150-311.670(1) by REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-311.672(1)(a)
Data Requirements for Property Description on Tax Deferral Application

(1) The county assessor's office must complete the property description portion of the deferral application to include:

(a) Information about the current deed as follows:

(A) The document or instrument number;

(B) Year recorded;

(C) Book and page number, if applicable;

(b) Information about the earliest deed showing applicant's ownership as follows:

(A) The document of instrument number;

(B) Year recorded;

(C) Book and page number, if applicable;

(c) Assessor's account number;

(d) Code area; and

(e) A description of the property as follows:

(A) For a property that is platted, the lot and block number and the addition name if the property is in a recorded subdivision;

(B) For a property that is unplatted a description that includes township, range, section and acres;

(C) For a manufactured structure, the model year, make, and home number assigned by the Building Codes Division of the Department of Consumer and Business Services.

(D) Multiunit property information:

(i) Notation if property contains multiple units:

(ii) The percentage of property to be deferred. This is determined by comparing the value of the taxpayer's unit (excluding the land and common areas) with the total value of all the units located on the property.

(iii) The real market values of the taxpayer's homestead. This is determined by comparing the percentage to be deferred with the real market value of the property.

(2) The county assessor must send the department a copy of the recorded deed if requested by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.672
Hist.: f. 10-14-92, ef. 12-31-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-311.676
Deferred Taxes Paid by the Department

(1) When the department makes a deferral account payment to the county, the department will pay 97% of the amount of the tax assessed, and the county must credit that amount as full payment of such taxes, regardless of whether the department's payment is before, on or after the payment deadline.

(2) The county may not charge the department interest on any deferral account payment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.676
Hist.: RD 10-1985, f. 12-26-85, cert. ef. 12-31-85; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 1-2003, f. & cert. ef. 7-31-03; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08

150-311.679-(A)
Senior Citizen's Deferred Tax Lien Estimate

(1) For all Senior Citizen Deferral accounts established under ORS 311.666 through 311.696, the department must record a lien estimate in the mortgage records of the appropriate county. The lien estimate is made from the following:

(a) Future deferred taxes based on the taxpayer-applicant's life expectancy, as determined by actuarial tables, with an inflation factor added for the tax amount,

(b) Interest to be charged, and

(c) Fees paid for lien recording, release, or satisfaction.

(2) The amount owing on an account, at any one time, equals the actual deferred tax, interest on the account, and any lien recording, release or satisfaction fees.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.679
Hist.: 12-31-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02, Renumbered from 150-311.679

150-311.684
Timing and Repayment of Disqualified, Cancelled or Inactivated Accounts Under the Property Tax Deferral Program

(1) The Department of Revenue will pay property taxes to the county on behalf of each applicant that has been approved for the property tax deferral programs under ORS 311.666 to 311.701. Once the application is approved, the department will pay the taxes each year for as long as the property and applicant remain eligible. A lien will be placed on the property. The department account will include the deferred taxes, lien fees, and interest on the deferred taxes.

(2) "Disqualification" means an account is no longer subject to deferral and the department will no longer pay taxes on behalf of the applicant. The department will send notice of disqualification to the applicant which includes a statement that repayment is required by August 15 of the year following the calendar year in which any one of the following events occurs:

(a) The applicant(s) dies;

(b) The property is sold or transferred and a person other than the applicant(s) has become the owner of the property;

(c) The property is no longer the homestead of the taxpayer, except in the case the applicant(s) is required to be absent from the home due to medical reasons; or

(d) The property is a manufactured structure or floating home that is moved out of the state.

(3) "Cancellation" means that an account has been removed from the deferral program at the written request of the applicant, and not for reason of any of the events listed in subsection (2) of this rule.

(a) If an account is cancelled prior to September 1, the department will not pay the current year taxes to the county on behalf of the applicant.

(b) The department will pay the current year taxes to the county on behalf of the applicant if an account is cancelled on or after September 1.

(c) A cancelled account may be paid in full at any time after cancellation but no later than as required by ORS 311.686.

(4) "Inactivated" means the department has determined that the applicant or property has become ineligible for deferral of future property taxes due to failure to meet eligibility requirements. If an account is inactivated, the department will send the applicant a notice of inactivation and not pay current or future year taxes to the county on behalf of the applicant. (4) The department will release its lien on the property only after all taxes, interest and fees that were deferred have been paid.

(a) Repayment of a disqualified account is due and payable to the department August 15 of the year following the calendar year in which a disqualifying circumstance occurred.

(b) By itself, cancellation or inactivation of an account is not an event requiring repayment of all deferred taxes, interest and fees.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.666 & 311.684
Hist.: TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; TC 2-1979, f. & cert. ef. 3-5-79; REV 1-2003, f. & cert. ef. 7-31-03; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

150-311.688
Election by Spouse to Continue Tax Deferral

(1) "Surviving spouse" means:

(a) A man or woman who is legally married to an applicant at the time of the applicant's death; or

(b) A man or woman who is joined in a registered domestic partnership with an applicant at the time of the applicant's death. "Registered domestic partnership" has the meaning given that term in ORS 106.310(1).

(2) When any one of the circumstances listed in ORS 311.684(1) to (3) occurs, a surviving spouse may continue the property in deferred tax status as active or inactive.

(a) When an account continues as active, the department continues to pay the yearly property taxes to the county. The account balance continues in deferral, and interest continues to accrue on all taxes paid.

(b) When an account continues in an inactive status, the department does not continue to pay property taxes to the county. The deferral account balance of past-deferred taxes, accrued interest, and recording fees remains deferred and interest continues to accrue on the past-deferred taxes.

(3) If a surviving spouse did not apply jointly with the taxpayer for the original Senior or Disabled deferral or was not eligible for deferral, the spouse must file a new deferral application in order to continue the account as active or inactive.

(a) For the deferral account to remain active, in addition to the filing of a new deferral application all the following is required:

(A) The spouse is at least 59-1/2 years of age or is disabled as defined in ORS 311.666(5) the day a circumstance in 311.684(1) to (3) occurs,

(B) The property is the homestead of the surviving spouse,

(C) The total household income continues to be less than the allowable yearly limitation, and

(D) The property ownership meets the requirement in ORS 311.670(1).

(b) When a surviving spouse meets all of the requirements of section (3)(a) of this rule except the age requirement of 59-1/2, or a disability as defined in ORS 311.666(5), the surviving spouse may only continue the deferral account in an inactive status. The surviving spouse is responsible to pay all future property taxes to the county. The surviving spouse may file a new application to change the deferral account status from inactive to active when the surviving spouse turns 62 years of age before April 15 of any year, or if the surviving spouse becomes disabled and begins to receive or becomes eligible to receive federal Social Security disability benefits.

(4) In the case of a divorce or termination of a registered domestic partnership, if the circumstances in ORS 311.684(3) occur before the divorce, then the surviving spouse remaining in the homestead may file an application to continue the deferral. The requirements of section (2) of this rule determine if the account remains active or becomes inactive.

(5) All applications to continue deferral must be filed in the time and manner as provided in ORS 311.668. The department may determine that good and sufficient cause exists to accept a late filed application. The application may be filed within 180 days after the department mails or delivers to the applicant the deferred tax due and payable notice.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.688
Hist: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

150-311.690(4)
Voluntary Payments on Property Tax Deferral Accounts

(1) When the department receives voluntary payments, it will apply the payments in the following order:

(a) Against all accrued interest first;

(b) Then to the deferral tax balance until fully paid; and

(c) Lastly to the lien recording and release fees.

(2) Subject to ORS 311.684 and 311.686(2), when the department receives full payment on the account and a written statement from the taxpayer asking for removal of the property from the deferral, the department will release the lien against the property. When the department receives full payment on a disqualified account, the department will release the lien against the property.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.690

Hist.: 10-14-92, REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-311.691
Taxes Unpaid Before Approval of Senior Deferral Application

(1) Delay of foreclosure is only available for real property. It is not available on personal property. To qualify for delay of foreclosure, the property owner's household income must not exceed the limits allowed under ORS 311.668 for the immediately preceeding calendar year.

(2) When an application for property tax deferral has been submitted and approved by the department, the taxpayer is notified of that approval. If prior years' taxes on the property subject to deferral remain unpaid on the date of approval, the applicant may apply for a delay of foreclosure by completing the appropriate application for all years in which unpaid taxes exist and submit that application to the county assessor, pursuant to ORS 311.693.

(a) Applications are accepted for delay of foreclosure only for delinquent taxes accumulated for tax years prior to the tax year for which property tax deferral is sought. An applicant may have several years' worth of delinquent taxes covered under one or more delays of foreclosure.

(b) The delay of foreclosure will remain in effect until the property is disqualified under ORS 311.684, even if the homestead or taxpayer are inactivated from the deferral program for failure to meet one or more requirements under another deferral program statute.

Example 1: The taxpayer owed delinquent property taxes to the county for the 2009/10 tax year. The taxpayer first applied and was approved for the deferral program in 2010. At that time, the taxpayer applied for and was approved to have foreclosure delayed for the 2009/10 taxes. The Department of Revenue paid the 2010/11 deferred taxes to the county. Then, the taxpayer failed to meet the program qualifications for tax year 2011/12, and was inactivated from the deferral program, which meant that the department stopped paying property taxes to the county. But the delay of foreclosure for the 2009/10 taxes remained in effect, because the taxpayer and the homestead were not disqualified under ORS 311.684. The taxpayer did not pay the property taxes to the county for the 2011/12, 2012/13, and 2013/14 tax years. In 2014, the taxpayer reapplied for deferral and was approved for the property tax deferral program for tax year 2014/15. The taxpayer submitted and was approved for another delay of foreclosure for the 2011/12, 2012/13, and 2013/14 taxes.

(3) Interest will continue to accrue at the current county interest rate on any unpaid delinquent taxes covered under the delay of foreclosure.

(4) When the property is disqualified from the deferral program for an event listed in ORS 311.684, any deferred taxes plus interest and fees, along with the full amount of any delinquent taxes and applicable interest or other charges covered under the delay of foreclosure become due by August 15 the year following the disqualification.

Example 2: The taxpayer had received a delay of foreclosure when applying for the Senior Citizen Deferral program. The account was disqualified on July 15, 2008. The taxpayer has until August 15, 2009 to pay both the amounts due to the county for the delinquent taxes, interest any other charges that were subject to the delay of foreclosure and amounts due to the Department of Revenue for the deferred property taxes, and applicable interest and other charges.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.691
Hist.: RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2000, f. & cert. ef. 8-3-00; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10; REV 3-2014, f. & cert. ef. 7-31-14

150-311.708
Data Requirements for Property Description on Special Assessments Application

(1) The bonding district's officer must complete the property description portion of the application to include:

(a) The document or instrument number;

(b) Year recorded;

(c) Book and page number, if applicable;

(d) Assessor's account number;

(e) Code area; and

(f) A description of the property as follows:

(A) For a property that is platted, the lot and block number and the addition name if the property is in a recorded subdivision;

(B) For a property that is unplatted, a description that includes township, range, section, and acres.

(C) For a manufactured structure, model year, make, and home number assigned by the Building Codes Division of the Department of Consumer and Business Services.

(2) The county assessor must send the department a copy of the recorded deed, if requested by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.708
Hist.: 10-14-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-311.711
Recording Special Assessment Deferral Liens in County; Lien Constitutes Notice of State Lien

In each county in which there is deferred property for the payment of any deferred special assessment for local improvement, the department shall cause to be recorded in the mortgage book of records of the county, a list of the deferred special assessment properties. The list shall contain a description of the property as listed on the bond lien docket together with the name of the owner listed thereon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.711
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87

150-311.725
Assessment District's Responsibility to Collect Payments

(1) The Department of Revenue, upon being notified of the disqualification of a special assessment deferral account, will confirm the deferral account balance with the assessment district.

(2) The assessment district is responsible for collecting the deferred special assessment installments, along with any accrued interest, lien recording and releasee fees, and forwarding those amounts to the Department of Revenue. The district must remit any payment it collects in full to the department no later than August 15 of the year following the year of the disqualifying event or promptly after receipt.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.725
Hist.: 10-14-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02

150-311.806-(A)
Process for Determining Recipient of Property Tax Refund

(1) Definitions: For the purpose of this rule:

(a) "Owner of record on the tax roll" means the owner or an owner of the property or each person in whose name the property is assessed on the last certified tax roll.

(b) "At the time of the refund" means the time at which the tax collector calculates the refund and any applicable interest.

(2) The tax collector must determine the recipients of a refund as follows:

(a) Whenever a refund is the result of an appeal, the refund for each year included in the petition must be made payable to, and be mailed or delivered to, the petitioner as shown on the petition.

(b) If an appeal results in a lowering of value under ORS 309.115 for a subsequent year that was not included in the petition and a refund results, the refund for each subsequent year must be made payable to, and be mailed or delivered to, the petitioner for each year in which that person was the owner, an owner, or the person in whose name the property was assessed; and to the current owner of record on the tax roll at the time of the refund for each year thereafter.

(c) Whenever taxes are collected against property not within the jurisdiction of the levying body, the refund must be made payable to, and be mailed or delivered to the owner of record on the tax roll at the time of the refund.

(d) Whenever taxes are paid on property in excess of the amount actually due the refund must be made payable to, and be mailed or delivered to, the owner of record on the tax roll at the time of the refund.

(e) Whenever taxes are paid on the property of another by mistake of any kind:

(A) The refund must be made payable to, and be mailed or delivered to, the payer of the tax.

(B) If the Department of Revenue pays the taxes on a deferral account under ORS 311.676, and the owner, or another party acting on behalf of the owner, also pays the tax for the same property, the department will determine the refund recipient for the overpayment based on information it deems appropriate, The department may contact the deferral applicant and the "other party" to make the determination.

(f) Pursuant to OAR 150-309.110(1)-(D), a refund resulting from a petition to a Board of Property Tax Appeals, the Department of Revenue, or the tax court by one or more owners of property assessed as an undivided interest must be apportioned to all of the owners of the property according to the percentage of interest owned.

(3) Notwithstanding section (2) of this rule, the refund will not be mailed or delivered to the petitioner, owner of record on the tax roll, or payer of the tax if:

(a) The refund is the result of an appeal as described in section (2)(a) or (2)(b) of this rule and the petitioner is represented by an attorney. The refund to which the petitioner is entitled must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney.

(b) The refund is the result of an appeal as described in section (2)(f) of this rule and the petitioner who filed the appeal is represented by an attorney. The refund apportioned to the petitioner must be made payable to the petitioner, or to someone else if so directed by the petitioner in writing, but must be mailed or delivered to the representing attorney. The refund or refunds due to the other owners who did not file petitions must be made payable to, and be mailed or delivered to those individual owners.

(c) The petitioner, owner of record, or payer of the tax named in section (2) of this rule is not represented by an attorney and instructs the tax collector, in writing, to make the refund payable to or to mail or deliver it to someone else. The tax collector must follow such instructions.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.806
Hist.: 10-5-84, 12-31-84, Renumbered from 150-311.806 to 150-311.806-(A); 12-31-87; 12-31-92; REV 6-2001, f. & cert. ef. 12-31-01; REV 6-2003, f. & cert. ef. 12-31-03; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 12-2007, f. 12-28-07, cert. ef. 1-1-08; REV 8-2012, f. 12-18-12, cert. ef. 1-1-13; REV 1-2013, f. & cert. ef. 3-28-13

150-311.806-(B)
Refunds Paid from the Unsegregated Tax Account

Refunds paid out of the unsegregated tax account provided in ORS 311.385 shall be drawn from the unsegregated tax account collections on hand for the current tax year, regardless of the tax year for which the refund was issued.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.806
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87

150-311.806-(C)
Credit Balance Adjustment

(1) Credit balances of $10 or less not required to be refunded shall be adjusted through creation of a category called "credit balance adjustment" per ORS 311.806(5).

(2) This category shall be used to adjust those accounts on which the amount collected exceeds the amount owed by not more than $10.

(3) This category shall not impact the certified tax balance nor the collection records; it is used only to eliminate the overpayment on the account.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.806
Hist.:

150-311.807
Refund Reserve Account

For tax years beginning on or after July 1, 1992, the anticipated annual refunds shall be the total dollar amount of refunds issued for the prior fiscal year. This amount may be increased or decreased for anticipated changes in appeals.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.807
Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-311.806; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-311.812(3)
Calculation of Interest on Refund

(1) Interest on refunds is based on the method the taxpayer used to pay taxes. Interest is calculated from the first trimester due date if full payment, or two-thirds payment, was made with a discount on or before November 15. If payments were made on the installment basis, interest is calculated on the amount overpaid as of each trimester due date or date of payment, whichever is later. Refund interest accrues at the rate specified in ORS 311.812(3) until paid.

(2) When the taxpayer pays in full, with discount, on or before the first trimester due date, interest is calculated on the amount overpaid from that date.

Example: The 2000–01 tax statement for $4,000 was corrected to $400 resulting in an overpayment of tax. The original tax less discount was paid in full October 17, 2000. The refund on the corrected tax is issued February 19, 2001 and includes interest calculated from the due date, November 15, 2000, to the date of refund, February 19, 2001. [Table not included. See ED. NOTE.]

(3) When the taxpayer chooses to pay in trimesters, interest is calculated on the amount overpaid on each trimester due date when there is no balance on the account. When there is a balance on the account in the year for which overpayment occurred, the overpayment is credited to the trimester(s) still outstanding. No refund interest is paid until the overpayment exceeds the total amount of corrected tax.

(a) When trimester payments are made timely, the overpayment is credited as follows:

Example: The 2000–01 tax statement for $3,000 was corrected to $2,400. Two trimester payments were made timely. The correction is made March 15, 2001. [Table not included. See ED. NOTE.]

(b) When two trimester payments are made after the due date and accrued interest has been calculated, the overpayment is credited as follows:

Example: The 2000–01 tax statement for $3,000 was corrected to $2,400. The first trimester payment was made November 20, 2000; the second trimester payment was made February 20, 2001; the account is corrected March 20, 2001. [Table not included. See ED. NOTE.]

(4) When timely payment for the first trimester is sufficient to pay two-thirds or more of the corrected tax, then the corresponding discount must be credited.

(a) When all three trimester payments have been made timely, the overpayment is credited as follows:

Example: The 2000–01 tax statement for $3,000 was corrected to $400. All trimester payments were made on or before the due dates. The correction is made June 15, 2001. The original payment for the first trimester covers the full corrected tax so the three percent discount is granted. [Table not included. See ED. NOTE.]

(b) When two trimester payments have been made timely, the overpayment is credited as follows:

Example: The 2000–01 tax statement for $3,000 was corrected to $300. Two trimester payments were made timely. The correction was made and the refund was issued on March 15, 2001. The original payment for the first trimester covered the full corrected tax so the three percent discount was granted. [Table not included. See ED. NOTE.]

(c) When the first trimester payment is made timely, the overpayment is credited as follows:

Example: The 2000–01 tax statement for $2,400 was corrected to $1,200. The first trimester payment was made timely. The correction was made on January 15, 2001. Since the original payment for the first trimester payment covers the corrected first and second trimester payments, a 2% discount is calculated on the full original trimester payment. [Table not included. See ED. NOTE.]

(5) Refund interest is not paid on an overpayment of delinquent interest. Refund interest accrues only on the tax principal overpaid. Any difference between the original late payment interest and the correct late payment interest is also included in the amount to be refunded.

Example: The 2000–01 tax statement for $4,000 was corrected to $400. Full payment was made November 20, 2000. The refund was made March 19, 2001. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.812
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01

150-311.814
Value Used to Activate Refund Reserve Account

ORS 311.814 authorizes the county governing body to establish a reserve account when the dollar difference between the assessed value asserted by the taxpayer and the assessed value asserted by the opposing party exceeds one-fourth of one percent (.0025) of the total assessed value in the county. The total assessed value used in the calculation shall be the total assessed value in the county as contained in the annual report of the assessment roll to the department for the previous tax year as required by ORS 309.330.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.814
Hist.: REV 4-1999, f. 12-1-99, cert. ef. 12-31-99

150-311.860
Prepayment of Ad Valorem Taxes, Computation of Accrued Interest, Allocation of Pay

(1) Interest Computation. The interest computed under ORS 311.860(1)(c) by the assessor on the payments made under the agreements to the taxing units shall be ordinary interest and not compounded. For the first year the facility is allowed a reduction in real market value for the purpose of computing the rate of levy, the interest shall be computed from the date of each payment to the November 15th due date for the tax roll for which the first value reduction is allowed. For each succeeding year, the interest shall be computed from November 16th to the following November 15th and shall be computed on that portion of the payments made by the facility which has not been used to fund a real market value reduction.

(2) Allocation of Payment to Real Market Value Reduction. Each year in which a reduction of real market value is allowed, the payments made by the facility and the interest accrued thereon shall each be charged to fund the reduction in the proportion that each is to the combined sum existing as of November 15th. The amount charged against the payment and interest shall be the gross amount of the ad valorem tax which would have been extended against the value reduction.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.860
Hist.: RD 9-1983, f. 12-20-83, cert. ef. 12-31-83; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91

150-311.865
Determination of the Real Market Value Reduction Amount

Each year in which a percentage value reduction is to be allowed, the assessor shall determine if sufficient unused moneys remain from the payments made by the facility to cover the amount of the reduction. This is to be done on the basis of multiplying the amount of assessed value represented by the real market value reduction by the rate percent of levy as extended on the most recent tax roll for each district which entered into the agreement. If sufficient moneys are not available to cover the agreed upon percentage reduction, the assessor shall reduce the percentage reduction to correspond with the available moneys.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.205
Hist.: RD 9-1983, f. 12-20-83, cert. ef. 12-31-83; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91

DIVISION 312

FORECLOSURE OF PROPERTY TAX LIENS

150-312.030(1)(d)
Interest Calculated to the Date of Publication

The foreclosure publication amount includes all interest accrued as of the date of publication. According to ORS 311.505(2), interest is charged and collected at a specific rate per month, or fraction of a month, until paid. This applies to all years shown in the publication. Example [Example not included. See ED. NOTE.] The statutes direct that foreclosure proceedings begin three months after the day of delinquency of taxes of the latest year (ORS 312.050(1)). Newspaper publication schedules may cause the date of publication to vary. This example is not meant to encourage deviation from compliance with the statutes.

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 312.030
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90

150-312.030(2)
Monthly Interest Calculated on All Years in the Foreclosure Process Until Judgment Is Taken

Interest is calculated on all years in the foreclosure process, from the date of publication to the date the judgment and decree is granted, using the rate and process outlined in ORS 311.505(2) and Oregon Laws 1989, Chapter 796, Sections 10 and 22. Interest is charged and collected on the tax at a rate of one and one-third percent (1 1⁄3%) per month or fraction of a month until paid. To determine the amount of the additional interest to be included in the judgment and decree where the publication is late and/or judgment is granted late, the following chart provides examples of publication dates and the corresponding interest dates. [Chart not included. See ED. NOTE.] The statutes direct that foreclosure proceedings begin three months after the day of delinquency of taxes of the latest year (ORS 312.050(1)) with judgment and decree granted 30 days thereafter. Newspaper publication schedules may cause the date of publication to vary. This example is not meant to encourage deviation from compliance with the statutes.

[ED. NOTE: Charts referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 312.030
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90

150-312.040(1)(b)
Mailing of Notice of Foreclosure Proceeding

Counties have the option to send the first-class mail notice prior to sending the certified mail notice, providing both notices are sent by August 15, or the date of application of judgment and decree, whichever is later.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 312.040
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 6-2003, f. & cert. ef. 12-31-03

150-312.110
Five Percent Foreclosure Penalty

The 5 percent penalty is charged at the time the foreclosure list is submitted to the designated newspaper for publication. The penalty is not included in the published foreclosure list. The 5 percent penalty is computed on the total tax and interest owed. Add the tax and interest for each year shown on the foreclosure list, plus any additional interest that may have accrued since the publication, and multiply that total by 5 percent (.05) to determine the penalty amount. Once judgment and decree is granted, the penalty becomes a fixed amount calculated by multiplying the total amount shown in the judgment and decree by 5 percent (.05). Examples 1 & 2 [Examples not included. See ED. NOTE.] The statutes direct that foreclosure proceedings begin three months after the day of delinquency of taxes of the latest year (ORS 312.050(1)). Publication requirements may cause the date of publication to vary. This example is not meant to encourage deviation from compliance with the statutes.

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 312.110
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90

DIVISION 314

INCOME TAXATION GENERALLY
GENERAL PROVISIONS

150-314.085(2)
Period of Computation of Taxable Income

(1) General Rule: If the taxable year of an individual, partnership, Corporation, S corporation, trust, REMIC, or other taxpayer for

federal income tax purposes is different than the taxable year for Oregon tax purposes, the Oregon tax year shall be changed to correspond to the federal tax year. In making this change or in changing from one tax year to another under ORS 314.085, Treas. Reg. Section 1.443-1 shall be followed.

(2)(a) Annualization of Modifications and Deductions: Where annualization is required for items of income and deductions under federal law, the modifications required by the provisions of ORS Chapters 314, 316 and 317 shall be annualized in the manner provided under Treas. Reg. Section 1.443-1. Where annualization is required, an individual must itemize deductions. The Oregon standard deduction is not available for such individuals.

(b) Computation of Personal Exemption Credit: Where a change in the taxable year results in the need to file a short-year return, personal exemption credits for individuals shall be prorated based on the number of months in the short year. The credit shall equal the dollar amount allowed pursuant to ORS 316.085 multiplied by the number of months in the short year divided by twelve.

(c) Computation of Oregon Tax Credits. Where a change in the taxable year results in the need to file a short-year return, and the taxpayer is entitled to an Oregon tax credit, the credit shall be allowed on each short-year return. The taxpayer shall not be required to annualize tax credits unless the credits are based on income. The taxpayer shall not be required to prorate tax credits unless required by the provisions of ORS 316.117 for nonresidents and part-year residents. A partner in a partnership or a shareholder in an S corporation is entitled to their pro rata share of any Oregon tax credit claimed on a short-year return filed by the partnership or the S corporation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.085
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-314.105
Mitigation of Effect of Limitations and Other Provisions

The following rules shall apply:

(1) For determinations made on or before December 31, 1970, regulations promulgated prior to December 31, 1970, for ORS 314.110, 314.120 and 314.130 shall apply.

(2) For determinations made after December 31, 1970, paragraph (3) of this rule shall apply.

(3) Since the purpose of ORS 314.105 to 314.135 is to follow as closely as possible the provisions of subtitle A, chapter 1, subchapter Q, Part II of the Internal Revenue Code, dealing with the mitigation or affect of limitations and other Provisions, federal regulations under sections 1311 to 1314 of the Internal Revenue Code are persuasive authority in the interpretation of the Oregon law.

(4) Mitigation is not available solely due to a refund or deficiency arising as a result of a change in accounting method.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.105
Hist.: 11-71; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83

150-314.105(1)(d)
Determination by Agreement

(1) In General: A determination may take the form of an agreement made pursuant to this section. Such an agreement is intended to provide an expeditious method for obtaining an adjustment under ORS 314.105 to 314.135 and for offsetting deficiencies and refunds whenever possible. It shall not, in itself, establish the tax liability for the open year to which it relates, but it shall state the amount of tax for that year, as then determined. The tax may be the amount shown on the return as filed, or it may take into account any changes which have been made, or which are being made by documents executed concurrently with execution of the agreement.

(2) Contents of Agreement: An agreement under this section shall contain:

(a) A heading indicating that it is made pursuant to ORS 314.105(1)(d);

(b) A statement of tax liability for the open year, including reference to any document concurrently executed by which the tax liability is established or altered;

(c) A concise statement of the material facts with respect to the item that was erroneously treated in the closed year;

(d) A statement of how the item involved was treated in computing the tax liability set forth in the agreement; and

(e) A statement of the amount of the adjustment with respect to the erroneous prior treatment and any related adjustments.

(3) Execution of Agreement: The agreement under this section shall be signed by the taxpayer with respect to whom the determination is made. If an adjustment is made in a case of a related taxpayer, the agreement shall also be signed by the related taxpayer. Both the taxpayer and the related taxpayer may have the agreement signed on their behalf by an agent or attorney acting pursuant to a power of attorney on file with the Department. On the Department's behalf, the agreement shall be approved by counsel and signed by the director.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.105
Hist.: 9-74; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83

150-314.220
Refund; Method of Claiming

See ORS 314.415(1) and the rules thereunder.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.220
Hist.: 1958; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-314.255(1)
Pollution Control Facilities: Revocation of Certificate

Upon receipt of notice of revocation of a certificate, the Department shall issue a statement to the taxpayer of the amount of unpaid taxes due, together with interest from the time the taxes would have been due if the tax relief had not been granted. If, within 30 days of the date of such statement, the amount is not paid or protest received as to the accuracy of the billing, warrants will be issued pursuant to ORS 314.430, and such other collection procedures will be instituted as provided by law and deemed necessary by the Department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.255
Hist.: 6-68

150-314.255(2)
Pollution Control Facilities: Facilities Not Eligible for Tax Credit

Pollution control facilities, other than resource recovery facilities, constructed by or for the use of a governmental agency or public corporation, do not qualify for the tax credit, even if such a facility is subsequently acquired by a taxpayer and used for pollution control in a manner otherwise eligible for tax credit or tax exemption.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.255
Hist.: 6-68; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-314.256
Formula for Apportionment of Lobbying Expenses Subject to Proxy Tax

The amount of lobbying expenses subject to the proxy tax under section 6033(e) of the Internal Revenue Code shall be apportioned to Oregon by multiplying the expenses by a fraction, the numerator of which is the amount of dues or other similar amounts received by the organization from Oregon residents during the tax year, and the denominator of which is the amount of all such amounts received during the tax year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.256
Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.258
Withholding on Real Property Conveyances

(1) For purposes of ORS 314.258 and this rule:

(a) "Authorized agent" does not include an employee of a transferee who merely makes payments to a transferor in connection with a conveyance, nor a person who performs services such as inspections, appraisals, drafting services, and recording services performed for the benefit of a transferor or transferee in a conveyance.

(b) "Consideration" includes any encumbrance that the transferee agrees to pay or assume as well as the fair market value of any property conveyed or transferred to a transferor, or the fair market value of any service provided to a transferor.

(2) Withholding requirements. Except as provided in subsection (2)(a) of this rule, an authorized agent must withhold tax for the year in which income is recognized for Oregon tax purposes and remit the tax withheld to the department.

(a) An authorized agent is not required to withhold if:

(A) The withholding amount calculated is less than $100 per transferor;

(B) The total consideration for the property is less than or equal to $100,000;

(C) The person making a conveyance is a resident of Oregon as defined in ORS 316.027 on the closing date of the conveyance;

(D) The person making a conveyance is a C-Corporation that is qualified to do business in Oregon on the closing date of the conveyance;

(E) The transferor delivers to the authorized agent a written assurance as required in IRC section 6045(e) that the entire gain qualifies for exclusion under IRC section 121;

(F) The transferor is an estate, certain trusts, S corporation, general partnership, or limited partnership, or a limited liability company that for purposes of Treasury Regulation section 301.7701-3 has not elected to be classified as an association taxable as a corporation and is not a disregarded entity the sole member of which is a transferor within the meaning of ORS 314.258(1)(f);

(G) The transferor is an entity not described in ORS 314.258(1)(f), such as a government agency or instrumentality, or a municipal or public corporation;

(H) The authorized agent is an attorney involved in a transaction where a licensed escrow agent is providing services for the conveyance; or

(I) The transferor or the transferor's tax advisor executes a written affirmation under penalty of perjury that the conveyance is not likely to be taxable to the transferor under Oregon law during the tax year of the transferor in which the conveyance occurs. Examples of such transactions include, but are not limited to, a conveyance that constitutes or is accomplished as part of:

(i) A transfer that is the sale of a principal residence and the gain qualifies for exclusion under IRC section 121;

(ii) A transfer to a corporation controlled by the transferor for purposes of IRC section 351;

(iii) A transfer pursuant to a tax-free reorganization under IRC section 361;

(iv) A transfer by a tax-exempt entity that does not give rise to unrelated business taxable income to the transferor under IRC section 512;

(v) A transfer to a partnership in exchange for an interest in the partnership such that no gain or loss is recognized under IRC section 721;

(vi) A transfer that qualifies for nonrecognition under IRC section 1031 or 1033 and the transferor enters into such a transaction;

(vii) A transfer between spouses or incident to divorce for purposes of IRC section 1041; or

(viii) Any other transaction in which gain is not recognized for purposes of ORS Chapters 316, 317, and 318, as explained to the department in writing at the time the transaction is completed.

(b) The authorized agent must send the tax withheld to the department within 20 days of the date the proceeds from the conveyance are disbursed to the transferor.

(c) If there is more than one transferor for one parcel, the authorized agent must withhold tax on each non-exempt transferor as if all transferors had equal ownership in the real property unless the transferor establishes to the authorized agent the actual ownership percentage in the real property, such as through recorded documents, tenancy-in-common agreements, or other documents. If the transferor establishes other than equal ownership, the authorized agent must withhold in proportion to each non-exempt transferor's actual ownership percentage in the real property.

(d) A transferor may claim the amount withheld by an authorized agent as a credit on the transferor's corresponding personal income tax return or corporate income or excise tax return.

(e) If the transferor is a limited liability company, the sole member of which is a transferor within the meaning of ORS 314.258(1)(f) (2008), and the limited liability company is a disregarded entity for federal income tax purposes, the transferor is the single member for purposes of this rule.

(3) Calculation of amount to be withheld.

(a) An authorized agent is required to withhold from the consideration payable to the transferor and remit to the department the least of:

(A) Four percent of the consideration for the real property;

(B) Eight percent of the amount of gain on the conveyance that is includable in the transferor's Oregon taxable income; or

(C) The net proceeds from the conveyance.

(b) A transferor subject to withholding must deliver to an authorized agent at or before conveyance of the real property a written affirmation, signed under penalty of perjury, identifying the amount of withholding required by subsection (a) of this section. If the transferor fails to deliver the form timely, the authorized agent must withhold four percent of the amount of consideration, or if less, all the net proceeds.

Example 1: Anne sold her rental property for $300,000. Her federal and Oregon adjusted basis in the property is $250,000. She has an outstanding mortgage against the property of $157,000 and closing costs are $3,350. At closing, she determines she is not exempt from withholding so her escrow officer must withhold tax based on the least of four percent of the consideration, eight percent of the gain includable in Oregon taxable income, or all of the net proceeds.

Step 1) Determine four percent of the consideration. In this case, it is $12,000 ($300,000 x 0.04 = $12,000).

Step 2) Determine eight percent of the gain includable in Oregon taxable income as follows:

$300,000 Consideration less

$250,000 Federal and Oregon adjusted basis equals

$50,000 Gain

$4,000 ($50,000 x 0.08 = $4,000) is eight percent of the gain.

Step 3) Determine the "net proceeds" as follows:

$139,650 Net amount disbursed to seller ($300,000 consideration - $157,000 mortgage – $3,350 closing costs = $139,650) $139,650 is the "net proceeds" from this conveyance.

Step 4) Because eight percent of the gain ($4,000) is the lowest of the amounts calculated in steps one, two, or three, Anne's escrow officer would withhold and remit $4,000.

(c) Installment sales. If a transferor elects to recognize income from the conveyance using the installment method under IRC section 453, the transferor may reduce the gain by the amount of the installment that will be recognized in future years. The withholding calculation is based on the entire consideration and net proceeds, or the modified gain to determine the lowest of the three methods provided in subsection (a) of this section.

Example 2: Assume the same facts as Example 1 except that Anne is selling the property on an installment basis and recognizing the income from the sale using the installment method under IRC section 453 over five years in equal installments. Because Anne is selling the property over time, the amount of gain includable in Oregon taxable income is $10,000 for the year of the conveyance ($50,000 ÷ 5 years = $10,000) and $10,000 in each year thereafter. Eight percent of the amount included in Oregon taxable income is $800. Anne's escrow officer would withhold and remit $800 for the year of the conveyance because it is the least amount using the three methods provided in subsection (a) of this section.

(d) Deferred exchanges. If a transferor enters into a like-kind exchange under IRC section 1031, withholding is not necessary at the time the transferor relinquishes the property to a Qualified Intermediary (QI) unless part of the proceeds from the sale are disbursed to the transferor.

Example 3: Robert entered into an exchange under IRC section 1031 to defer tax on the gain from the sale of his rental property. The consideration for the property was $500,000. Robert's federal and Oregon adjusted basis in the property is $150,000. He holds a first mortgage of $190,000 and he incurred $10,000 in costs related to the conveyance. Robert requested $50,000 from the consideration directly. Robert's escrow officer transferred title of the property and $250,000 of the consideration to a QI and the escrow officer disbursed $50,000 directly to Robert as requested. The escrow officer is required to withhold on the amount disbursed to Robert as follows:

Step 1) Determine four percent of the consideration. In this case, it is $20,000 ($500,000 x 0.04 = $20,000).

Step 2) Determine eight percent of the gain includable in Oregon taxable income as follows:

$500,000 Consideration

$150,000 Federal and Oregon adjusted basis
$350,000 Gain
$300,000 Gain eligible for deferral under IRC section 1031
$50,000 gain includable in Oregon taxable income.
Eight percent of the gain is $4,000.
Step 3) Determine the "net proceeds" as follows:
$50,000 Net amount disbursed to seller shown on the settlement statement before reducing for withholding.
Step 4) The lowest of the amounts calculated in steps one, two, or three is $4,000 (8 percent of the gain). Robert's escrow officer would withhold and remit $4,000.

(4) Written affirmation.

(a)(A) To claim exemption under subparagraph (2)(a)(I) of this rule, the transferor or the transferor's tax advisor must complete and sign a written affirmation under penalty of perjury, that the transferor is exempt from withholding because the transferor is unlikely to owe Oregon tax as a result of the conveyance, before the funds related to the transaction are disbursed.

(B) To determine whether the transferor is unlikely to owe Oregon income tax as a result of the conveyance, the gain may not be offset against any other items of gain, loss, deduction, or credit the transferor expects to claim on the related tax return unless the item is directly related to the conveyance. For example, if an Oregon nonresident must pay tax on the gain from the sale of the Oregon property to both Oregon and the state of residency, and the Oregon nonresident must claim the credit for taxes paid to the state of residency on the Oregon nonresident return, the transferor established that he or she is unlikely to owe Oregon tax as a result of the conveyance.

(C) The transferor must provide the completed written affirmation to the authorized agent providing closing and settlement services.

(b) Basing withholding on the amount of includible gain. If the transferor is subject to withholding, the transferor may calculate tax based on the amount of gain includible in Oregon taxable income. The transferor must complete and sign the written affirmation under penalty of perjury that the calculation is true and accurate to the best of the transferor's knowledge.

(c) Sale of a principal residence. The gain from the sale of a principal residence may qualify for exemption from withholding under either ORS 314.258(3)(e) or 314.258(3)(f). If the transferor is eligible to exclude the entire gain under IRC section 121, they must complete a written assurance similar to that found in IRC section 6045(e) pursuant to 314.258(3)(e) and this rule. If the transferor completes the written assurance, it is in lieu of the written affirmation required under 314.258(3)(f) and subsection (4)(a) of this rule and the transferor need not complete the written affirmation. However, the authorized agent must provide the information contained in the written assurance in the same manner as information contained in the written affirmation. If the gain is not fully excludible under IRC section 121, the transferor must complete the written affirmation calculating the gain under penalty of perjury.

(d) In addition to retaining the completed written affirmation or assurance in the authorized agent's records, the authorized agent must send a copy of the affirmation or assurance to the department within 30 days of the date of the conveyance.

(5) Failure to withhold.

(a) An authorized agent who relies on the written representation made by the transferor that the transferor is either exempt from or not subject to withholding, is not liable for amounts required to be withheld under ORS 314.258. An authorized agent who relies on the calculation shown on the written affirmation provided by the transferor is not liable for the amount that was required to be withheld in excess of that shown on the written affirmation. The transferor is liable for the tax and may be subject to interest charged on the underpayment of estimated tax.

(b) Penalty assessment. The department may assess a failure-to-withhold penalty if an authorized agent fails to demonstrate to the department's satisfaction that the authorized agent met the requirements of ORS 314.258.

(A) For conveyances that occurred before May 23, 2008, the department will not assess the failure-to-withhold penalty if an authorized agent met the requirements of either ORS 314.258 (2007) or 314.258 (2008).

(B) For conveyances that occurred on or after May 23, 2008, the department will not assess the failure-to-withhold penalty if an authorized agent met the requirements of ORS 314.258 (2008) and related rules.

(6) Failure to remit. If an authorized agent withholds tax from the transferor's disbursal and fails to remit the same amount to the department timely, the authorized agent is liable to the State of Oregon for those amounts. The department may collect such amounts from the authorized agent together with interest under ORS 305.220.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100 & 314.258
Stats. Implemented: ORS 314.258
Hist.: REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 4-2008(Temp), f. & cert. ef. 5-23-08 thru 11-17-08; REV 10-2008, f. & cert. ef. 9-23-08

150-314.260
REMIC Filing Requirements

A real estate mortgage investment conduit (REMIC) receiving income from prohibited transactions, must file an Oregon Form 20-I and a copy of the complete federal return, including a Schedule Q (Notice to Residual Interest Holder of REMIC Income or Loss) for each residual interest holder. A REMIC must file an Oregon return only for tax years with income from prohibited transactions.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.260
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 8-2002, f. & cert. ef. 12-31-02

150-314.260(4)
REMIC Income Taxable to Nonresidents

(1) Regular Interests.

(a) In general, dividends, interest, royalties and other income from the use or ownership of intangible personal property used in a trade or business is includable in the taxable income of a nonresident if such property has a business situs in Oregon pursuant to ORS 316.127 and the rules thereunder.

(b) The income of a nonresident holder of a regular interest in a real estate mortgage investment conduit (REMIC) shall be considered income from intangible personal property and subject to the provisions of ORS 316.127 and the corresponding rules. Thus, income attributable to regular interests in a REMIC shall be taxable to nonresidents only if the taxpayer's regular interest has acquired a business situs in Oregon.

(2) Residual Interests.

(a) The taxable income or loss of a nonresident holder of a residual interest in a real estate mortgage investment conduit (REMIC) shall be the nonresident's daily portion of the REMIC's taxable income or loss, as determined in section 860C of the Internal Revenue Code, modified in accordance with the general rules of ORS 316.124. In determining the items of REMIC income, gain, loss, and deduction included in the taxable income of a nonresident, the following shall apply:

(A) The nonresident shall include only his or her daily portion of REMIC income or loss derived from or connected with sources within Oregon. The daily portion of REMIC income or loss includable for the taxable year shall bear the same ratio to the nonresident's total daily portion of REMIC income or loss as the REMIC net income or loss from Oregon sources bears to the REMIC net income or loss from all sources.

(B) When a REMIC has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to ORS 314.280 and the rules thereunder.

(b) Disposition of Real Property: The gain, profit, or loss from the sale, exchange or disposition of any real property, incident to the foreclosure or default of the mortgage, shall be used in the determination of the taxable income of a nonresident if the real property is located in Oregon. The gain or loss from the disposition of the real property shall be included only to the extent of the nonresident's daily portion of the REMIC income, gain, or loss in accordance with this rule and the general rules of ORS 316.124.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.260
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-314.276
Change in Methods of Accounting or Reporting

A taxpayer's method of accounting for state income tax purposes must be the same as for federal tax purposes and it must clearly reflect the taxpayer's income. If the taxpayer's method of accounting does not clearly reflect the taxpayer's income, the department shall compute the taxpayer's taxable income in a manner consistent with the Treasury Regulations set forth under Internal Revenue Code Sections 446 through 483.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.276
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87

Corporations Excluded From Uniform Division of Income for Tax Purposes Act

NOTE: The provisions of the Uniform Division of Income for Tax Purposes Act (ORS 314.605 to 314.675), exclude from the Act financial organizations and public utilities (as therein defined). Therefore, it became necessary to prepare rules relating to apportionment and allocation both for those corporations covered by the Uniform Act and those so excluded. OAR 150-314.280-(A) to 150-314.280-(N) deal with corporations not under the Act, while OAR 150-314.605 to 314.670 deal with corporations covered by the Act. However, in using these regulatory provisions, the following should be noted:
(1) The general definitions and definitions of the property, payroll and sales factors contained in the Uniform Act are adopted by OAR 150-314.280-(B) and OAR 150-314.280-(F) for general use in connection with financial organizations and public utilities.
(2) The statutory rules as to allocation of income contained in the Uniform Act are adopted as rules under OAR 150-314.280-(D).
(3) Many rules (or portions thereof) are made applicable to both groups of corporations.
(4) Both groups contain apportionment factors for certain corporations deviating from the usual property, payroll and sales factor usage.
(5) Certain financial institutions not within the definition of "financial organization" in the Act, are covered by OAR 150-314.280-(A) to 150-314.280-(F).

150-314.280(3)
Election to Use Alternative Apportionment Weightings by Taxpayers Engaged in Utilities or Telecommunications; Revocation of Election

(1) A taxpayer engaged in utilities or telecommunications as defined in ORS 314.280(3)(e)(A) and (B) may elect to use the double-weighted sales apportionment factor weightings in ORS 314.650 (1999 Edition).

(2) This election is made by completing schedule AP using the double-weighted sales apportionment factor weightings on the original or amended tax return for each tax year for which the election is made to use the alternative factor weightings. For processing purposes check the appropriate box in the information section.

(3) A taxpayer may revoke the election to use the double-weighted sales apportionment factor weightings. This revocation is made by completing schedule AP using the single-sales apportionment factor on the original tax return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: REV 8-2002, f. & cert. ef. 12-31-02; REV 3-2005, f. 12-30-05, cert. ef 1-1-06; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.280-(A)
Apportionment and Allocation of Income of Financial Organizations and Public Utilities from Business Activities Within and Without Oregon

(1) The several parts of OAR 150-314.280, as amended in 1965 and thereafter, shall apply for all tax years beginning on and after January 1, 1965. Apportionment of income for tax years beginning prior to January 1, 1965, shall be governed by the law and rules in effect with respect to such years.

(2) The provisions of ORS 314.650, as amended in 1989 and thereafter incorporated in the several parts of OAR 150-314.280, apply to all tax returns of financial organizations and public utilities for all tax years beginning on or after January 1, 1991.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: 1-65; 12-19-75; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-314.280-(B)
Definitions

The definitions of "business income," "commercial domicile," "compensation," "financial organization," "nonbusiness income," "public utility," "sales," and "state," contained in ORS 314.610 and the related rules are by this reference incorporated herein and made a part of this OAR 150-314.280-(B).

"Taxpayer" means a financial organization or a public utility.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: 1-65; 12-19-75

150-314.280-(C)
Apportionment and Allocation of Income Generally

The provisions of OAR 150-314.615-(A) to 150-314.615-(E), 150-314.620-(A) to 150-314.620-(C), 150-314.640 and ORS 314.650 are by this reference incorporated herein and made a part of this OAR 150-314.280-(C).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: 1-65; 12-19-75; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92

150-314.280-(D)
Allocation of Income

The provisions of ORS 314.625 to 314.645, inclusive, are by this reference incorporated herein and made a part of this OAR 150-314.280-(D).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: 1-65

150-314.280-(E)
Apportionment Factors Generally

(1) Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved or the formula provided in 314.280(3)(b) for qualifying utilities. For tax years beginning on or after July 1, 2005, 314.650 provides for apportionment using only the sales factor.

(2) For purposes of the sales factor as used in OAR 150-314.280-(G) through (L), "sales" means all gross receipts and revenues included in the taxpayer's apportionable income.

(3) For financial organizations, the three factors are modified as provided in OAR 150-314.280-(N).

(4) Title insurance companies and health care service contractors are not classed as "domestic insurers" under ORS 317.010(11) and so may not apportion their income under 317.660. These companies must apportion their income under the provisions of 314.610 to 314.665, except that "sales" includes "gross premium receipts."

(5) For public utilities (other than carriers of freight or passengers), companies engaged in sea transportation services, and companies engaged in interstate river transportation, the three factors are property, payroll and sales.

(6) For companies engaged in sea transportation services and companies engaged in interstate river transportation, the three factors are modified property, payroll and sales factors.

(7) For carriers of freight or passengers, the three factors are modified property, payroll and sales. Modified factors for such carriers, sea transportation companies, and interstate river transportation companies are contained in OAR 150-314.280-(G) through 150-314.280-(L).

Stat. Auth.: ORS 305.100, 314.280
Stats. Implemented: ORS 314.280
Hist.: 1-65; 11-69; 11-71; 1-1-77; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(F)
Apportionment Factors

Property factor. Unless otherwise provided by rule, the provisions of ORS 314.655 and the rules pertaining thereto, are by this reference incorporated herein and made a part of this OAR 150-314.280-(F). Payroll factor. Unless otherwise provided by rule, the provisions of ORS 314.660 and the rules pertaining thereto, are by this reference incorporated herein and made a part of this 150-314.280-(F). Sales factor. Unless otherwise provided by rule, the provisions of ORS 314.665 and the rules pertaining thereto, are by this reference incorporated herein and made a part of this OAR 150-314.280

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: 1-65; 1-70; 12-19-75; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-314.280-(G)
Modified Factors for Carriers of Freight or Passengers: General Rule

(1) Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, 314.650 provides for apportionment using only the sales factor.

(2) A substantial portion of the net income of taxpayers engaged in the transportation of freight or passengers within and without Oregon results from the movement of revenue-producing equipment, drivers and other personnel. It is therefore necessary in calculating the apportionment factor of such carriers to reflect the results of the movement of such equipment and personnel by using revenue miles traveled both within and without the state. Thus, the apportionment formula of such transportation companies is to be computed as follows in tax years beginning before July 1, 2005:

(a) Tangible Property. Fixed properties, such as buildings and land used in the business, shop equipment, cars and trucks used in gathering or delivering local freight, are assigned to the state in which such properties are located. The value of trucks or other equipment used in over-the-road hauling or other transportation is assigned to this state on a revenue miles basis. For example, if ten percent of a taxpayer's revenue miles are in Oregon, then ten percent of the value of the revenue-producing equipment is included as part of the Oregon property factor.

(b) Payroll. The wages and salaries of employees assigned to fixed locations within this state are included in the Oregon payroll factor. The wages of personnel of over-the-road or other transportation equipment are assigned to this state upon the basis of revenue miles. The wages of such personnel are apportioned to Oregon in the proportion that revenue miles traveled within this state bear to total revenue miles traveled everywhere.

(c) Sales. Sales are assigned to this state in the proportion that the revenue miles traveled within the state bear to the total revenue miles traveled everywhere.

Stat. Auth.: ORS 305.100, 314.280
Stats. Implemented: ORS 314.280
Hist.: 1-65; 12-70; 12-19-75; 12-31-82; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 11-1992, f. 12-30-92, cert. ef. 12-31-92; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(H)
Modified Factors for Carriers of Freight or Passengers: Special Rules — Railroads

(1) In General. Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state must be determined pursuant to ORS 314.610 to 314.665 except as modified by this rule. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under ORS 314.610 and OAR 150-314.610(1)-(A) and (B). Nonbusiness income is directly allocable to specific states under ORS 314.625 to 314.645. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this rule. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

(2) Business and Nonbusiness Income. For definitions, rules and examples for determining business and nonbusiness income, see OAR 150-314.610(1)-(A) and (B).

(3) Apportionment of Business Income. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, 314.650 provides for apportionment using only the sales factor.

(a) In General. The property factor must be determined in accordance with ORS 314.655, the payroll factor in accordance with 314.660, and the sales factor in accordance with 314.665, except as modified in this rule.

(b) The Property Factor.

(A) Property Valuation. Owned property is valued at its original cost and property rented from others is be valued at eight (8) times the net annual rental rate in accordance with ORS 314.655 and OAR 150-314.655(2)-(B). Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.

(B) General Definitions. The following definitions are applicable to the numerator and denominator of the property factor:

(i) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (OAR 150-314.655(2)-(A))

(ii) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

(iii) The "value" of owned real and tangible personal property means its original cost. (ORS 314.655 and OAR 150-314.655(2)-(A))

(iv) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the tax period, but the Department may require the averaging of monthly values during the tax period or such averaging as necessary to reflect properly the average value of the railroad's property. (ORS 314.655 and OAR 150-314.655(3))

(v) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (ORS 314.655 and OAR 150-314.655(2)-(B))

(vi) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(vii) "Property used during the tax period" includes property which is available for use in the taxpayer's trade or business during the tax period.

(viii) A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.

(ix) A "car-mile" is a movement of a loaded or unloaded unit of car equipment a distance of one mile.

(C) The Denominator and Numerator of the Property Factor. The denominator of the property factor is the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the tax period. The numerator of the property factor is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the tax period is included in the numerator of the property factor in accordance with ORS 314.655 and OAR 150-314.655(1)-(D). Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the tax period is included in the numerator of the property factor in the ratio which "locomotive-miles" and "car-miles" in the state bear to the total everywhere.

(c) The Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the tax period for the production of business income. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. With respect to all personnel except the engine crew and train crew performing services on interstate trains, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). With respect to the engine crew and train crew performing services on interstate trains, compensation paid to such employees is included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state is deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

(d) The Sales Factor.

(A) In General. All sales derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income are included in the denominator of the sales factor. (ORS 314.665 and OAR 150-314.665(1)-(A)) Per diem and mileage charges that are collected by the taxpayer are excluded from both the numerator and denominator of the sales factor. The numerator of the sales factor is the total sales of the taxpayer in this state during the tax period. The total sales of the taxpayer in this state during the tax period, other than sales from hauling freight, passengers, mail and express, are attributable to this state in accordance with ORS 314.665 and OAR 150-314.665(2)-(A).

(B) Numerator of Sales Factor From Freight, Mail and Express. The total sales of the taxpayer in this state during the tax period for the numerator of the sales factor from hauling freight, mail and express are attributable to this state as follows:

(i) All sales from shipments which both originate and terminate within this state; and

(ii) That portion of the sales from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination.

(C) Numerator of Sales Factor From Passengers. The numerator of the sales factor includes:

(i) All sales from the transportation of passengers (including mail and express handled in passenger services) which both originate and terminate within this state; and

(ii) That portion of the sales from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.

Stat. Auth.: ORS 305.100, 305.280
Stats. Implemented: ORS 305.280
Hist.: 1-65; 12-70; 12-19-75; 12-31-82; 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(I)
Modified Factors for Carriers of Freight or Passengers: Special Rules — Airlines

(1) In General. Where an airline has income from sources both within and without this state, the amount of business income from sources within this state is determined pursuant to ORS 314.610 to 314.665 except as modified by this rule.

(2) Apportionment of Business Income. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.(a) General Definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.

(A) "Value" of owned real and tangible personal property means its original cost. (ORS 314.655 and OAR 150-314.655(2)-(A))

(B) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(C) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it is assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.

(D) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income year, but the department may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (ORS 314.655 and OAR 150-314.655(3)).

(E) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (ORS 314.655 and OAR 150-314.655(2)-(B)).

(F) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(G) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(H) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(I) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(J) "Transportation sales" means sales from transporting passengers, freight and mail as well as liquor sales, pet crate rentals, etc.

(K) "Departures" means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

(b) Property Factor.

(A) Property valuation. Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with ORS 314.655 and OAR 150-314.655(2)-(B). The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier does not constitute a rental of such aircraft by the airline to the other participating airline. Such aircraft are accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, are valued at cost.

(B) The denominator and numerator of the property factor. The denominator of the property factor is the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor is the average value of the tangible personal property owned or rented and used in this state during the income year. In determining the numerator of the property factor, all property except aircraft ready for flight are included in the numerator of the property factor in accordance with ORS 314.655 and OAR 150-314.655(1)-(D). Aircraft ready for flight are included in the numerator of the property factor in the ratio calculated as follows: Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(c) Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees is included in the ratio that departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type, compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(d) Sales (Transportation Sales) Factor. The transportation sales derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the sales factor. (ORS 314.665 and OAR 150-314.665(1)-(A)) Passive income items such as interest, rental income, dividends, etc., are not included in either the numerator or the denominator nor are the proceeds or net gains or losses from the sale of aircraft included. The numerator of the sales factor is the total sales of the taxpayer in this state during the income year. The total sales of the taxpayer in this state during the income year is the result of the following calculation: The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departure similarly weighted, multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight sales directly attributable to this state.

(3) Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these rules. Such records are to be subject to review by the state of Oregon or their agents. Example 1: [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100, 305.280

Stats. Implemented: ORS 314.280

Hist.: RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; Eff. 1/65, Amended 12/70, 12/19/75, 12/31/82, 12/31/83, Amended to renumber and to transfer material from OAR 150-314.280-(G) to OAR 150-314.280-(I), 12/31/87; Amended 12/31/97; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(J)
Modified Factors for Carriers of Freight or Passengers: Special Rules — Trucking Companies

(1) In General. As used in this rule, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without this state, the amount of business income from sources within this state must be determined pursuant to ORS 314.610 to 314.665 except as modified by this rule. In such cases, the first step is to determine what portion of the trucking company's income constitutes "business" income and what portion constitutes "nonbusiness" income under 314.610 and the corresponding rules. Nonbusiness income is directly allocable to specific states pursuant to the provisions of 314.625 through 314.645. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales factors set forth in this rule. The sum of (a) the items of nonbusiness income directly allocated to this state plus (b) the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax in this state.

(2) Business and Nonbusiness Income. For definitions, rules, and examples for determining business and nonbusiness income, see OAR 150-314.610(1)-(A) through 150-314.610(1)-(C).

(3) Apportionment of Business Income. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(a) In General. The property factor is determined in accordance with ORS 314.655, the payroll factor in accordance with 314.660, and the sales factor in accordance with 314.665, except as modified in this rule.

(b) The Property Factor.

(A) Property Valuation. Owned property is valued at its original cost in accordance with ORS 314.655(2) and OAR 150-314.655(2)-(A). Property rented from others is valued at eight times the net annual rental rate in accordance with ORS 314.655(2) and OAR 150-314.655(2)-(B).

(B) General Definitions. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

(i) "Average value" of property means the amount determined by averaging the values at the beginning and end of the tax period, but the department may require the averaging of monthly values during the tax period or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See OAR 150-314.655(3).)

(ii) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property, other than support vehicles used predominantly in a local capacity.

(iii) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(iv) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property cannot be ascertained under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (OAR 150-314.655(2)-(A).)

(v) "Property used during the tax period" includes property which is available for use in the taxpayer's trade or business during the tax period.

(C) The Denominator and Numerator of the Property Factor. The denominator of the property factor sis the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. The numerator of the property factor is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. In the determination of the numerator of the property factor, all property, except mobile property as defined in this rule, is included in the numerator of the property factor in accordance with ORS 314.655 and the corresponding rules. Mobile property as defined in this rule, which is located within and without this state during the tax period is included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

(c) The Payroll Factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the tax period for the production of business income. (See ORS 314.660 and the corresponding rules.) The numerator of the payroll factor is the total compensation paid in this state during the tax period by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees is included in the numerator as provided in 314.660 and the corresponding rules. With respect to personnel performing services within and without this state, compensation paid to such employees is included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere based on mobile property miles.

(d) The Sales Factor.

(A) In General. All sales derived from transactions and activities in the regular course of the taxpayer's trade or business which produce business income are included in the denominator of the sales factor. (See ORS 314.665(1) and OAR 150-314.665(1)-(A).) The numerator of the sales factor is the total sales of the taxpayer in this state during the tax period. The total state sales of the taxpayer, other than sales from hauling freight, mail, and express, are attributable to this state in accordance with ORS 314.665 and the corresponding rules.

(B) Numerator of the Sales Factor from Freight, Mail, and Express. The total sales of the taxpayer attributable to this state during the tax period from hauling freight, mail, and express is:

(i) Intrastate: All sales from any shipment which both originates and terminates within this state; and,

(ii) Interstate: That portion of the sales from movements or shipments passing through, into, or out of this state as determined by the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

(4) Records. The taxpayer must maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this rule. Such records are subject to review by the department or its agents.

(5) De Minimis Nexus Standards. Notwithstanding any provision contained herein, this rule does not apply to require the apportionment of income to this state if the trucking company during the course of the tax period neither:

(a) Owns nor rents any real or personal property in this state, except mobile property; nor

(b) Makes any pick-ups or deliveries within this state; nor

(c) Travels more than twenty-five thousand mobile property miles within this state; provided that the total mobile property miles traveled within this state during the tax period does not exceed 3 percent of the total mobile property miles traveled in all states by the trucking company during that tax period; nor

(d) Makes more than twelve trips into this state.

Stat. Auth.: ORS 305.100, 314.280
Stats. Implemented: ORS 314.280
Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(K)
Modified Factors for Companies Engaged in Sea Transportation Service

(1) Sea transportation services within this rule include the activities of steamship companies substantially engaged in interstate or international commerce which derive income within and partly from sources without the state. They do not include the activities of water transportation carriers operating mainly on the Columbia and Willamette Rivers or water transportation carriers operating primarily within Oregon waters.

(2) The Oregon income of a taxpayer carrying on the business of sea transportation services must be determined pursuant to ORS 314.610 to 314.665 except as modified by this rule. Business income is apportioned to this state by use of the formula provided in 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, 314.650 provides for apportionment using only the sales factor.

(a) Property factor. The property factor is a fraction, the denominator of which includes the value of all real and tangible personal property, including ships, owned, rented or leased by the taxpayer and used in the business. The numerator of this factor includes all real and personal property owned, rented or leased by the taxpayer and used in the business, except ships, to the extent such assets are located in the state, and so much of the value of ships used in the business as is determined by applying the ratio that the voyage time which the ship was within this state during the tax period bears to the total voyage time of the ship during the tax period.

(A) The value of ships used in the business but not owned by the user, such as bareboat chartered vessels, is the same as their value for insurance purposes. There are generally three types of charters.

(i) “Bareboat” charters. The owner-charterer places the tanker at the complete use and control of the user. All operating costs are borne by the user, and the charter fee is purely for the use of the vessel. Bareboat charters are included in the property factor.

(ii) “Time and Demise” (long-term) charters. The owner-charterer provides, in addition to the vessel, all operational costs at the instruction of the user. Time and demise charter fees include a component for operating costs borne by the owner-charterer, such as insurance, port and docking fees, crew and master wages, fuel and repairs. Time and demise charters are considered the purchase of transportation and are not included in the property factor.

(iii) “Single Voyage” charters. These are actually purchased transportation services that take the form of a charter. The owner-charterer has complete use and control of the vessel and merely contracts to deliver product between one or more ports of loading and discharge. Single voyages may be arranged on a consecutive voyage basis. Single voyage charters are not included in the property factor.

(B) Other rented or leased property is valued in the manner set out in ORS 314.655 and OAR 150-314.655(2)-(B).

(C) The term “voyage time” means the time that a ship is in operation for the purpose of transporting cargo, freight, mail, passengers, etc. The time that a ship is in operation includes all sailing time, even though a ship is returning empty or is en route to a port of call to load passengers or cargo, all time in port while loading and unloading, all time awaiting cargo, and all time that the ship is laid up for ordinary repairs, refueling, or provisioning. A ship is not in operation when out of service or during the time that it is laid up for extensive repairs, overhaul, modification or is in dry dock.

(D) The voyage time spent traveling on the Columbia River below mile post 309 is divided equally between Oregon and Washington. For purposes of this rule a vessel is not considered traveling on the Columbia River while remaining at a port even though the vessel moves from one terminal or dock to another within that port.

Example: [Example not included. See ED. NOTE.]

(b) Payroll factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the tax period for the production of business income. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. With respect to all personnel except ocean going personnel, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). The numerator contains so much of the compensation of oceangoing personnel as is determined by applying a fraction, the numerator being the voyage time the ship spent within this state during the tax period and the denominator being the total voyage time of the ship during the tax period.

(c) Sales factor. The sales factor is a fraction, the denominator of which includes all sales derived from carrying cargo, i.e., passengers, freight, mail, etc., and the sales incidental thereto. In calculating the numerator of the factor, such sales are assigned to this state in the proportion that the voyage time the ship spent within this state during the tax period bears to the total voyage time of the ship during the tax period. Sales from activities incidental to the transportation service, such as income from restaurants, locker rentals, etc., are assigned to the state or country in which the activity is carried on.

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 314.280
Stats. Implemented: ORS 314.280
Hist.: 1-65; 12-70; 12-31-84, Renumbered from 150-314.280(H); 12-31-87; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(L)
Modified Factors for Companies Involved in Interstate River Transportation Service

A taxpayer involved in interstate river transportation shall calculate its Oregon income under the provisions of ORS 314.610 to 314.665 except as modified by this rule. Business income is apportioned to this state by the formula provided in 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, 314.650 provides for apportionment using only the sales factor.

(2) Sales factor. The denominator of this factor include all sales. The numerator of this factor includes all sales not derived from interstate river transportation, assigned to this state in accordance with ORS 314.665. The numerator also includes all sales derived from vessels engaged in river transportation between Oregon and other states as is determined by applying the Oregon Interstate Mobile Allocation Formula (IMAF).

(3) Payroll factor. The payroll factor is a fraction. The denominator is the amount of all compensation paid to officers and employees, including personnel engaged in river transportation. The numerator of this factor includes all compensation paid to officers and employees not engaged in interstate river transportation, assigned to this state in accordance with ORS 314.660. The numerator also includes so much of the compensation to personnel engaged in river transportation between Oregon and other states as is determined by applying the Oregon IMAF.

(4) Property factor. The property factor is a fraction. The denominator includes the value of all real and tangible personal property, including vessels, owned, rented or leased by the taxpayer and used in the business. The numerator of this factor includes all real and personal property owned, rented or leased by the taxpayer and used in the business to the extent such assets are located in the state. The numerator also includes so much of the value of vessels engaged in river transportation between Oregon and other states and used in the business as is determined by applying the Oregon IMAF. The value of vessels used in the business but not owned by the user is the same as their value for insurance purposes. Property rented by the taxpayer is valued at eight times its net annual rental rate as set out in ORS 314.655 and OAR 150-314.655(2)-(B).

(5) For purposes of this rule, the Oregon IMAF is the average of two factors. The two factors are the originating and terminating tons factor and the ton-miles factor. For purposes of computing both factors, only mileage and tonnage from those vessels that operate on some portion of a river that constitutes the border between Oregon and other states is included in the computation. For example: The ton-miles generated by vessels operating on the Mississippi River or exclusively on the Willamette River would not be included in the computation.

(a) The originating and terminating tons factor is a fraction. The denominator is the total number of tons handled by the vessels engaged in river transportation between Oregon and other states. The numerator is the number of tons assigned to Oregon. The tons attributed to a voyage from one Oregon port to another Oregon port are credited wholly to Oregon. The tons attributed to a voyage between ports in different states are credited equally to the two states. For this purpose each trip between two ports of call is treated as a separate voyage even though the cargo may be scheduled for later movement to one or more ports.

(b) The ton-miles factor is a fraction. The denominator is the total number of ton-miles generated by the vessels engaged in river transportation between Oregon and other states. The numerator of the fraction consists of those ton-miles assignable to Oregon. Ton-miles generated on the Willamette are credited wholly to Oregon. Ton-miles generated on that part of the Columbia above mile 309 are credited wholly to Washington. One-half of those ton-miles generated on the portion of a river that forms the boundary between Oregon and another state are credited to Oregon. Ton-miles are figured by multiplying tons carried for each movement by miles traveled.

Example: [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100, 314.280

Stats. Implemented: ORS 314.280

Hist.: 10-5-84, 12-31-84, Renumbered from 150-314.280-(J); 12-31-87; RD 3-1992, f. 5-28-92, cert. ef. 6-1-92; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(M)
Other Methods: Limited Application

(1) For taxpayers that are taxable both within and without Oregon, the provisions of ORS 314.280 will ordinarily require apportionment to arrive at a fair and accurate measure of net income from business activity in Oregon. If the taxpayer can show that no unitary relationship exists between its business activities within Oregon and those activities outside Oregon, then the taxpayer may use separate accounting.

(2) If the allocation and apportionment provisions of OAR 150-314.280-(A) to 150-314.280-(N) do not fairly and accurately reflect the net income of the business done within Oregon, based on the taxpayer's business activity within Oregon, the department may require or the taxpayer may request an alternative method of apportionment and the department may approve that method of apportioning all or any part of the net income from the taxpayer's business activity within Oregon:

(3) The request to use an alternative method of apportionment shall be filed in writing with the department. The request must be signed by the taxpayer or the taxpayer's authorized representative and shall be filed separately from the taxpayer's return. The request shall include a complete explanation of the alternative method as well as an explanation why the apportionment factors in OAR 150-314.280-(A) through 150-314.280-(N) should not be used. Upon receipt of the request, the department will review it and issue a letter either authorizing or denying the request. If denied, the taxpayer can appeal that action as provided in ORS 305.275. An alternative apportionment method may be used only after receiving written authorization from the department. The authorization may be revoked if, upon audit, it is determined that the alternative method does not arrive at a fair and accurate measure of net income from business activity in Oregon. Once an alternative method has been authorized, it shall be used until a request to change is made and approved by the department or until the authorization is revoked in an audit.

(4) Examples of alternative methods of apportionment include:

(a) The exclusion of any one or more of the factors;

(b) The inclusion of one or more additional factors which will fairly and accurately reflect the taxpayer's net income from business activity in Oregon; or

(c) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.280

Hist.: 1-65, Renumbered from 150-314.280-(I); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.280-(N)
Modified Factors for Financial Organizations

(1) This rule is based on a model regulation adopted by the Multistate Tax Commission to promote uniform treatment of this item by the states. A financial institution having income from business activity that is taxable both within and without this state must allocate and apportion its net income as provided in this rule for tax years beginning on or after January 1, 1993. All items of nonbusiness income (income that is not includable in the apportionable tax base) must be allocated pursuant to the provisions of ORS 314.610 through 314.645 and the rules thereunder. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income (as defined under the Federal Revenue Code) is taxable both within this state and within another state, other than the state in which it is organized, must allocate and apportion its net income as provided in this rule.

(2)(a) For tax years beginning on or after January 1, 1991 and before May 1, 2003, all business income must be apportioned to this state by multiplying the income by a fraction. The numerator of the fraction is two times the sales factor, as described in section (4) of this rule, plus the property factor, as described in section (5) of this rule, plus the payroll factor, as described in section (6) of this rule. The denominator of the fraction is four. If one of the factors is missing, the remaining factors are added and the sum is divided by three (divide by two if the missing factor is the sales factor). A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero.

(b) For tax years beginning on or after May 1, 2003 and before July 1, 2005, all business income must be apportioned to this state by multiplying the income by a multiplier equal to 80 percent of the sales factor described in section (4) of this rule plus 10 percent of the property factor described in section (5) of this rule plus 10 percent of the payroll factor described in section (6) of this rule.

(c) For tax years beginning on or after July 1, 2005, all business income must be apportioned to this state by multiplying the income by a multiplier equal to 100 percent of the sales factor described in section (4) of this rule.

(d) Each factor must be computed according to the method of accounting (cash or accrual) used by the taxpayer for the taxable year.

(e) See OAR 150-314.280-(M) for other methods of apportionment and allocation or modification of the method in this rule that may be allowable.

(3) Definitions as used in this rule, unless the context otherwise requires:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement, or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(A) A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

(B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) "Commercial domicile" means:

(A) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(B) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed or directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, no matter where the services of such employees are performed, as of the last day of the taxable year.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services provided by the merchant to the credit card. (f) "Financial corporation" has the same meaning as "financial institution" in subsection (3)(g) of this rule.

(g) "Financial institution" is defined in ORS 314.610(4).

(h) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans do not include: loans representing property acquired in lieu of or pursuant to a foreclosure under section 595 of the federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from other depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(i) "Loan secured by real property" means that 50 percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(j) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(k) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(l) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

(m) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly:

(A) Starts his or her work and to which the employee customarily returns in order to receive instructions from the employer, or

(B) Communicates with customers or other persons, or

(C) Performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points.

(n) "Real property owned" and "tangible personal property owned" means real and tangible personal property, respectively,

(A) On which the taxpayer may claim depreciation for federal income tax purposes; or

(B) Property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(o) "Regular place of business" means an office at which the taxpayer conducts business in a regular and systematic manner and that is continuously maintained, occupied, and used by employees of the taxpayer.

(p) "State" is defined in ORS 314.610(8).

(q) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(r) "Taxable" is defined as "taxable in another state" in ORS 314.620.

(s) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

(4) Sales Factor.

(a) In general. The sales factor is a fraction as provided in ORS 314.665(1). The sales factor includes only those receipts described herein that constitute business income and are included in the computation of the apportionable income base for the taxable year.

(b) Receipts from the lease of real property. See OAR 150-314.665(4).

(c) Receipts from the lease of tangible personal property.

(A) Except as described in paragraph (B) of this subsection, the numerator of the sales factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(B) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the sales factor to the extent that the property is used in this state. The extent an aircraft is deemed to be used in this state is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

(d) Interest from loans secured by real property.

(A) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the sales factor if more than 50 percent of the fair market value of the real property is located within this state. If more than 50 percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection must be included in the numerator of the sales factor if the borrower is located in this state.

(B) The determination of whether the real property securing a loan is located within this state is made as of the time the original agreement was made, and any and all subsequent substitutions of collateral are disregarded.

(e) Interest from loans not secured by real property. The numerator of the sales factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(f) Net gains from the sale of loans. The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of section 1286 of the Internal Revenue Code.

(A) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(g) Receipts from credit card receivables. The numerator of the sales factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(h) Net gains from the sale of credit card receivables. The numerator of the sales factor includes all net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(i) Credit card issuer's reimbursement fees. The numerator of the sales factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (g) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(j) Receipts from merchant discount. The numerator of the sales factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts are computed net of any card holder charge backs, but are not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(k) Loan servicing fees.

(A) The numerator of the sales factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (d) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(C) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor must include such fees if the borrower is located in this state.

(l) Receipts from services. See OAR 150-314.665(4).

(m) Receipts from investment assets and activities and trading assets and activities.

(A) Interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities are included in the sales factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities, trading account assets, federal funds; securities purchased and sold under agreements to resell or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (i) and (ii) of this paragraph, the sales factor includes the amounts described in such subparagraphs.

(i) The sales factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The sales factor includes the amount by which interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(B) The numerator of the sales factor includes interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities described in paragraph (A) that are attributable to this state.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph), attributable to this state and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the average value of such trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) For purposes of this paragraph, average value is determined using the rules for determining the average value of tangible personal property set forth in subsections (c) and (d) of section (5).

(C) In lieu of using the method set forth in paragraph (B) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the sales factor is determined by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph) attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(D) If the taxpayer elects or is required by the department to use the method set forth in paragraph (C) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior written permission from the department, or the department requires the use of a different method.

(E) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business, and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines are presumed to be established at the commercial domicile of the taxpayer.

(n) All other receipts. The numerator of the sales factor includes all other receipts pursuant to the rules set forth under ORS 314.665.

(o) Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable are included in the numerator of the sales factor if the taxpayer's commercial domicile is in this state.

(5) Property Factor.

(a) In general. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real property, tangible personal property, loans, and credit card receivables located and used within this state during the taxable year and the denominator of which is the average value of all such property located and used both within and without this state during the taxable year.

(b) Property included. The property factor includes only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(c) Value of property owned by the taxpayer.

(A) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged off for federal income tax purposes is treated as charged off for purposes of this section.

(C) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the receivable charged off is not outstanding.

(d) Average value of property owned by the taxpayer. See OAR 150-314.655(2)-(A) and 150-314.655(3).

(e) Average value of real property and tangible personal property rented to the taxpayer. See OAR 150-314.655(2)-(B).

(f) Location of real property and tangible personal property owned by or rented to the taxpayer.

(A) Except as described in paragraph (B) of this subsection, real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated, or used within this state.

(B) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft is deemed to be used in this state and the amount of value that is included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined, then the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

(g) Location of loans.

(A)(i) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state is presumed to have been properly assigned if:

(I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

(III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in subparagraph (A)(ii) of this section may be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is located within this state if:

(I) The taxpayer had a regular place of business within this state at the time the loan was made; and

(II) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(B) In the case of a loan that is assigned by the taxpayer to a place without this state that is not a regular place of business, it is presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by subsection (3)(c), was within this state.

(C) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue will be reviewed on a case-by-case basis and consideration will be given to such activities as the solicitation, investigation, negotiation, approval, and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and "administration" are defined as follows:

(i) Solicitation. Solicitation is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business that the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment, currency denomination, and security required). Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iv) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business that the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) Administration. Administration is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement, and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business that oversees this activity.

(h) Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables are treated as loans and are subject to the provisions of subsection (g) of this section.

(i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state, absent any change of material fact, remains assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business there.

(6) Payroll factor. In general. The payroll factor is determined as provided in ORS 314.660 and the rules thereunder.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.280
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2002, f. & cert. ef. 12-31-02; REV 2-2003, f. & cert. ef. 7-31-03; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef 1-1-06; REV 5-2006, f. & cert. ef. 7-31-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

150-314.295
Disallowance of Certain Intercompany Transactions Involving Intangible Assets

(1) The provisions of section (3) of this rule apply in situations where:

(a) An intangible asset is owned by one corporation, organization, trade or business (the owner) and used by another (the user) for a royalty or other fee,

(b) Both the owner and the user are "owned by the same interests," as defined in Treas. Reg.§1.469-4T, paragraph (j),

(c) The owner and the user are not included in the same Oregon tax return, and

(d) The separation of ownership of the intangible asset from the user of the intangible asset results in either:

(A) Evasion of tax, or

(B) A computation of Oregon taxable income that is not clearly reflective of Oregon business income.

(2) For purposes of this rule, separation of the ownership and use of an intangible asset is for "evasion of taxes" when such separation has no effect on the operations of the user beyond payment of the royalty or other fee.

(3) The user of the intangible asset must add the royalty or other expense for such use to federal taxable income as an "other addition" on the Oregon tax return. The owner of the intangible asset must subtract the royalty or other income from such use from federal taxable income as an "other subtraction" on the Oregon tax return. The following example is for illustrative purposes only.

Example: Alpha Corporation (Alpha) uses a number of trademarks in its retail sales business. After developing the value of the trademarks over a period of 30 years, Alpha incorporated a subsidiary, Beta, Inc. (Beta) in Bermuda and transferred the trademarks to Beta for shares of newly issued Beta stock. Alpha paid royalties to Beta for use of the trademarks. Beta is not included in Alpha's consolidated federal and Oregon tax returns. After the transfer of the trademarks to Beta, Alpha uses the trademarks as it had before the transfer and the only change in its business operation is the payment of the royalty. The transfer of the trademarks does not change Alpha's business operations as they are readily apparent to or as they affect relations with customers, vendors or other external parties. Alpha requires that Beta manage the trademarks as Alpha had before the transfer. Alpha must add the royalty deduction back to federal taxable income on its Oregon Corporation Excise Tax return. If Beta is subject to Oregon taxation, the royalty income must be subtracted from its federal taxable income.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.295
Hist.: REV 4-2003, f. & cert. ef. 12-31-03; REV 3-2009, f. & cert. ef. 7-31-09

150-314.297(6)
Farm Income Averaging

(1)(a) Overview. An individual engaged in a farming business may elect to compute his or her current year (election year) income tax liability under ORS Chapter 316 by averaging, over the prior three-year period (base years), all or a portion of the individual's current year electible farm income (as defined in section (4) of this rule). To average farm income, the individual:

(A) Designates all or a portion of his or her elected farm income for the election year as elected farm income; and

(B) Allocates one-third of the elected farm income to each of the three base years; and

(C) Determines the election year tax under ORS Chapter 316 by determining the sum of:

(i) The election year ORS Chapter 316 tax without regard to the elected farm income; plus

(ii) For each base year, the increase in ORS Chapter 316 tax attributable to the elected farm income allocated to each year.

(b) Individual engaged in a farming business. An individual engaged in a farming business includes a sole proprietor of a farming business, a partner in a partnership engaged in a farming business, and a shareholder of an S corporation engaged in a farming business. Estates and trusts may not use farm income averaging. An individual is not required to have been engaged in a farming business in any of the base years in order to make a farm income averaging election.

(c) Making, changing, or revoking an election. A farm income averaging election is made by filing a Farm Income Averaging form with an individual's timely filed (including extensions) Oregon income tax return for the election year.

(A) An individual who has an adjustment for an election year or any base year may make a late farm income averaging election, change the amount of elected farm income in a previous election, or revoke a previous election, if the period of limitation prescribed in ORS 314.415 has not expired for the election year. For purposes of this paragraph, an adjustment is any change in taxable income or tax liability that is permitted to be made by filing an amended Oregon income tax return or a change in taxable income or tax liability made as the result of an examination or a federal audit report received from the Internal Revenue Service.

(B) If the individual does not have an adjustment as described in paragraph (A), the individual may not make a late farm income averaging election, change the amount of elected farm income in a previous election, or revoke a previous election, without the consent of the department.

(2) Calculation of tax for the election year. Determine the tax for the election year by allocating elected farm income to the base years only after all other adjustments and determinations have been made. For example, any net operating loss (NOL) carryover or net capital loss carryover is applied to an election year before allocating elected farm income to the base year. Similarly, the determination of whether there is a net section 1231 gain or loss in the election year and the determination of the character of the section 1231 items are made before allocating elected farm income to the base years. The allocation of the elected farm income to the base years does not affect any determination with respect to the election year or the base years. For example, in calculating a deduction or tax credit for Oregon that is computed by using adjusted gross income or is limited by adjusted gross income, adjusted gross income for the election year includes any elected farm income allocated to the base years. Similarly, adjusted gross income for the base year is not recalculated to take into account the allocation of elected farm income. The calculation of tax on elected farm income allocated to a base year is made without any additional adjustments or determinations with respect to the base year. For example, if a base year had a partially used capital loss, the remaining capital loss may not be applied to reduce the elected farm income allocated of the base year. Similarly, if a base year had a partially used credit, the remaining credit may not be applied to reduce tax attributable to the elected farm income allocated to the base year.

(3) Base year was previously an election year or another base year. If a base year for a current farm income averaging election was previously an election year for another farm income averaging election, determine the base year's Oregon tax after reducing the base year's taxable income by the elected farm income for the prior election year. If a base year for a current farm income averaging election was previously a base year for another farm income averaging election, determine the base year's Oregon tax after increasing the base year's taxable income by the elected farm income allocated to that year by the prior election.

Example: In each of years 1999, 2000, and 2001, farmer Joe had taxable income of $15,000. In 2002, farmer Joe had taxable income of $30,000 (prior to any farm income averaging election) and electible farm income of $9,000. Farmer Joe makes a farm income averaging election to average all $9,000 of his electible farm income for 2002. Thus, $3,000 of elected farm income is allocated to each of years 1999, 2000, and 2001. Joe's 2002 tax liability is the sum of:

(a) The Oregon tax on $21,000 (2002 taxable income minus elected farm income); plus

(b) For each of years 1999, 2000, and 2001, the Oregon tax on $18,000 minus the Oregon tax on $15,000 (the increase in tax attributable to the elected farm income allocated to each year).

In 2003, Joe has taxable income of $50,000 and electible farm income of $12,000. Joe makes a farm income averaging election to allocate all $12,000 of his electible farm income for 2003. Thus, $4,000 of elected farm income is allocated to each of years 2000, 2001, and 2002. Joe's 2003 tax liability is the sum of:

(a) The Oregon tax on $38,000 (2003 taxable income minus elected farm income); plus

(b) For each of years 2000 and 2001, the Oregon tax on $22,000 ($15,000 + $3,000 + $4,000) minus the tax on $18,000 (the increase in Oregon tax attributable to the elected farm income allocated to these years after increasing each years' taxable income by elected farm income allocated to each years by the 2002 farm income averaging election); plus

(c) For year 2003, the Oregon tax on $25,000 (the 2002 taxable income minus elected farm income plus the $4,000 allocated to this base year) minus the Oregon tax on $21,000 (the increase in tax attributable to the elected farm income allocated to this year after reducing this year's taxable income by the 2002 elected farm income.

(4) Electible farm income.

(a) Farm income includes items of income, deduction, gain, and loss attributable to the individual's farming business. Farm losses include a NOL carryover, or a net capital loss carryover to an election year that is attributable to a farming business. Income, gain, or loss from the sale of development rights, grazing rights, and other similar rights is not treated as attributable to a farming business. Farm income does not include wages.

(b) Gain or loss on sale or other disposition of property. Gain or loss from the sale of other disposition of property (other than land, but including a structure affixed to the land) that was regularly used in the individual's farming business for a substantial period of time is treated as attributable to a farming business. Whether property was regularly used for a substantial period of time depends on all of the facts and circumstances.

(c) Cessation of a farming business. If gain or loss is realized on assets used in a farming business after the farming business stops, the gain or loss is treated as attributable to a farming business if the property is sold within a reasonable time after the business ceases operations. A sale or other disposition within one year of the end of business operations is considered to be within a reasonable time. Whether a sale or other disposition that occurs more than one year after the end of business operations is within a reasonable time depends on all of the facts and circumstances.

(d) Determination of amount that may be elected farm income. The maximum amount of income that an individual may elect to average (electible farm income) is the sum of any farm income and gain minus any farm deductions or losses (including loss carryovers and carrybacks) that are allowed as a deduction in computing the individual's taxable income. Electible farm income may not exceed taxable income. Electible farm income from net capital gain attributable to a farming business cannot exceed total net capital gain. An individual who has both ordinary and net capital gain farm income may elect (up to electible farm income) any combination of such ordinary and net capital gain farm income.

Example 1. A has farm gross receipts of $200,000 and farm ordinary deductions of $50,000. A's taxable income is $150,000 ($200,000 - $50,000). A's electible farm income is $150,000, all of which is ordinary income.

Example 2. B has a farm capital gain of $50,000 and a nonfarm capital loss of $40,000. B also has ordinary farm income of $60,000. B has taxable income of $70,000 ($50,000 - $40,000 + $60,000). B's electible farm income is $70,000. B can elect up to $10,000 of farm capital gain and up to $60,000 of farm ordinary income.

Example 3. C has a nonfarm capital gain of $40,000 and a farm capital loss of $30,000. C also has ordinary farm income of $100,000. C has taxable income of $110,000 ($40,000 - $30,000 + $100,000). C's electible farm income is $100,000 ordinary farm income minus $30,000 farm capital loss, or $70,000, all of which is ordinary income.

(5) Miscellaneous rules.

(a) Short taxable year. If a base year or an election year is a short taxable year, the rules of IRC 443 and the regulations thereunder apply for purposes of calculating Oregon tax.

(A) Base year is a short taxable year. If a base year is a short taxable year, the increase in Oregon tax attributable to the elected farm income allocated to the base year is determined after the taxable income for the base year has been annualized.

(B) Election year is a short taxable year. If an election year is a short taxable year, any elected farm income is first annualized before being allocated to the base years. The increase in Oregon tax attributable to the elected farm income allocated to the base years is the same part of the tax computed an annual basis as the number of months in the short election year is of 12 months.

(b) Changes in filing status. An individual is not prohibited from making a farm income averaging election solely because the individual's filing status is not the same in an election year and the base years. For example, an individual who files single in the election year, but filed married filing jointly in all of the base years, may still elect to average farm income.

(c) Changes in residency status. An individual is not prohibited from making a farm income averaging election solely because the individual's residency status is not the same in the election year and the base years. If an individual's filing status is as a part-year or nonresident in the election year, the taxpayer still may elect to average farm income. Only Oregon source farm income and Oregon source capital gains and losses are considered elected farm income. If an individual's filing status is a full-year resident in the election year but some or all of the base years are filed as a part-year or nonresident, elected farm income is allocated over the three prior years and added to amounts in both the federal and state column. The Oregon percentage for allocating deductions and modifications and for apportioning tax is recomputed using the new amounts of income in the federal and Oregon columns. Exemption credits are not computed using the revised percentage.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.297
Hist.: REV 8-2001, f. & cert. ef. 12-31-01

150-314.300
Allocation of Oregon Modifications to Passive Activity Losses

(1) Oregon Passive Activity Loss. The Oregon passive activity loss shall be equal to the federal passive activity loss (defined in IRC Section 469(d)) as modified by the additions, subtractions, modifications or adjustments provided in ORS Chapters 314, 316, 317, and 318 as they relate to passive activities (defined in IRC Section 469(c)).

(2)(a) Modifications to Federal Passive Activity Losses. Modifications that may apply to passive activities of individuals include but are not limited to the following:

(A) The addition provided in ORS 316.680(2)(a) for interest or dividends on obligations of another state, provided the interest or dividends are derived in the ordinary course of the passive activity.

(B) The addition or subtraction provided in ORS 316.707 for differences in depreciation of assets used in the passive activity.

(C) The addition or subtraction provided in ORS 316.716 due to a difference in basis, upon the taxable sale, exchange or disposition by the taxpayer of an asset used in the passive activity.

(D) The addition provided in ORS 316.723 for public utility stock dividends and the subtraction for gain or loss on the sale of public utility stock where dividends were reinvested, provided the dividends and gain or loss are derived in the ordinary course of the passive activity.

(E) The addition provided by ORS 316.680(2)(d) for depletion in excess of the adjusted basis of property if the property is used in the passive activity.

(F) The subtraction provided in ORS 316.680(1)(a) for interest or dividends on obligations of the U.S. government if the interest or dividends are derived in the ordinary course of the passive activity.

(G) The subtraction for wage expense paid or accrued with respect to the passive activity but not deducted in arriving at federal taxable income because the federal targeted jobs credit under IRC Section 51 was claimed.

(H) The subtraction provided by ORS 314.210 for the elimination of excess profits on government contracts if such profits were derived in the ordinary course of the passive activity.

(I) The addition or subtraction provided in ORS 316.872 for deferral of gain on the sale of small business securities if the securities were held or sold in the ordinary course of the passive activity.

(J) The addition or subtraction provided in ORS 316.873 for deferral of gain on the sale of capital assets, if the assets were held or sold in the ordinary course of the passive activity.

(K) The subtraction provided in ORS 316.744 for energy conservation payments if the energy conservation measure was undertaken with respect to the passive activity.

(L) The addition provided in ORS 316.680(2)(e) for deferred gain on involuntary conversions or exchanges of Oregon property, the proceeds of which are reinvested in property outside Oregon. This modification applies if the property disposed of was used in the passive activity.

(M) The subtraction provided in ORS 316.056 for interest or dividends on obligations of Oregon political subdivisions, provided the interest or dividends are derived in the ordinary course of the passive activity.

Example: Mary has a post-1987 nonrental passive activity loss for federal purposes of $13,500. She shows an addition for depreciation for Oregon of $1,000 and a subtraction for a jobs credit of $600. The computation of Mary's passive loss for Oregon is shown below:

Federal loss — ($13,500)
Oregon addition for depreciation — 1,000
Oregon subtraction for jobs credit — (600)
Passive loss for Oregon — $13,100

(b) Modifications that may apply to passive activities of a closely held corporation or personal service corporation include but are not limited to the following:

(A) The addition or subtraction provided in ORS 317.368 for differences in depreciation of assets used in the passive activity.

(B) The addition or subtraction provided in ORS 317.374 for differences in depletion if the property is used in the passive activity.

(C) The addition or subtraction provided in ORS 317.356 due to a difference in basis, upon the taxable sale, exchange or disposition by the taxpayer of an asset used in the passive activity.

(D) The addition or subtraction provided in ORS 317.319 for payments to or withdrawals from a capital construction fund if it is established in the ordinary course of the passive activity.

(E) The addition provided in ORS 317.326 for deferred gain from the exchange or involuntary conversion of Oregon property, the proceeds of which are reinvested in property outside Oregon. This modification applies if the property disposed of was used in the passive activity.

(F) The addition provided in ORS 317.309 for interest and dividends received from states and political subdivisions of states derived in the ordinary course of the passive activity.

(G) The dividend-received deduction provided in ORS 317.267 if the securities were held in the ordinary course of the passive activity.

(3)(a) Modifications of Passive Losses by a Nonresident: In the case of a nonresident, losses resulting from passive activities derived from or connected with Oregon sources as defined in ORS 316.127 are deductible for Oregon purposes, subject to the provisions of IRC Section 469. The loss is modified by the modifications, additions and subtractions provided for in ORS Chapters 314 and 316 allocable to the passive activity. Sections (2) and (4) of this rule shall be followed regarding which additions, subtractions and modifications are allocable and how the transition rules and passive activity credits are applied. Section (7) of this rule shall be followed regarding the computation of the Oregon passive activity loss.

Example: John is a nonresident of Oregon and has rental property in both Oregon and California. His loss from all rentals is $50,000 and from his Oregon rental $10,000. Federal law allows a deduction of up to $25,000 for rentals. John would show $25,000 loss in the federal column of Form 40N and $10,000 loss in the Oregon column of Form 40N. John claims the $10,000 loss for Oregon because the loss for a nonresident from Oregon sources is treated in the same manner as a passive loss for a full-year resident.

In the case of a nonresident, losses resulting from passive activities derived from or connected with sources outside Oregon are not deductible for Oregon purposes, regardless of a later change in the taxpayer's residency.

Example: Tony is currently a full-year resident of Oregon. He moved to Oregon from California on December 15th of the prior year. In his last year in California, Tony incurred a passive loss from a California based investment. He was unable to claim the loss in the year incurred due to the passive loss limitations. Tony may not carry his loss forward to his Oregon return, because he was not a resident of Oregon in the year the loss was incurred and nonresidents can only carry forward passive losses from Oregon sources.

(b) Modification of Passive Losses by a Part-year Resident: In the case of a part-year resident, losses resulting from passive activities carried on during the period the taxpayer is a resident plus those derived from or connected with Oregon sources as defined in ORS 316.127 during the period the taxpayer is a nonresident are deductible for Oregon subject to the provisions of IRC Section 469. The loss is modified by additions, subtractions and modifications provided for in ORS Chapters 314 and 316 allocable to the passive activity. Sections (2) and (4) of this rule shall be followed regarding which additions, subtractions and modifications are allocable and how passive activity credits are applied. Section (7) of this rule shall be followed regarding the computation of the Oregon passive activity loss.

Example: Steve moved to Oregon on July 1 and is a part-year resident of Oregon. He has rentals in both Oregon and California. His loss from the California rental is $24,000 incurred ratably throughout the year ($2,000 per month). His loss from the Oregon rental is $10,000.

Steve would show the maximum $25,000 loss for rentals in the federal column of Form 40P. He would show $22,000 loss in the Oregon column of Form 40P. The Oregon loss consists of $10,000 loss for the Oregon rental and $12,000 loss ($2,000 x 6) for the California rental incurred from July 1 to December 31, the period in which Steve was a resident.

(4) Passive Activity Credits: Taxpayers may offset in full the tax credits provided in ORS Chapters 315, 316, 317, and 318 related to a passive activity against Oregon tax liability for the taxable year.

(5) Active Participants in Rental Real Estate Activities: The $25,000 offset for rental real estate activities provided in IRC Section 469(i) is not reduced by deduction equivalents (defined in IRC Section 469(j)(5)).

(6) Special Rules for Taxpayers in Real Property Business: Taxpayers who qualify under IRC 469(d)(7)(B) to treat any rental real estate activity as a non-passive activity for federal tax purposes shall use the same treatment for Oregon tax purposes.

(7) Computation of the Oregon Passive Activity Loss: Modify the federal passive activity loss by the additions, subtractions and modifications applicable to the passive activity. Apply the passive activity loss limitations specified in IRC Section 469 to the recomputed Oregon passive activity loss. Modify the Oregon return for the difference between the federal passive activity loss deducted and the allowable Oregon passive activity loss. Any amount of the Oregon passive activity loss not allowed in the tax year as a result of the application of the federal loss limitations may be carried forward to the following tax year.

Example 1: Tom has an adjusted gross income of under $100,000. He has a $26,000 passive activity loss from rental property acquired in 1987. The passive loss limitations in IRC Section 469 will allow Tom to use $25,000 of this loss to offset current year income from other sources. The remaining $1,000 will be carried forward for federal purposes.

Tom has $2,000 less depreciation for Oregon than for federal on the rental property. His Oregon passive activity loss is reduced to $24,000 (26,000 – 2,000). An addition of $1,000 is required on the Oregon return. This represents the difference between the allowable federal deduction of $25,000 and the allowable Oregon deduction of $24,000. The $1,000 addition is shown as an “Other addition … Oregon passive loss” on the Oregon return. Tom does not show an addition for depreciation. He will not carry forward any of the loss for Oregon purposes.

Example 2: Larry has an adjusted gross income of under $100,000. He has a $40,000 passive activity loss from rental property acquired in 1987. For federal purposes, Larry may use $25,000 of the loss to offset income from other sources. He carries forward the $15,000 balance.

Larry has $3,000 less depreciation for Oregon than for federal on the rental property. His Oregon passive activity loss is reduced to $37,000 (40,000 – 3,000). Larry then applies the federal passive loss limitations of section 469 of the Internal Revenue Code, and shows the maximum $25,000 loss on his Oregon return. Because this is the same passive loss shown on the federal return, no modification is needed. Larry may carry forward the $12,000 balance of the loss (37,000 – 25,000). Larry does not show an addition for depreciation on the return.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.300

Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96

150-314.302

Interest on Deferred Oregon Tax Liability with Respect to Installment Obligations

(1) Corporations with income from business activity taxable both within and without this state shall compute interest on deferred Oregon tax liability with respect to installment obligations using the relevant apportionment and allocation provisions of ORS Chapter 314.

(2) Interest on deferred Oregon tax liability with respect to business income from installment obligations shall be computed using the Oregon apportionment factor for the year of the installment sale.

(3) Interest on deferred Oregon tax liability with respect to nonbusiness income from installment obligations shall be computed using the allocation provisions that apply to the income from the installment sale.

Example: C Corp is a toy manufacturer doing business in Oregon and Washington. In 1990, C Corp sells a factory in Washington. The sales price is $11,000,000, the basis for Oregon tax purposes is $5,500,000 and the gross profit percentage is 50 percent. Under the terms of the sale, C Corp receives $1,000,000 in 1990 and a note for $10,000,000 (including $5,000,000 of unrecognized gain) to be paid in five equal annual installments. C Corp’s Oregon apportionment percentage for its 1990 calendar year return is 25 percent. The interest rules under IRC 453A and ORS 314.302 apply because the face amount of installment obligations remaining unpaid at the end of 1990 is greater than $5,000,000. The interest to report as tax on the 1990 Oregon return is computed as follows: [Examples not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.302

Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-314.306

Reduction of Tax Attributes after Discharge of Debt

(1) A taxpayer who has excluded income from the discharge of indebtedness for federal tax purposes under IRC 108 shall also exclude the income for Oregon purposes. Separate rules apply depending on whether the discharge is related to insolvency or qualified farm indebtedness, or to bankruptcy. The taxpayer shall reduce Oregon tax attributes independently of the reduction made at the federal level.

Example 1: [Example not included. See ED. NOTE.]

(2)(a) If an insolvent taxpayer or a taxpayer with discharged qualified farm indebtedness elects under IRC 108(b)(5) to reduce the basis of depreciable property first, the election is also effective for Oregon tax purposes.

Example 2: [Example not included. See ED. NOTE.]

(b) A bankrupt taxpayer cannot elect to reduce the basis of depreciable property first for Oregon tax purposes. Bankrupt taxpayers are required to reduce Oregon tax attributes in the following order:

(A) Net operating loss for the current taxable year and any net operating loss carryover to such taxable year.

(B) Capital loss for the current year and any capital loss carryforwards.

(C) Basis of property.

(3) Taxpayers required to apportion income. The amount of debt discharged and excluded from the federal taxable income of a multistate taxpayer subject to the apportionment provisions of ORS Chapter 314 is also excluded from Oregon taxable income. Oregon tax attributes of a multi-state taxpayer shall be reduced until all of the excluded income is absorbed. Oregon tax attributes are reduced in the following manner:

(a) Oregon net losses and net loss carryforward amounts are reduced first. Excluded income is absorbed proportionally, using the Oregon apportionment percentage for the year of debt forgiveness.

(b) Oregon capital losses and capital loss carryforward amounts are reduced next. Again, excluded income is absorbed proportionally, using the Oregon apportionment percentage for the year of debt forgiveness.

(c) Any excluded income that remains unabsorbed is used to reduce the taxpayer’s basis of property. Unlike net losses and capital losses, reductions in basis absorb excluded income dollar-for-dollar, since basis of property is not subject to apportionment.

Example 3: [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.306

Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.308

Listed Transaction Reporting Requirement

(1) For tax years beginning on or after January 1, 2007, taxpayers who engage in or receive a tax benefit from participation in reportable transactions as defined under section 2, chapter 568, Oregon Laws 2007 are required to report their participation on the Oregon tax return for the tax year in which the participation took place.

(2) In addition to any other applicable penalties, a taxpayer is subject to penalties as provided in section 9, chapter 568, Oregon Laws 2007 if the taxpayer fails to report the transaction as required on the Oregon return.

Stat. Auth.: ORS 305.100, 314.308

Stats. Implemented: ORS 314.308

Hist.: REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.330(2)
Definition: Final Determination

An order of the director of the department or a court decision becomes final after all periods of appeal have expired.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.330
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-314.355
Returns When Accounting Period Changed

(1) A return may not be made for a period of more than one year. A separate return for a fractional part of a year is therefore required whenever there is a change. If a change in accounting period requested by the taxpayer has been approved by the IRS for federal purposes, the change shall also be permitted for Oregon tax purposes. A copy of the approved application shall be sent to the Department. The Department will require proration of exemptions, dependency credits, etc., where the part-year return is based on a change of accounting periods. If the change is approved by the Internal Revenue Service, the return for the period necessary to effect the change shall be delinquent unless filed on or before the fifteenth day of the fourth month after the close of such period and the taxpayer shall thereafter make returns and compute income upon the basis of the new accounting period.

(2) A taxpayer's taxable year for Oregon income tax purposes shall be the same as the taxpayer's taxable year for federal income tax purposes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.355
Hist.: 1958; 12-31-84

150-314.360
Information Returns

(1) Definition. As used in this rule:

(a) "Information return," as used in ORS 314.360(4) and sections (7) and (8) of this rule, means a federal form W-2 or 1099.

(b) "Payer" means any person required to issue a 1099-MISC, 1099-G, 1099-R, or a W-2G.

(2) In general, taxpayers are not required to file information returns as described in ORS 314.360 except as provided in this rule.

(3) Any person that issues more than 10 information returns, where the recipient, winner, or the payer has an Oregon address, is required to file the information returns electronically with the department and using federal due dates. For purposes of this rule, information returns required to be filed electronically include:

(a) 1099-MISC Miscellaneous Income;

(b) 1099-G Certain Government Payments;

(c) 1099-R Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, etc.

(d) W-2G Certain Gambling Winnings.

(4) For information regarding the reporting requirements of salaries and wages, see ORS 316.202 and related rules.

(5) The department may grant an exception to this filing requirement in section (3) upon a showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each payer and determined on a case-by-case basis.

(6) In addition to any other filing requirement in this rule, the department may require the filing of any type of information return as it deems necessary. If requested under this section, an information return must be provided within 30 days of the date of the department's written request to be considered timely under ORS 305.217.

(7) Penalties. The department will assess penalties, as described in ORS 314.360(4), if a payer fails to file an information return with the department by the due date as required under section (3) of this rule or files an incorrect or incomplete information return.

(a) An information return is incorrect or incomplete if one or more of the following circumstances exist:

(A) Identifying employee information is missing from the information return, such as first or last name or social security number.

(B) The information return contains an incorrect statement of state income tax withheld, federal income, or state income amounts. Obvious math or clerical errors are not considered an incorrect statement for this purpose.

(C) Other information is incorrect or missing on the information return.

(b) A payer knowingly fails to file an information return by the due date if the information return was not received by the department on or before the due date of the corresponding federal return for the tax year under consideration, and

(A) The payer has failed to file an information return for two consecutive years prior to the due date of the information return required for the second consecutive year.

(B) The payer has been assessed the penalty under ORS 314.360(4) for one or more filing periods preceding the period at issue.

(C) The payer fails to file the information return upon written request to file the information return by the department.

(D) The department determines that the facts and circumstances in the particular case warrant penalty assessment.

(c) A payer knowingly files an incomplete, false or misleading information return if:

(A) A pattern of conduct exists by the payer of repeatedly filing incorrect information returns.

(B) The payer failed to correct the information return upon discovering incorrect information.

(C) The payer corrected the information return only upon written request to correct the information return by the department.

(D) The amount of the potential information return penalty is less than the cost of complying with the requirement to include correct information on the information return.

(E) The department determines that the facts and circumstances in the particular case warrant penalty assessment.

(8) If the payer fails to produce documentation to support the information return, as requested by the department, the department will use the best information available to determine the appropriate penalty assessment amount.

Stat. Auth.: ORS 305.100 & 314.360
Stats. Implemented: ORS 314.360
Hist.: 1958-59; 12-70; 12-19-75; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88, Renumbered to 150-314.360?; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; REV 2-2014, f. & cert. ef. 7-31-14

150-314.360(2)
Brokers' Information Returns

When required by the Department (but not otherwise), any person or organization that acted at any time as a broker or agent in stock, bond or commodity transactions (including a bank that cleared orders for depositors' or custodians' accounts) shall make a separate return of information for each customer, showing the total sales and the total purchases. In lieu of information with respect to each of the brokers' customers, the Department may require returns of information with respect only to a specified customer or customers.

[ED. NOTE: With the adoption of Oregon Laws 1984, Ch. 1, (Enrolled HB 3029), ORS 314.363 was repealed. The administrative rules under this section will no longer be in effect for taxable years beginning on or after January 1, 1986. For all prior years, the rules under this section shall remain in full force and effect.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.360
Hist.: 1958-1959, 12-70

150-314.364(A)
Requirement to File Returns Electronically (Corporation E-file Mandate)

(1) All corporations required to electronically file their federal corporation tax return are required to electronically file their Oregon corporation tax return.

(2) Waivers.

(a) A waiver of the electronic filing requirement granted by the Internal Revenue Service (IRS) will be accepted by the department as a waiver to the mandate under section (1). The corporation must notify the department in writing when such a waiver is granted in accordance with the department's instructions.

(b) In addition to a waiver allowed under subsection (a), the department may grant a waiver of the mandate in section (1) if the following conditions are met:

(A) The corporation requests a waiver in accordance with the department's instructions; and

(B) The corporation's facts and circumstances are such that complying with the mandate would cause the corporation an undue financial hardship. The corporation's refusal to purchase or use the requisite software or computer equipment does not, in and of itself, satisfy the conditions for a waiver under this subsection.

(c) When circumstances warrant, the department may issue an administrative waiver of the mandate in section (1) when the department determines it is necessary to promote the effective and efficient administration of the tax system.

(3) If an electronic tax return cannot be accepted for processing electronically, the corporation must contact the department for assistance in correcting the rejected return errors. If the rejected return errors cannot be corrected, the corporation must receive authorization from the department prior to filing a paper return.

(4) This rule is applicable to corporation tax returns filed for tax years beginning on or after January 1, 2011.

Stat. Auth.: ORS 305.100 & 314.364
Stats. Implemented: 314.364
Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; Renumbered from 150-314.HB2071(A) by REV 6-2012, f. 7-20-12, cert. ef. 8-1-12

150-314.364(B)
Requirement to File Returns Electronically

(1) All paid tax preparers filing Oregon personal income tax returns in this state are required to file them by electronic means if the paid tax preparer is required to do so by federal law. See 26 USC § 6011 and Treasury Regulation §301.6011-7 for the federal mandate and relevant definitions.

(2) Waivers.

(a) A waiver granted by the Internal Revenue Service (IRS) pursuant to Treasury Regulation §301.6011-7(c)(1) or (2) will be accepted by the department as a waiver to the mandate under section (1). The paid preparer must notify the department in writing when such a waiver is granted in accordance with the department's instructions.

(b) In addition to a waiver allowed under subsection (a), the department may grant a waiver of the mandate in section (1) if the following conditions are met:

(A) The paid preparer requests a waiver in advance of the preparation of personal income tax returns subject to the mandate in accordance with the department's instructions; and

(B) The paid preparer's facts and circumstances are such that complying with the mandate would cause the paid preparer an undue financial hardship. The paid preparer's refusal to purchase or use the requisite software or computer equipment does not, in and of itself, satisfy the conditions for a waiver under this subsection.

(c) When circumstances warrant, the department may issue an administrative waiver of the mandate in section (1) to a paid preparer or group of paid preparers when the department determines it is necessary to promote the effective and efficient administration of the tax system.

(3) This rule is effective January 1, 2012 and applies to tax returns filed on or after that date.

NOTE: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and 183.355(1)(b).
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.364
Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; Renumbered from 150-314.HB2071(B) by REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; Renumbered from 150-314.HB2071(B), REV 6-2013, f. & cert. ef. 12-26-13

150-314.380(2)-(B)
Report of Changes in Federal Taxable Income

(1) Report Requirements. The report of change or correction required by ORS 314.380(2) must be:

(a) Filed in writing with the department;

(b) Signed by the taxpayer or the taxpayer's authorized representative; and,

(c) Filed separately from any statement or attachment forming a part of the taxpayer's original tax return.

(2) The report may be in the form of an amended return or a schedule showing the adjustments and the recomputation of the tax. Regardless of what form is used, the report must include either a copy of the report of the Internal Revenue Service (IRS) adjustment, federal revenue agent's report or the audit report of the other state's taxing authority, whichever is applicable, or other information sufficient to inform the department of each item on the tax return that has been changed or corrected.

(3) If the taxpayer does not concede the accuracy of any change or correction made by the IRS or other state's taxing authority, the report filed with the department must include a full explanation of the reason why the taxpayer believes such change or correction to be erroneous. If the report is not filed in the manner stated in this rule, the department will not be considered to have been notified by the taxpayer.

(4) A report of a change or correction is treated as a timely claim for refund, pursuant to ORS 314.415, if filed with the department within two years after the date of the IRS adjustment or the audit report of the other state's taxing authority.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.380
Hist.: 6-68; 12-70, Renumbered from 150-314.380(2); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.385(1)-(A)
Filing Returns of Income: Due date

Returns of income must be filed with the department on or before the fifteenth day of the fourth month following the close of the tax year. For corporations, the due date is the 15th day of the month following the due date of the federal return. Thus, when the tax year is a calendar year, the return is due on or before the fifteenth day of April in the following year. Returns received after the due date are subject to late filing penalty as provided in ORS Chapter 314, except that returns received by mail are accepted without the imposition of such charges if postmarked before midnight of the due date (see ORS 293.660 and 305.820). When the due date falls on a Saturday, Sunday or a state legal holiday, the return is due on the next business day following such Saturday, Sunday or state legal holiday.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.385
Hist.: 1958-59; 9-71; 11-73; 1-1-77; 12-31; 78; 12-31-80; 12-31; 81; 12-31-82; 12-31-83; Renumbered from 150-314.385(1), RD 10-1986, f. 12-22-86 & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87

150-314.385(1)-(B)
Filing Returns of Income: Extensions, Chapters 316, 317 and 318

(1) If a taxpayer cannot file a return within the prescribed time, the department may grant the taxpayer an extension of time for filing but this does not extend the time for payment of the tax.

(2) Procedure when a federal extension is granted.

(a) The department will grant extension of time to file an Oregon return if the taxpayer has obtained an extension to file the federal return from the Internal Revenue Service. The taxpayer does not need to request an Oregon extension. The taxpayer must attach a copy of an approved federal extension or a filed automatic federal extension request under Internal Revenue Code (IRC) section 6081(b) to the Oregon return in accordance with current tax return instructions to serve as evidence of an Oregon extension.

(b) An automatic extension of time for filing a return does not relieve the taxpayer of the responsibility to pay estimated tax or eliminate interest charges for failure to pay estimated tax. An extension also does not relieve the taxpayer of a late payment penalty provided under ORS 314.400, except when the requirements of section (3) of OAR 150-314.400(1) are met.

(c) The Oregon extension is for the same length of time as the federal extension. If the Internal Revenue Service denies the taxpayer's extension request, but grants the taxpayer a period of time from the date of the denial in which to file the return, the department will grant the taxpayer an equal period of time if a copy of the denied extension request is attached to the Oregon return at the time of filing.

(3) Procedure for requesting an extension for Oregon only.

(a) An individual may request an extension of time for Oregon only by completing and filing the appropriate Oregon form. The taxpayer must file the extension request and payment with the department on or before the original due date of the associated return.

(b) A corporation may request an extension of time for Oregon only by writing "For Oregon Only" on the top of a federal extension form, filling out the form with Oregon tax information, and attaching it to the Oregon return when it is filed. An extension payment must be sent to the department on or before the original due date of the return accompanied by the appropriate Oregon form.

(c) Insurance companies filing federal income tax returns on a fiscal year basis must request a separate extension for Oregon under subsection (b) of this section. The Oregon extension is for the same length of time that would be allowed if the insurance company filed a calendar year federal return and applied for a federal extension.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.385
Hist.: 1958-59; 9-71; 11-73; 1-1-77; 12-31; 78; 12-31-80; 12-31-81; 12-31-82; 12-31-83; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 8-2002, f. & cert. ef. 12-31-02; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.385(3)
Standards for Substitute Tax Forms; Treatment of Forms Not Meeting the Standards; Treatment of Payments Received With Forms Not Meeting the Standards

(1) Definitions. For purposes of this rule:

(a) Official form. An official form is any payroll, income, or excise tax form prepared, printed, and distributed by or on behalf of the department pursuant to Oregon Revised Statutes (ORS) Chapters 310, 314, 315, 316, 317, 318, Lane Transit District (LTD) Ordinance 38, and Tri-County Metropolitan Transportation District (TRIMET) Ordinance 92.

(b) Substitute form. A substitute form is any payroll, income, or excise tax form authorized under ORS Chapters 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92 that is intended to replace the official form.

(c) Tax Return. A tax return is a payroll, income, or excise tax form filed with the department by or on behalf of a taxpayer under the provisions of ORS Chapter 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92.

(2) A tax return must be made on the department-prescribed forms, which may be obtained upon request from the department. Such forms are widely distributed, but a failure to receive any forms does not relieve the taxpayer from the responsibility to file any return required by statute.

(3) The department may accept a substitute form filed in lieu of an official form if the substitute form meets the standards set forth in this rule. It is the intent of the department to follow the National Association of Computerized Tax Processors (NACTP) standards as closely as is practical.

(4) Substitute form standards. A substitute form with or without optical character readable (OCR) scan lines must be a duplicate of the official form unless the variation is within the exceptions listed in section (5) of this rule. The overall format of substitute forms must match the format of official forms. Overall format includes graphics, location of lines, boxes, data entry symbols, spacing, 2-D barcode placement, and OCR scan line.

(a) A substitute form must be on paper of the same overall dimension (size) and weight and of a quality equal to or better than that used for the official form.

(b) Substitute forms and the filled-in data must be legible and must not have extra text or marks that do not appear on the official forms.

(c) The social security number on substitute forms must be separated by hyphens after the third and fifth digits.

(d) If the substitute form has OCR scan lines, black nonreflective ink in OCR-A font must be used for printing the scan line.

(e) Substitute forms must contain a 2-D barcode for tax years beginning on or after January 1, 2006 if the substitute form is:

(A) Software generated; and

(B) Used for personal income tax purposes under ORS Chapters 314, 315, or 316.

(5) Exceptions. The substitute form may differ from the official form with respect to the exceptions listed in this section. However, the difference may delay processing of the tax return.

(a) Official forms that are printed on colored paper may be reproduced in black ink on white paper.

(b) Official forms that use both sides of the paper may be reproduced on one side only of two successive pages.

(c) Reproductions of the data entry symbols may vary in size from that of the data entry symbols on the official form if the symbols conform to the following specifications:

(A) The data entry dot must be a filled circle (•) at least 1/16 inch in diameter and no larger than 1/8 inch in diameter centered vertically on the text line;

(B) The data entry symbols must not obstruct or overlap line numbers or captions; and

(C) The data entry symbols must be printed on the substitute form in the same position relative to the information to be data-entered as on the official form.

(d) All text on the official form that is larger in size than 14 point print may be reproduced on the substitute form in 14 point print.

(e) The boxes (data entry areas) printed on the official form for entry of the filled-in data may be reproduced on the substitute form without a vertical line provided to divide the dollar amount from the cents amount. If rounding an amount to the whole dollar, the amount may be printed without a decimal point and cents.

(f) Substitute forms that the department does not support in 2-D barcode format may be printed without 2-D barcode.

(6) Photocopies of official forms may be filed if the official form does not contain OCR printing.

(7)(a) Substitute forms must be approved by the department prior to use. Substitute forms that do not meet the requirements of this rule may not be filed in lieu of the official forms. The department may reject and return to the taxpayer tax returns using substitute forms that do not meet the requirements of this rule.

(b) A tax return that has been rejected under this rule does not meet the filing requirement of the applicable program. The taxpayer must file a tax return using an official form or a substitute form that meets the requirements of this rule in order to meet the filing requirement under the provisions of the personal income tax, corporate income tax and corporate excise tax programs; the filing requirement under the TRIMET self-employment tax and LTD programs; the filing requirement under ORS 314.724 for partnership returns; or the filing requirement under the Elderly Rental Assistance program. If the return is rejected, the taxpayer may be assessed penalty for failure to file a tax return as provided under ORS 314.400, 314.724 or as otherwise provided under Oregon law.

(8) If the department receives payment with a substitute form that does not meet the requirements of this rule, the department will treat the payment as an estimated tax payment under the provisions of ORS Chapters 314 or 316.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.385
Hist.: RD 9-1987(Temp), f. & cert. ef. 7-8-87; RD 11-1987, f. & cert. ef. 11-1-87; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 1-2005, f. 6-27-05, cert. ef. 6-30-05; Renumbered from 150-314.385(1)-(D), Rev 4-2005, f. 12-30-05, cert. ef. 1-1-06; REV 7-2006(Temp), f. & cert. ef. 9-29-06 thru 12-31-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.385(4)
Alternative Filing Methods

(1) As used in this rule:

(a) "Alternatively filed return" means an Oregon return submitted using a department-approved alternative filing method under section (2) of this rule.

(b) "IRS date of receipt" means the electronic time stamp indicating the date and time of receipt of the Oregon return by the Internal Revenue Service (IRS).

(2) The department may provide for filing of returns using electronic or other methods as an alternative to paper returns.

(3) Alternatively filed returns are deemed filed and received on:

(a) The date the return is received by the department as indicated by the department's date stamp; or

(b) In the case of an electronically filed return, the earlier of:

(A) The IRS date of receipt, or

(B) The date of successful transmission.

(4) Alternatively filed returns must be verified pursuant to the rules of the department adopted under ORS 305.810.(5) If an alternatively filed return cannot be processed, a paper return must be filed with the department. If the paper return is filed within 30 days of the date of the successful transmission of the alternatively filed return, the date of the successful transmission of the alternatively filed return is considered the filing date of the paper return.

183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100, 314.385

Stats. Implemented: ORS 314.385

Hist.: REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

150-314.385(c)-(A)

Time Limitations Affected by Military Service

The Provision of ORS 316.020 (1967 Replacement Part), providing a moratorium for filing returns and payment of tax for certain members of the Armed Forces, was not made a part of ORS Chapter 316 (1969 Replacement Part). Utilizing the powers of the Director given by ORS 305.145, the Department will waive penalty and interest on account of late filing and late payment of personal income tax in those cases where penalty and interest are waived by the Internal Revenue Service on account of personal income, pursuant to IRC section 7508(a). Section 7508(a) reads in part as follows:

"(a) In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a 'combat zone' for purposes of section 112, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section, or hospitalized as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous qualified hospitalization attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual:

"(1) Whether any of the following acts was performed within the time prescribed therefor:

"(A) Filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

"(B) Payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof or of any other liability to the United States in respect thereof;…"

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.385

Hist.: 1-69; 1-1-77; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-316.407-(B); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-314.385(c)-(B)

Time Limitations for Persons Outside United States

The Department will waive penalty (but not interest) for delinquent filing and delinquent payment of tax by taxpayers who qualify for the automatic two month extension for filing under Treasury Regulation 1.6081-5. This regulation grants an automatic extension of time, for federal purposes, to file a return and pay the tax due by the fifteenth day of the sixth month following the close of the tax year. To qualify, a taxpayer must reside outside the United States and Puerto Rico on the original due date of the return. A taxpayer must have filed a return and paid the tax due within the federal extension period in order to receive this waiver. This is not an extension of time for filing but only a waiver of the delinquency penalty. Accordingly, a return filed under these circumstances will be considered delinquent.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.305

Hist.: 12-70; TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-314.407-(C); REV 4-2003, f. & cert. ef. 12-31-03

150-314.395

Payment of Tax; Interest on Delayed Return

See OAR 150-305.220(1) for the rate of interest on a delayed payment of tax.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.395

Hist.: 1-69; 11-71; 12-19-75; 12-31-82; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-314.395(1)

Responsibility for Tax Payments

When an employer fails to withhold income tax from an employee under ORS 316.167, the employee is not relieved from paying income tax under Chapter 305, 314 and 316.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.395

Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-314.400(1)

Delinquency Penalty

(1) Although ORS 314.400(1) refers to a delinquency penalty for (A) failure to file a report or return by the due date or (B) failure to pay a tax due by the due date, only one five-percent penalty is added, even though there is a failure as to both requirements.

Example 1: Joe did not obtain an extension to file his tax return, which was due on April 15. On July 1, he filed the return and paid $2,000 of tax plus interest of $40. Joe will be charged a penalty of $100 ($2,000 x 5 percent).

(2)(a) The delinquency penalty is based on the tax required to be shown on the return, reduced by credits claimed on the return and by any amount of the tax that is paid on or before the due date for payment. If the department determines that the tax shown on the return is greater than the tax required to be shown, the lesser amount is used to determine the penalty.

Example 2: Jeanette filed her tax return on time. The tax shown on the return was $800. Jeanette claimed credits of $150, withholding of $150, and showed a balance due of $500. She did not pay the $500 with the filing of the return. The department determined in processing the return that the tax required to be shown on the return was $600. The delinquency penalty of $15 is based on five percent of $300 ($600 tax required to be shown on the return, less credits of $150 and withholding of $150).

(b) The 20-percent penalty is in addition to the five-percent penalty. A 20-percent penalty is charged when:

(A) A tax return that is required to be filed annually or for a one-year period is not filed within three months of the due date (determined with regard to any extension of time to file granted to the taxpayer); or

(B) A tax return that is required to be filed more frequently than annually is not filed within one month of the due date (determined with regard to extensions).

Example 3: Pierre did not request an extension to file his return, which was due on April 15. He filed the return on November 1, showing tax of $900, credits of $300, and withholding of $200. Pierre sent a check for the balance due of $400 with the tax return. A total penalty of $100 will be charged; $20 for failure to pay the tax when due ($400 x 5 percent), and $80 for failing to file the return within three months of the due date ($400 x 20 percent).

Example 4: Same facts as Example 3, except Pierre received an extension to file until October 15. Pierre will be charged a five-percent penalty for failure to pay the tax when due. The 20-percent penalty for failure to file the return will not be charged because Pierre filed the return within three months of the extended due date.

Example 5: French Bakery did not file its Oregon Quarterly Tax Report for 1st quarter 2008 withholding, which was due on April 30, 2008. It filed the return on July 1, 2008, showing tax of $800 and prepayments of $500. French Bakery sent a check for the balance due of $300 with the tax return. A total penalty of $75 will be charged; $15 for failure to pay the tax when due ($300 x five percent), and $60 for failing to file the return within one month of the due date ($300 x 20 percent).

(c) If a taxpayer is required to file a federal income tax return for a period of less than 12 months under section 443 of the Internal Revenue Code, the Oregon personal income or corporate excise or income tax return required to be filed for that period is considered an annual filing thus subject to the additional 20-percent penalty.

(d) If a return or report is required to be filed on a one-time basis such as with inheritance returns, the return or report is considered an annual filing thus subject to the 20-percent penalty.

(e) If a taxpayer fails to file a return and the department must determine and assess the amount of tax, the penalties are based on the tax required to be shown on the return. The tax required to be shown on the return is reduced by any credits that may be lawfully claimed on the return and by any amount of the tax that is paid on or before the due date for payment.

Example 6: Isabelle filed her 2005 tax return on July 1, 2007. The tax shown on the return was $800 and Isabelle claimed credits of $300 and withholding of $400. She paid the balance due of $100 when she filed the return. Isabelle will be charged a five-percent failure-to-pay penalty, plus a 20 percent penalty for filing the return more than three months after the due date. The total penalty of $25 is based on $100 ($800 tax shown on the return less credits of $300 and withholding of $400).

Example 7: Same facts as Example 6, except that Isabelle did not file her 2005 tax return after being requested to do so by the department. The department determined that the tax required to be shown on the return was $900, allowable credits were $150 and withholding was $400. The penalty will be based on $350.

(3) Exceptions to the penalty for failure to pay tax when due.

(a) Payment of 90 percent of the tax shown on the return. Income and excise tax returns filed within the period of an extension granted are not considered delinquent with regard to the time of filing. However, an extension of time to file a return does not extend the time for paying the tax. Thus, if the tax is not paid by the original due date of the return, a delinquency penalty of five percent is added to the total unpaid tax unless the taxpayer has met all of the following conditions:

(A) Filed for a federal automatic extension of time to file or filed for a separate Oregon extension, in accordance with current Oregon tax return instructions;

(B) At least 90 percent of the tax after credits as shown on the return was paid on or before the original due date of the return;

(C) The taxpayer's return is filed timely within the extension period;

(D) The balance of the tax as shown on the return is paid when the return is filed and any interest due is either paid when the return is filed or within 30 days of billing by the department.

Example 8: Henry filed an extension request with Oregon on April 15, along with a payment of $600. He filed his tax return on October 15. The tax shown on the return was $1,200 and Henry claimed total tax credits on the return of $200. Henry paid the balance due of $400 with the return. A five-percent penalty would be charged on the $400 paid on October 15 because Henry did not pay at least $900 (90 percent of the tax shown on the return, less withholdings and credits), on or before the original due date of the return. Interest on the unpaid balance would be due from April 16 to October 15.

Example 9: Jan was granted an extension to file her federal tax return until October 15. She filed her Oregon return on June 14. The tax shown on the return was $2,500 and she had made estimated tax payments totaling $2,300. Jan paid the $200 tax due with the return. The five-percent penalty will not be charged on the $200 paid on June 14 if interest from April 16 to June 14 accompanies the $200 payment or if Jan pays the interest due on the unpaid balance of $200 within 30 days of billing by the department.

(b) Amended tax returns. If a taxpayer (individual or corporate) files an amended income or excise tax return accompanied by less than full payment of tax and interest, the department must send a billing notice indicating the amount of tax plus accrued interest to be paid. If the taxpayer pays the full amount of tax plus interest within 30 days of the date on the billing notice, the five-percent penalty for failure to pay the tax with the amended return will not apply.

Example 10: ABC Corporation filed an amended income tax return showing a balance of tax due of $1,000. A payment of $1,000 was submitted with the return. The $1,000 payment is first applied to interest that has accrued from the original due date of the return. The department determines that $200 of interest has accrued on the $1,000 of additional tax. Because the corporation has underpaid the tax by $200, ($1,000 payment less $200 applied to interest equals $800 of tax paid with the return), a five-percent penalty applies to the $200 of tax due. However, if ABC Corporation pays the $200 of tax plus any additional interest within 30 days of the date on the billing notice, the five-percent penalty will not apply.

(c) Deficiencies. If the department issues a Notice of Deficiency and the taxpayer pays the full amount of tax plus interest within 30 days of the date on the Notice of Deficiency, the five-percent penalty for failure to pay the tax required to be shown on the return will not apply.

Example 11: Hanna filed her original return timely but the department issued a Notice of Deficiency for $500 plus $75 interest. Hanna paid $300 within 30 days of the Notice of Deficiency. However, the five-percent penalty will apply to the entire deficiency ($500) because she did not pay the deficiency plus interest in full within 30 days of the Notice of Deficiency.

(d) Differences in the amount of prepaid tax. If a taxpayer (individual or corporate) files an income tax return or an excise tax return and the taxpayer overstates the amount of tax that was paid on or before the due date, the department must send a billing notice indicating the amount of additional tax and interest due. If the taxpayer pays the full amount of tax plus interest within 30 days of the date on the billing notice, the five-percent penalty for failure to pay the tax by the due date does not apply.

Example 12: Maria filed her individual income tax return on April 15. The tax shown on the return was $1,300. She claimed credits of $300 and state income tax withholding of $600. The $400 balance of tax due as shown on the return was paid with the return. During processing of the return, the correct amount of state income tax withholding is determined to be $350. Because Maria did not pay $250 of tax by the due date, a five-percent penalty applies. If Maria pays the additional tax due of $250 plus any additional interest within 30 days of the date on the department's notice, the five-percent penalty will not be charged.

Example 13: Same facts as Example 12, except Maria did not pay the $400 balance due when she filed the return. A penalty of $20 ($400 x 5 percent) is charged for failure to pay the $400 of tax when due. The $250 of additional tax resulting from the error in the amount of withholding will not have a five-percent penalty added if Maria pays the $250 of tax plus additional interest within 30 days of the department's notice.

(4) The penalties provided under ORS 305.265(13) and 314.400(6) are not combined. Only one 100 percent penalty may be assessed on a particular report or return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.400
Hist.: 11-71; 12-19-75; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 16-1982, f. 12-6-82, cert. ef. 12-31-82; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 9-1987(Temp), f. & cert. ef. 7-8-87; RD 11-1987, f. & cert. ef. 11-1-87; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 3-2006, f. & cert .ef. 7-31-06; REV 5-2008, f. 8-29-08

150-314.400(2)
Failure to File Penalty

A penalty of 20 percent of the tax required to be shown as tax on the return will be added if a return is not filed within three months after the due date. The three month period will be measured from the last day of any extension granted to file the return.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-19-75

150-314.400(4)
Interest on Deficiencies and Delinquencies

In general, interest is accrued on the unpaid tax from the due date of the return until paid. When additional tax is due as a result of a refund issued in error, a Notice of Deficiency will be issued for the tax and interest paid to the taxpayer. Interest then accrues on the total amount owed from the day after the check was issued until paid.

Example 1: John and Mary were issued a tax refund of $585 along with $11 interest on July 17, 2006. The department later determines that the refund was issued in error, and issues a Notice of Deficiency for $596 ($585 tax and $11 interest) on August 18, 2006. Interest then accrues on the $596 total amount owed beginning July 18, 2006, until the deficiency is paid.

Example 2: Ron and Nancy were issued a tax refund of $1,185 along with $42 interest on October 17, 2006. The department later determines that $395 of the refund was issued in error, and issues a Notice of Deficiency for $409 ($395 tax and $14 interest received on the improper refund) on December 18, 2006. Interest then accrues on the $409 total ($395 tax and $14 interest) beginning October 18, 2006, until the deficiency is paid.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.400
Hist.: 12-19-75, Renumbered see 150-314.400(4); 12-19-75; 12-31-82; 12-31-83; 12-31-86, Renumbered from 150-314.400(3); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 3-2006, f. & cert .ef. 7-31-06

150-314.402
Definition: Taxable Income for Imposing Substantial Understatement Penalty

(1) For personal income tax purposes, in determining if a substantial understatement of taxable income exists, taxable income as defined in ORS 316.048 and OAR 150-316.048 shall be applicable.

(2) For a corporation other than an S corporation, in determining if a substantial understatement of taxable income exists, taxable income as defined in ORS 317.013, 317.018, 317.715 and the rules thereunder shall be applicable.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.402
Hist.: RD 4-1988, f. 5-25-88, cert. ef. 6-1-88

150-314.402(1)
Computation of Penalty for Substantial Understatement of Taxable Income (SUI)

(1) The department will assess a penalty if a substantial understatement of taxable income exists for any taxable year. The penalty is equal to 20 percent of the amount of any underpayment of tax attributable to the understatement of taxable income. A substantial understatement exists only if incurred on the return of the individual, corporation, or reporting entity required to file a return and pay tax.

(2) Substantial Understatement. An understatement is substantial if the understatement exceeds $25,000 for corporations (other than S corporations or personal holding companies) or exceeds $15,000 for all other taxable entities.

Example 1: A partnership return is adjusted for a $50,000 increase in unreported income. The partnership is owned by Renton, Mark, and Paul. The partnership adjustment results in an increase in unreported income of $30,000 on Renton's individual return, $15,000 on Mark's individual return, and $10,000 on Paul's individual return. The SUI penalty is only assessed on Renton's tax due because only his return was adjusted for more than $15,000. The adjustment to Mark and Paul's individual returns will not include the SUI penalty, although all three may be subject to other penalties as provided by law.

(3) Understatement Computation.

(a) For full-year residents, the understatement is the taxable income required to be shown on the return minus the taxable income shown on the return. For nonresidents and part-year residents the understatement is calculated the same as for full-year residents except that taxable income must be calculated as provided in ORS 316.117

(b) Taxable income required to be shown is the amount of taxable income determined for the taxable year without regard to:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(c) Taxable income shown is the amount determined from items properly reported on the return and:

(A) Items with substantial authority (as described in OAR 150-314.402(4)(b)) had such items received the proper tax treatment; and

(B) Items with adequate disclosure and reasonable basis (as described in OAR 150-314.402(4)(b)) had such items received the proper tax treatment.

(d) Items not included in the computation for taxable income shown are:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(C) Items without substantial authority or adequate disclosure and reasonable basis as described in OAR 150-314.402(4)(b).

(D) Items attributable to an abusive tax shelter as defined in ORS 314.402(4)(a).

(4) Penalty Computation.

(a) The penalty is equal to 20 percent of the amount of any underpayment of tax attributable to the understatement of taxable income. The underpayment of tax attributable to the understatement is computed by applying an allocation percentage to the total underpayment of tax. The percentage to apply is computed by dividing the understatement of taxable income by total adjustments made. The total underpayment of tax is the tax required to be shown on the return minus the tax shown on the return for the taxable year.

(b) Tax required to be shown is the net tax computed on the taxable income required to be shown, as determined in subsection (3)(b) of this rule, without regard to:

(A) Withholdings (unless the withholding payments were unreported by the taxpayer or were collected without assessment for the taxable year);

(B) Estimated tax paid by the taxpayer; or

(C) The state surplus refund pursuant to ORS 291.349.

(c) Tax shown on the return is the amount of net tax determined for the taxable year before the taxpayer was first notified by the department concerning their tax liability. If the return shows no net income tax, the amount of tax shown on the return is considered to be zero. In all cases, tax shown is computed without regard to:

(A) Withholdings;

(B) Estimated tax paid by the taxpayer; or

(C) The state surplus refund pursuant to ORS 291.349.

(5) A net operating loss carryover, tax credit carryover, or capital loss carryover shall be treated for the purposes of ORS 314.402 as a credit or deduction in the year in which the carryover is taken into account.

(6) The department will not impose a penalty under ORS 314.402 unless a return has been filed. [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.402
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11

150-314.402(4)(b)
Substantial Authority, Adequate Disclosure and Reasonable Basis

(1) Definitions. For purposes of ORS 314.402, OAR 150-314.402(1), and this rule:

(a) "Substantial authority" has the same meaning as used in Treasury Regulation 1.6662-4(d).

(b) "Adequate disclosure" has the same meaning as used in Treasury Regulation 1.6662-4(e)-(f).

(c) "Reasonable basis" has the same meaning as used in Treasury Regulation 1.6662-3(b)(3).

(2) When determining if an understatement is substantial, the understatement does not include items for which:

(a) Substantial authority exists (or existed at the time the taxpayer claimed it on the return) for the tax treatment of the item in question; or

(b) The taxpayer adequately disclosed relevant facts for the tax treatment of the item in question on the Oregon return (or on a statement attached to the Oregon return), and the taxpayer had a reasonable basis for the tax treatment of the item.

(3) Items not adequately disclosed to the department before the taxpayer was first notified by the department concerning the tax liability will not be considered adequately disclosed on any subsequent filing by the taxpayer.

(4) Items attributable to an abusive tax shelter as defined in ORS 314.402(4)(a) do not qualify under this rule to be excluded from the understatement.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.402
Hist.: RD 4-1988, f. 5-25-88, cert. ef. 6-1-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

150-314.402(6)
Waiver of 20 Percent Substantial Understatement of Income Penalty Imposed under ORS 314.402

(1) The department will waive the penalty if the taxpayer shows that there was reasonable cause for the understatement and that the taxpayer acted in good faith.

(2) The department will not waive the penalty if the taxpayer was involved in an abusive transaction as defined in ORS 314.402(4) for the tax year at issue.

(3) Reasonable cause and good faith. A taxpayer's reasonable cause and good faith for a substantial understatement of income is demonstrated by the extent of the taxpayer's efforts to determine the taxpayer's correct tax liability under the law.

(a) The following circumstances demonstrate reasonable cause and good faith:

(A) The taxpayer relied on a position contained in a proposed federal regulation or state rule.

(B) The taxpayer honestly misunderstood the facts or law affecting the understatement, and the misunderstanding was reasonable in light of the taxpayer's experience, knowledge and education.

(C) The taxpayer or taxpayer's return preparer made a computational or transcriptional error in preparing the return.

(b) Generally, reliance on an information return, incorrect facts or advice of a professional does not demonstrate reasonable cause and good faith, unless under all the circumstances the taxpayer's reliance was reasonable. The following examples demonstrate reasonable cause and good faith:

Example 1: The taxpayer relied on erroneous information that was inadvertently included in the financial records of the taxpayer's business by others, if procedures existed that were designed to identify factual errors.

Example 2: The taxpayer relied on erroneous information reported on a Form 1099 provided by another person, if the taxpayer did not know or have reason to know that the information was incorrect.

(c) A taxpayer is considered to know or have reason to know that information is incorrect only if such information is inconsistent with other information reported to the taxpayer or is inconsistent with the taxpayer's knowledge of the underlying facts.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.402
Hist.: REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-314.403
Listed Transaction Understatement; Penalty

(1) "Return of the taxpayer" for purposes of this penalty is defined as the original return filed with the department that contains a listed transaction understatement, or the most recent amended return filed with the department that contains a listed transaction understatement.

(2) "Net increase in taxable income" for purposes of this penalty is defined as an increase to taxable income or a decrease to a taxable loss.

Example 1: Taxpayer files an original 2006 return that contains a listed transaction understatement. Taxpayer amends the 2006 return and makes no changes to the treatment of the listed transaction. The Department, during an audit, discovers a listed transaction understatement on the taxpayer's return. The listed transaction understatement penalty is based on the net increase in taxable income between the treatment of the listed transaction reported on the amended return and the correct treatment of the listed transaction.

Example 2: Taxpayer files an original 2007 return. Taxpayer amends the 2007 return to report the correct treatment of a listed transaction. The listed transaction understatement penalty is based on the net increase in taxable income between the amount of the listed transaction on the original return and the correct treatment of the listed transaction reported on the amended return.

Stat. Auth.: ORS 314.403, 305.100
Stats. Implemented: ORS 314.403
Hist.: REV 11-2008, f. & cert. ef. 9-23-08

150-314.410(1)
Additional Assessments

(1) The filing of a 'tentative return' which does not reveal the details of income or deductions is not considered a filing within the meaning of ORS 314.410, and the statute of limitations upon an additional assessment does not begin to run until a detailed return, showing items of income and deductions, is filed. Beginning with the tax year 1994, a copy of the federal Form 1040, Form 1040A, Form 1040EZ, or 1040 PC, whichever is applicable, must be filed with Form 40, pursuant to ORS 316.457 and OAR 150-316.457, or the return will be deemed incomplete.

(2) For tax years beginning on or after January 1, 1969 and before December 31, 1993, a complete copy of the federal income tax return, including all schedules, must be filed with the department.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.410
Hist.: 1958-59; 6-68; 11-71; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-314.410(2)
Five-Year Statute of Limitations

(1) For tax years beginning before January 1, 2014, the term "gross income" as used in ORS 314.410(2) has the same meaning as provided under section 61 of the Internal Revenue Code. For tax years beginning on or after January 1, 2014, the term "gross income" as used in ORS 314.410(2) has the same meaning as provided under:

(a) Section 61 of the Internal Revenue Code as it relates to any income other than from the sale of goods or services in a trade or business, or

(b) Section 6501(e) of the Internal Revenue Code as it relates to a trade or business.

(2) An item shall not be considered as omitted from gross income if information sufficient to apprise the Department of the nature and amount of such item is disclosed in the return or in any schedule or statement attached to the return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.410
Hist.: 11-71; REV 1-2014, f. & cert. ef. 7-31-14

150-314.410(4)
Time Limit to Make Adjustment

(1) The provisions of this rule that apply to a federal change or correction apply to reports that are received by the department on or after October 4, 1997. The provisions of this rule that apply to another state's change or correction apply to changes or corrections made on or after October 23, 1999.

(2) The department may mail a Notice of Deficiency at any time within two years after the department receives notification of a change or correction contained in:

(a) A report received from the Internal Revenue Service;

(b) A report received from another state's taxing authority; or

(c) The written report filed by the taxpayer as required by ORS 314.380(2)(a)(A).

Example 1: Ron filed his 1996 federal and state returns on time. The Internal Revenue Service (IRS) audited and adjusted his federal return in March 2000. The department may mail a Notice of Deficiency within two years of receiving the report of the Internal Revenue Service adjustment.

(3) The department may mail a Notice of Deficiency if, at the time the change or correction by the Internal Revenue Service or another state's taxing authority was made, an assessment or issuance of a refund of federal or other state's tax based on the change or correction was within the time permitted by federal tax law or the tax law of the other state, as applicable. This provision applies regardless of whether an adjustment to the return is allowable under any other provision of Oregon law.

Example 2: ABC Corporation was audited by the IRS for tax year 1991. ABC Corporation signed an agreement with the IRS to extend the period of time for assessing federal tax. No separate extension agreement was signed with Oregon. Following completion of the federal audit, the department may mail a Notice of Deficiency at any time within two years of receiving the report of the Internal Revenue Service adjustment.

Example 3: Sally filed a timely 1993 tax return. In 1999, the IRS determined that Sally had omitted an item of income that was more than 25 percent of the gross income shown on the return. The IRS assessed additional tax based on Internal Revenue Code section 6501(e), which allows an assessment to be issued within six years of the filing of the return when there is such an omission. The department may mail a Notice of Deficiency based on the federal RAR within two years of receiving that report.

(4) The department may not mail a Notice of Deficiency based on a federal adjustment or the audit report of another state if, at the time of the change or correction, the tax year was closed to adjustment for Oregon purposes and also closed for adjustment under federal tax law, or the law of the other state, whichever applies.

Example 4: Lester filed timely 1995, 1996 and 1997 federal and state tax returns. In 1999, the Internal Revenue Service issued an adjustment that indicated Lester had incorrectly figured a capital loss for 1995. However, the IRS did not assess additional federal tax for 1995 because the year was not open to adjustment under any provision of federal law. Because both the federal and state returns were closed to adjustment, the department may not use the provisions of ORS 314.410(3)(b) to issue a Notice of Deficiency based on the Internal Revenue Service adjustment.

(5) When the department is notified of a change or correction, the department is not limited to the adjustments reflected in the IRS report, the report of the other state's taxing authority, or the taxpayer's written report submitted in the format required by OAR 150-314.380(2)-(B). The department may make any adjustments deemed necessary to properly reflect Oregon taxable income or Oregon tax liability for the year in question.

Example 5: Paul, a California resident, worked temporarily in Oregon in 1995 before returning to California. In April 1996, Paul filed a nonresident Oregon return for 1995 and claimed a credit for taxes paid to California. In March 2000, California audited his 1995 California return and in July 2000 Paul paid additional tax to California based on additional wages earned in Oregon. Paul filed a claim for refund with Oregon in November 2000, as allowed by ORS 314.380(2)(b). In reviewing the claim, the department allowed the increase in the credit for taxes paid to another state based on the increased wages. However, the department determined Paul had incorrectly calculated the political contribution credit and issued an adjusted refund.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.410
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-314.410(3), REV 8-2008, f. 8-29-08, cert. ef. 8-31-08; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.410(6)
Notification of Gain Realized Upon the Sale or Exchange of a Principal Residence

(1) The period for the assessment of any deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's principal residence shall not expire prior to three years from the date the department is notified by the taxpayer of:

(a) The cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain; or

(b) The taxpayer's intention not to purchase a new residence; or

(c) A failure to purchase a new residence within the prescribed period. The department is deemed to have been notified when the taxpayer provides this information to the department.

(2) Individuals who have deferred gain on the sale of a principle residence under Internal Revenue Code (IRC) Section 1034, or who have excluded gain on the sale of a residence under IRC 121, are not required to file notice directly with the department if:

(a) They have met any applicable reinvestment requirements; and

(b) Notification of the reinvestment has been filed with the Internal Revenue Service. In this case, the department is deemed to have been notified on the date the Internal Revenue Service is notified.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.295
Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; Renumbered from 150-314.410(5), REV 8-2008, f. 8-29-08, cert. ef. 8-31-08

150-314.410(7)
Extension of Period for Assessment

Once the provisions of ORS 314.410(6) have been exercised, the Department and the taxpayer may, by written agreement, extend beyond the original agreed period the period for mailing a notice of deficiency or assessing a deficiency, provided the subsequent agreement is made before the original agreement expires.

Stat. Auth.: ORS 305.100
Stats. Implemented: 314.410
Hist.: 11-71; 12-31-77; Renumbered from 150-314.410(6), REV 8-2008, f. 8-29-08, cert. ef. 8-31-08

150-314.410(9)
Effect of Federal Extension of Period for Assessment

If a taxpayer and the Commissioner of Internal Revenue, or the taxing authority of another state, enter into an agreement, or renewal thereof, extending the period of time for giving notices of deficiencies and assessing deficiencies of income tax, the Department may give notice of a deficiency within the limits set forth in subsections (1) to (7) of ORS 314.410 or within six months from the expiration date of the agreement, whichever period expires the later.

Stat. Auth.: ORS 305.100
Stats. Implemented: 314.410
Hist.: 11-71; 12-31-77; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-314.410(8), REV 8-2008, f. 8-29-08, cert. ef. 8-31-08

150-314.415
Refunds Generally

(1) Refund Limitations — Time and Amount.

(a) If the amount of the tax imposed by the statute is less than the amount paid by the taxpayer and the taxpayer does not then owe any other tax or liability to the State of Oregon, such overpayment must be refunded. A refund may be made under ORS 314.415 in compliance with a claim for refund filed by the taxpayer under ORS 305.270 or by correction of the return by the department. To issue a refund based on an audit examination, an auditor's report showing the amount of refund must be completed and approved prior to the expiration of the applicable period set forth in the following paragraph.

(b) Except as provided in subsections (3), (4), (5) and (6) of ORS 314.415, a refund or credit may not be granted unless a correction by the department is approved or a claim is filed within three years after the return is filed, or within two years after part or all of the tax is paid, whichever period expires later. Under ORS 316.417(1) and 317.504, a return filed before the due date is considered as having been filed on the due date.

(c) If there is an amount due from the taxpayer, the refund otherwise allowable will be applied to the balance due. An appeal from an additional assessment paid by the taxpayer to stop the running of interest cannot be classed as a "refund" claim. Except as provided in ORS 314.415(5), the amount refunded cannot exceed the amount of tax paid during the applicable period of limitation before a correction by the department is approved or the filing of the claim.

Example: A taxpayer files a 2002 return on April 15, 2003, showing a tax due in the amount of $100 and pays that amount at the time the return is filed. On April 1, 2006, an additional tax of $50 is assessed by the department on the2002 return and is paid by the taxpayer on May 1, 2006. Within two years the taxpayer files a claim for refund based on items not previously adjusted on the 2002 return. The refund claim shows an overpayment of $75 of the total $150 paid. The refund claim is limited to $50, the sum paid within the open period preceding the filing of the claim.

(2) Interest Starting Date.

(a) The interest starting date for a refund of individual income tax, corporate excise tax, or corporate income tax is 45 days after the date the tax was paid, 45 days after the return was due, or 45 days after the original return was filed, whichever is later.

(b) The interest starting date for a refund not described in subsection (2)(a) of this rule is 45 days after the return was due or 45 days after the tax was paid, whichever is later.

(c) See OAR 150-305.220(2) Interest on Refunds for information about interest periods and interest rates.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 1958-59; 12-19;75; 12-31-77; 12-31-82; RD 10-1986, f. & cert. ef. 12-31-86; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; Renumbered from 150-314.415(1) by REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.415(2)(b)-(A)
Refunds

(1) The return of the taxpayer, filed timely and in the prescribed manner, constitutes a claim for refund under the provisions of this section. For the purpose of determining when the three-year period for claiming a refund expires, the due date of a return is the statutory due date, not the due date after extension.

(2) The department will refund the excess tax paid whenever the review required by statute is completed, even if the date of refund is more than three years after the due date of the return.

Example 1: Simon filed his 1999 Oregon personal income tax return on April 1, 2003, requesting a refund. The department reviewed and processed the return in mid-May of that year. Although the refund payment would be outside the three year statute for refunds, the department can make the payment because Simon filed his return within the statute of limitations period.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 1-69; 11-71; 12-31-83, Renumbered from 150-316.192 to 150-314.415(1)(b); 12-31-85, Renumbered from 150-314.415(1)(b); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; Renumbered from 150-314.415(1)(c) by REV 4-2003, f. & cert. ef. 12-31-03; Renumbered from 150-314.415(1)(b)-(A), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(2)(b)-(B)
Minimum Check Amount

(1) The department is prohibited by statute from issuing refunds of less than the minimum allowed by ORS 314.415 after reduction for amounts owed. The department will not apply a refund less than the minimum to a subsequent year's estimated tax account or to a charitable checkoff.

(2) Refunds from all tax programs may be offset against delinquent accounts as specified in OAR 150-314.415(2)(f)-(B). Refunds of money received for miscellaneous purposes, such as photocopies of returns, purchase of publications, etc., may be offset against delinquent accounts if the refund is more than $10.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 10-5-83, 12-31-85, Renumbered from 150-314.415(1)(d)-(C); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-314.415(1)(b) by REV 4-2003, f. & cert. ef. 12-31-03; Renumbered from 150-314.415(1)(b)-(B), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(2)(f)-(A)
Interest Computation — Offset

(1) An overpayment of any tax imposed and interest on the overpayment, if any, shall be offset against any tax, penalty, or interest then due from the taxpayer. "Tax, penalty or interest then due from the taxpayer" means any amount of tax that has been assessed before the date the refund is applied or proposed to be applied and any penalty or interest incurred in connection with the tax.

(2) If a Notice of Assessment is issued, the department shall make the offset on the date the refund is issued.

(3) If a Notice of Deficiency is issued, the department may offset upon receiving written authorization from the taxpayer. If the taxpayer submits a written authorization to offset, the authorization shall include the taxpayer's name, social security number or other identifying number, current address, accounts (if known), and the signature of the taxpayer. The date on which the offset shall be made is the date that either a net billing or a refund is issued, or the date a payment is received, whichever is earlier.

Example 1: On February 15, 1985 it was determined that a taxpayer had overpaid the 1982 tax by $500 and underpaid the 1983 tax by $800. Assume the underpaid account had not yet been assessed and on March 15, 1985 the department received a written authorization allowing the department to offset the refund to the nonassessed account. The net amount due from the taxpayer on April 15, 1985, the date the net billing is issued, is calculated as follows: [Figures not included. See ED. NOTE.]

(4) For deficiencies on refunds issued under ORS 310.630 to 310.690, the department shall refund any penalty and interest, due to an offset of a refund, when it has been determined that the deficiency was not legally due. Interest shall be computed on the amount that was offset. This includes penalty and interest not legally due. The interest starting date is the date the offset was made.

Example 4: An individual files a Homeowner and Renter Refund claim and a check is issued. Six months later, the department audits the refund claim and issues a Notice of Deficiency. The individual files an income tax return for which a refund is issued. The individual requests the department to offset the income tax refund to pay the deficiency plus interest. The deficiency is later determined to be erroneous. The amount of total offset shall be refunded. Interest is computed on the entire amount beginning on the date the deficiency was offset.

Example 5: Assume the same facts in Example 1 except that the Notice of Deficiency is assessed and a 5 percent penalty is imposed. The amount of the refund, penalty and interest offset shall be refunded and interest is computed on the entire amount beginning on the date the assessed account was offset.

(5) Special Cases. Offsets applied to deficiencies issued for tax years beginning after December 31, 1984, and prior to January 1, 1986 for which the taxpayer has made the election as prescribed under OAR 150-316.021(1)(b) shall be applied in the following order:

(a) First, to penalty and interest due on such return;

(b) Second, the amount of tax due as prescribed under OAR 150-316.021(1)(b).

(c) Third, to the balance of tax due for the tax year. When the combined report method is required, penalty and interest under ORS 314.395 to 314.415 will be computed on the separate tax liability, or overpayment of each taxpayer included in the unitary group. There shall be no offsets of overpayments and deficiencies between taxpayers in the group prior to computing penalty and interest. After computation of penalty and interest, an offset may be made by the department upon receiving written authorization from the taxpayers, given the statute of limitations has not expired.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 10-5-83, 12-31-83; 12-31-85; 12-31-87, Renumbered from 150-314.415(1)(d)-(A); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; Renumbered from 150-314.415(1)(e)-(A), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(2)(f)-(B)
Refund Offset Priority

(1) Definitions for purposes of this rule.

(a) Unrestricted accounts. An account assigned by a state agency which is collected by use of all Department of Revenue resources available.

(b) Appropriation accounts. An account that is established by an appropriation of the state legislature.

(c) Nonassessed accounts. The deficiency tax account amount by which the tax as correctly computed exceeds the tax, if any, reported by the taxpayer.

(d) Assessed accounts. The tax account that has not been appealed or paid and a written notice of assessment stating the amount so assessed has been sent to the taxpayer.

(e) Oldest account. The oldest account is an account with the earliest set-up date. If more than one account has the same set-up date, the earliest tax year is the oldest account. "Set-up date" means the date the account was established or created.

(2) The department will offset a refund to assessed accounts. The department may also offset a refund to nonassessed accounts when the taxpayer sends the department a written authorization to offset the refund. Offsets will be made using the following guidelines:

(a) First, offset to the oldest account within the program that has the refund.

(b) Second, offset to other programs, oldest account first, following the priorities shown in section (4) below.

(3) A taxpayer's refund will be offset only to accounts owed by that taxpayer. An individual refund will not be offset to a corporate account nor a corporate refund offset to accounts of a subsidiary.

(4) The priority criteria is:

(a) Funds due the general fund excluding funds due other state of Oregon agencies. This includes all revenue from the cigarette and amusement device tax which is allocated part to the general fund and part to local governments.

(b) Funds due an appropriation account which will revert to the general fund.

(c) Funds due a state of Oregon tax program for distribution to local governments.

(d) Funds due other state of Oregon agencies.

(e) Funds due local jurisdictions for which the department collects under ORS 293.250.

(f) Funds due entities which serve a garnishment or levy on the Department of Revenue.

(g) Funds due charitable check-off programs designated by the taxpayer in lieu of receiving a refund check.

(5) If the refund balance as adjusted by the department in processing and after offset is insufficient to pay the designated charitable check-off contributions in full, payment will be prorated. The proration will be the ratio of the designated contribution to a specific fund divided by the total contribution to all funds.

(6) State tax refunds will not be offset to accounts for TriMet Transportation District or the Lane Transit District without the written permission of the taxpayer. Refunds from these programs will be offset to accounts within the same program but not to an account for a different local tax program.

(7) Delinquent senior citizen deferral accounts are part of the offset program. This includes the property tax and special assessment deferrals.

Example: A taxpayer has a personal income tax refund due for the year. The amount of the refund owed is $200. The taxpayer also has two liability accounts. The taxpayer owes $100 to the Department of Revenue on an assessed personal income tax account for the previous year. The Taxpayer also owes $300 to the Department of Education.

This is how the offset to the refund would look: [Table not included. See ED. NOTE.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 10-5-83, 12-31-83; 12-31-85, Renumbered from 150-314.415(1)(d)-(B); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; REV 2-2003, f. & cert. ef. 7-31-03; Renumbered from 150-314.415(1)(e)-(B), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(5)(a)
Refunds; Net Operating Loss and Net Capital Loss Carryback Claims

(1) Application. For purposes of this rule, provisions applying to individuals also apply to estates and trusts.

(2) Extended period for refund claim.

(a) A special period of limitations is provided under ORS 314.415(5)(a) to claim a refund or credit attributable to an individual net operating loss or corporation net capital loss carryback. A refund claim for an individual net operating loss or corporation net capital loss carryback year must be filed within three years from the due date (including extensions) of the taxable year of the net operating loss or net capital loss which results in the carryback.

Example 1: Edward filed his 1996, 1997, 1998, 1999, and 2000 returns by their respective due dates. On March 15, 2003, Edward filed his 2001 return on which he claimed a net operating loss. The refund claims for the carryback years (1996 through 2000) must be filed by April 15, 2004, three years after the due date of the 2001 net operating loss year return.

(b) The provision allowing refunds of tax within two years of the date of payment is not extended.

Example 2: Assume the same facts as in Example 1 except that the original 2001 return was not filed until March 15, 2005, was filed as a paid return and did not claim a net operating loss. On June 15, 2005, Edward filed an amended return (refund claim) for 2001 to claim an additional business expense. The amended return creates a net operating loss for 2001. Edward is allowed a refund for the 2001 taxes paid within the two years preceding his refund claim. Refund claims for the net operating loss carryback years (1996 through 2000) must have been filed by April 15, 2004, three years after the due date of the 2001 net operating loss year return. The date of filing of the net operating loss claim (June 15, 2005) does not extend the date of filing of the refund claims for the carryback years beyond the three-year period.

(3) Carryback periods for individuals. In the case of an individual taxpayer's net operating loss:

(a) For tax years beginning before August 6, 1997, the net operating loss carryback period is generally three years and the carryforward period is fifteen years.

(b) For tax years beginning on or after August 6, 1997, the carryback period is generally two years and the carryover period is twenty years.

(c) For tax years beginning on or after January 1, 1998, a five year carryback period is allowed to claim a refund or credit attributable to a net operating loss for a farming business.

(d) For tax years beginning on or after January 1, 2001, the carryback period is generally five years and the carryover period is twenty years.

(e) For tax years beginning on or after January 1, 2003, the carryback period is generally two years and the carryover period is twenty years.

(4) Limitations on credit or refund.

(a) If a claim for a credit or refund is based on an overpayment attributable to an individual net operating loss or corporation net capital loss carryback, the credit or refund may exceed the amount of tax paid within three years of when the return was filed or within two years immediately preceding the filing of the claim but only to the extent the overpayment is attributable to the net operating loss or net capital loss carryback.

Example 3: Jake amended his timely filed 2002 return November 1, 2006 to claim a refund for a carryback arising from a 2004 net operating loss. In addition to reducing income for the net operating loss carryback, Jake claimed a subtraction for U.S. government interest and an additional exemption credit. The refund claim is limited to the portion of the overpayment attributable to the net operating loss carryback. The subtraction for interest and the additional exemption credit are outlawed by the period of limitations under ORS 314.415(2).

(b) If a claim for a credit or refund is based not only on an overpayment attributable to an individual net operating loss or corporation net capital loss carryback, but also on other items, the credit or refund may not exceed the sum of:

(A) The amount of the overpayment attributable to the individual net operating loss or corporation net capital loss carryback, and

(B) The balance of such overpayment not to exceed the amount of taxes paid within the periods provided in ORS 314.415(2)(a).

Example 4: Assume the same facts as in Example 3 except that Jake paid additional tax for the 2002 taxable year on May 1, 2005. He may receive a refund for any overpayment of taxes attributable to the net operating loss carryback plus any remaining balance of overpayment, but not in excess of the amount of any taxes paid for 2002 during the two years immediately preceding November 1, 2006, the date the claim was filed.

(c) Delinquent returns. If a taxpayer filed an original return after the three-year period for requesting a refund provided in ORS 314.415(2)(a), but amends the same return for an individual net operating or corporation net capital loss carryback within the period allowed by ORS 314.415(5)(a), a refund will be allowed. The refund will be limited to the amount of net tax liability shown on the original return. Any additional refund requested on the amended return is barred by ORS 314.415(2)(a).

Example 5: Chuck files his 2002 return on September 30, 2006, more than three years beyond the original due date of the return. His return showed tax liability of $500 and he requested a refund of $300 for overpayment of estimated tax. The refund was denied based on ORS 314.415(2)(a). On October 15, 2006, Chuck filed an amended 2002 return carrying back a 2005 net operating loss. Chuck requests a refund of $800 since he filed within the additional three-year period allowed by ORS 314.415(5)(a). Chuck will receive a refund of $500 which is attributable to the net operating loss carryback. The additional $300 refund is not allowable based on ORS 314.415(2)(a).

(5) Treatment of carryover amounts. Although refunds for NOL years, individual net operating loss, or corporation net capital loss carryback years may be closed or limited under ORS 314.415 and this rule, the balance of any individual NOL or corporation net capital loss carryover amounts not fully absorbed in carryback years may be used in the computation of Oregon taxable income for all applicable carryover years to the same extent includable for federal.

Example 6: Jay filed his original 1998 return showing a net operating loss of $20,000 on July 1, 2006. Refunds for the carryback years 1996 and 1997 and the carryforward years of 1999, 2000, 2001, and 2002 are barred by the statute of limitations. However, any portion of the net operating loss deduction not fully absorbed in those years may be used to determine Oregon taxable income for 2003 and later years in accordance with ORS 316.028 and the related rules. The limitation of the refunds for the closed years will not limit the carryover amounts to be used in subsequent years.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-314.415(4)(a), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.415(6)
Effect of Federal Extension of Period for Assessment

If a taxpayer and the Commissioner of Internal Revenue enter into an agreement, or renewal thereof, extending the period of time for giving notices of deficiencies and assessing deficiencies of federal income tax for tax years beginning on or after January 1, 1969, the period within which a refund claim may be filed or a refund allowed if no claim is filed shall be within the limits set forth in subsections (1) to (5) of ORS 314.415 or within six months from the expiration date of the federal agreement, whichever period expires the later.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 11-71; 12-31-77; Renumbered from 150-314.415(5), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(7)
Separate Refunds When a Joint Return Has Been Filed

(1) The department may, as a convenience to taxpayers, issue separate refunds when either spouse submits a signed request. To issue separate refunds when a joint refund check has already been issued, the check must be returned uncashed. If either spouse has an amount owing to the state of Oregon, any refund due that person will be applied to the liability and the balance, if any, issued in a separate refund check.

(2) For purposes of this rule, the separate adjusted gross income (AGI) of each spouse is equal to each spouse's share of Oregon adjusted gross income.

Example 1: Ann and her husband Ian, both Idaho residents, filed a joint Oregon return claiming a $600. He owes a $500 debt to an Oregon city for unpaid parking tickets so the department withheld part of the joint $600 refund to pay the $500 debt and issued a $100 refund for the difference. Before they cashed the $100 refund, Ann sent it back requesting her share of the amount paid to the city in Oregon because she did not owe the debt. Ian reported $25,000 of wages of which he earned $10,000 in Oregon. Ann reported $15,000 of wages of which $5,000 she earned in Oregon. They had no other income to report. The department will apportion her refund based on her share of Oregon AGI as follows:

	Federal column	Oregon Column
Ian's wages	$25,000	$10,000
Ann's wages	$15,000	$5,000
Federal AGI	$40,000	$15,000 (Oregon AGI)

$5,000 ÷ $15,000 = 1/3
$600 x 1/3 = $200

The department will apportion the $600 refund and issue a $200 refund to Ann. Ian's portion of the refund was $400 thus he still owes the City of Portland $100.

(3) For purposes of this rule, items of income and deduction, separate adjusted gross income, and any refund claimed are determined without regard to community property law.

Example 2: Ethan and his wife Ava, both Washington residents, filed a joint Oregon return claiming a $1,500 refund. She owes a $1,200 debt to an Oregon university so the department withheld part of the joint refund and sent a $300 check for the difference. Before they cashed the $300 refund, Ethan sent it back requesting his share of the joint refund because he did not owe the debt and he claimed he owned half of the refund because he lives in a community property state. Ethan reported $50,000 of wages all of which he earned in Washington. Ava reported $25,000 of wages all of which she earned in Oregon. They had no other income to report. The department will apportion his refund based on his share of Oregon AGI without regard to community property law as follows:

	Federal column	Oregon Column
Ethan's wages	$50,000	$0
Ava's wages	$25,000	$25,000
Federal AGI	$75,000	$25,000 (Oregon AGI)

Because Ethan does not have any share of the Oregon AGI and community property law is disregarded for this purpose, the entire refund belongs to Ava and the department will not apportion any of it to Ethan.

(4) If the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Adjustment and/or Distribution. Separate refunds will not be made if the request is not received timely.

(5) Pursuant to ORS 18.665(2), the department cannot issue separate refunds when a garnishment or levy has been served on the department for one or both spouses.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 1-69; 11-71; 12-19-75; 1-1-77, Renumbered from 150-316.192(2)-(A); 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-314.415(6), REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

150-314.415(8)
Refunds of Tax Overpayments to Spouse or Heirs

(1) For deaths which occur on or after September 9, 1995: Upon the death of a taxpayer entitled to a refund not in excess of $10,000, when the estate is not probated, refunds may be made to survivors by classes upon filing acceptable affidavits, in the following order of precedence: Surviving spouse; the trustee of a revocable inter vivos trust; children, and issue of a deceased child by right of representation (the grandchildren dividing share and share alike what their deceased parent would have taken if alive); parents; brothers and sisters; nephews and nieces. If a small estate affidavit is filed, a refund may be made in the amount of the difference between the value of other personal property in the small estate and $50,000. See ORS 114.515, 293.490 to 293.500.

(2) For deaths which occur prior to September 9, 1995: The refund limitation amount is $1,000 or less, and trustees are not allowed to claim the refund.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 1-69; 11-73; 12-31-84, Renumbered from 150-316.192(2)-(B); 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-314.415(7), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.425
Model Recordkeeping and Retention Regulation

(1) Definitions, for purposes of this regulation, these terms shall be defined as follows:

(a) "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(b) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(c) "Hard copy" means any documents, records, reports or other data printed on paper.

(d) "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(e) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(f) "Taxpayer" as used in this regulation means any natural person, estate, trust, or beneficiary whose income is in whole or in part subject to the taxes imposed by Chapter 316; and any employer required by Chapter 316 to withhold personal income taxes from the compensation of employees for remittance to the state; and, any corporation subject either to ORS Chapter 317 or 318, or both.

(2) Recordkeeping Requirement — General:

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under Chapters 316, 317 or 318. All required records shall be made available on request by the Department of Revenue or its authorized representatives as provided for in ORS 314.425.

(b) If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Department of Revenue in machine-sensible format upon request of the department.

(c) Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with subsection (2)(b) of this regulation.

(3) Recordkeeping Requirements — Machine-Sensible Records:

(a) General Requirements:

(A) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

(B) At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(b) Electronic Data Interchange Requirements:

(A) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows department to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy section (3)(b)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the Department of Revenue. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(c) Electronic Data Processing Systems Requirements — The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(d) Business Process Information:

(A) Upon the request of the Department of Revenue, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

(i) The functions being performed as they relate to the flow of data through the system;

(ii) The internal controls used to ensure accurate and reliable processing; and

(iii) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

(i) Record formats or layouts;

(ii) Field definitions (including the meaning of all codes used to represent information);

(iii) File descriptions (e.g., data set name); and

(iv) Detailed charts of accounts and account descriptions.

(4) Records Maintenance Requirements:

(a) The Department of Revenue recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(b) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

(5) Access To Machine-Sensible Records:

(a) The manner in which Department of Revenue is provided access to machine-sensible records as required in subsection (2)(b) of this regulation may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide department with the hardware, software and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the department including copies of files, on a magnetic medium that is agreed to by the department.

(D) The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

(6) Taxpayer Responsibility And Discretionary Authority:

(a) In conjunction with meeting the requirements of section 3, a taxpayer may create files solely for the use of the department. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of section 3. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(b) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(7) Alternative Storage Media:

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

(A) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system shall be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures shall be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under section (9).

(C) Upon request by the Department of Revenue, a taxpayer shall provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(D) When displayed on such equipment or reproduced on paper, the documents shall exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data stored on microfilm, microfiche or other storage-only imaging systems shall be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

(8) Effect On Hard-Copy Recordkeeping Requirements:

(a) Except as otherwise provided in this section, the provisions of this regulation do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in section (7) of this regulation.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a transaction using a credit or debit card shall be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subsection (3)(b)-(A).

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(e) Nothing in this section shall prevent the Department of Revenue from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

(9) Records Retention — Time Period — All records required to be retained under this regulation shall be preserved pursuant to ORS 314.425 unless the Department of Revenue has provided in writing that the records are no longer required.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.425
Hist.: REV 7-1998, f. 11-13-98, cert. ef. 12-31-98

150-314.425-(B)
Requirement to Provide Copies of Documents

(1) Definitions for purposes of this rule.

(a) "Photocopy" (photocopied) means a copy or reproduction of an original document including books and papers; to make a photographic reproduction of any document, printed, pictorial, or other medium of information or recordkeeping.

(b) "Books and papers" has the same meaning as given in OAR 150-305.190.

(2) Books and papers must be provided either as a photocopy, an electronic reproduction, or be made available for photocopying, scanning or other electronic reproduction at a specified time and place for the purposes of administering and verifying compliance with the tax laws. Photocopying is a benefit to both the department and the taxpayer as the photocopy provides objective evidence supporting a tax position and allows for expediting the audit.

(3) When books and papers are requested they will be relevant and reasonable documentation for the issues under examination. The request for information is relevant if it is germane to or applicable to an audit issue.

(4) All books and papers that are acquired during an audit or examination are confidential in accordance with ORS 314.835.

(5) If this requirement creates a hardship for a taxpayer, the auditor or agent will work with the taxpayer to come to a reasonable solution for both parties.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.425
Hist.: REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.430(1)-(A)
Definition: Collection Charge

As used in ORS 314.430(1) "collection charge" includes:

(1) The fees and costs listed in ORS 18.999(4), related to recovery of expenses incurred in enforcing judgments, and

(2) All fees or charges of the Secretary of State imposed under ORS 305.184 incurred in filing, releasing, cancelling, or satisfying a warrant filed with the Secretary of State under ORS 305.182.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.430
Hist.: RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 2-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 2-2003, f. & cert. ef. 7-31-03

150-314.430(1)-(B)
Payment Secured by Bond, Deposit or Otherwise

The issuance of a warrant to the sheriff to enforce collection of delinquent taxes will be stayed either by paying the amount of assessed taxes, penalties and accrued interest after it becomes due or by securing payment of that amount by bond, irrevocable letter of credit, deposit or otherwise. The bond or irrevocable letter of credit given by the taxpayer must be for an amount not less than the amount of the taxes assessed, plus penalties, plus interest for a reasonable period determined by the Department. The bond must be executed by a surety company which is registered with and under the supervision of the Insurance Commissioner of the State of Oregon; or by two or more individual sureties, each of whom shall be a resident and a householder or freeholder within the state and each of whom shall be worth the sum specified in the undertaking, exclusive of property exempt from execution and over and above all just debts and liabilities. However, the Department may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification is equivalent to that of two sufficient undertakings. The irrevocable letter of credit must be issued by a commercial bank as defined in ORS 706.005. Any one of the following items, or combination of items acceptable to the Department, equal in amount to the taxes, penalties and accrued interest thereon may be deposited with the Department of Revenue:

(1) A deposit of money;

(2) A certified check or checks on any state or national bank within the State of Oregon payable to the Department of Revenue;

(3) Satisfactory municipal bonds negotiable by delivery, or obligations of the United States Government negotiable by delivery; or

(4) Any other security satisfactory to the Department. The Department of Revenue may require additional security whenever in its opinion the value of the security pledged is no longer sufficient to adequately secure the Payment of the taxes, penalties and accrued interest thereon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.430
Hist.: 1958-59; 12-19-75, Renumbered from 150-314.430(1); 12-31-83; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-314.430(2)
Statute of Limitation on Tax Collection

No statute of limitation runs on a tax self-assessed or additionally assessed by the Department in the time allowed by ORS 314.410 and collectible by warrant. However, the statute of 10 years limitation on judgment liens begins to run on a tax lien as soon as the tax warrant is filed pursuant to ORS 314.430. Such lien may be renewed by court order without loss of priority.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 1959

150-314.466-(B)
Assessment of Withholding Tax Against Liable Officers

The provisions of this rule dealing with hearings apply to hearing requests filed with the Department of Revenue prior to September 1, 1997. See OAR 150-305.525 for information about hearing requests filed on or after September 1, 1997.

(1) Oregon Combined Tax Report Filed With Partial Or No Payment. Potentially responsible officers or employees have been assessed the amount of the unpaid tax when the Oregon combined

tax report is filed (Pursuant to ORS 305.265 and 314.407). For the purpose of providing individual notice of the assessment, the department shall issue Notices of Liability to each potentially responsible officer or employee.

(2) No Oregon Combined Tax Report Filed. If a corporation fails to file an Oregon combined tax report when due, the department shall provide written notice, pursuant to ORS 314.400(2)(a)(B), to the corporation and to each potentially responsible officer or employee of the failure to file. If the failure to file is not remedied, then the department shall determine the tax and issue Notice of Determination and Assessment, to each potentially responsible officer and employee, pursuant to ORS 305.265(10) and 314.400(2)(a)(B).

(3) Understatement Of Tax Reported On Oregon Combined Tax Report. If an Oregon combined tax report shows tax amounts which upon audit and examination are determined to be understated, the department shall issue to each potentially responsible officer or employee and the corporation Notice of Deficiency pursuant to ORS 305.265(2) and Notice of Assessment pursuant to ORS 305.265(7).

(4) Appeals. The determinations and assessments issued under the procedures set forth above may be appealed under the provisions of ORS Chapter 305:

(a) Level 1, Conference: Within 30 days from the issuance of Notice of Liability, Notice of Deficiency or Notice of Determination and Assessment, the person given notice must advise the department in writing of objections to the assessment and request a conference. See ORS 305.265(5)

(b) Level 2, Hearing or Small Claims Division: Appeal of Notice of Determination and Assessment or Notice of Assessment must be filed within 90 days of the date of the notice. In the case of an appeal of a Notice of Determination and Assessment where a conference was requested, appeal must be filed within 90 days of the date of the conference officer's decision letter. Ref. ORS 305.280(2). In the case of a Notice of Liability to which the person has not objected, appeal must be made within 120 days of the date of the original notice.

(A) The person given notice must provide the director, or an authorized agent of the department, with a written request for a hearing. The request shall state the facts relied upon for relief from the assessment(s) and shall bear the signature of the person filing the appeal or of their authorized representative. See ORS 305.275(5) and OAR 150-305.115(A) to (C).

(B) If the assessed tax is $5,000, or less, appeal may be taken directly to the Small Claims Division, Oregon Tax Court (ORS 305.280(5) and 305.515(3)(a)). After an election (either requesting a hearing from the department or appeal to Small Claims Division) is made, the choice is final. A change of appeal method chosen is not permitted. See ORS 305.530.

(C) If one or more of the individuals that may be held liable under ORS 316.162(3)(b) appeal an assessment of unpaid withholding taxes, a joint conference may be required by the department. See OAR 150-316.207(3)(a).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.446
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; RD 4-1996, f. 12-23-96, cert. ef. 12-31-96; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-314.505-(A)
Estimated Tax: When Estimates Are Required; Refunds Prior to Filing of Return

(1) Every corporation or group of corporations required to file an Oregon excise or income tax return and expecting to have a tax liability of $500 or more must make estimated tax payments. Estimated tax liability means the tax as computed under ORS Chapter 317 or 318, less allowable credits. For purposes of determining whether estimated tax liability exceeds $500, a credit resulting from overpayment of tax for a prior year is not taken into account.

(2) Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient cause to refund such excess prior to the filing of the Oregon tax return. Where taxpayers establish to the satisfaction of the department that the facts warrant a refund, a refund of estimated taxes can be made prior to the filing of the tax return. Examples of fact situations that may be considered sufficient to warrant a refund are as follows:

Example 1: Estimated tax payments were made by a corporation that qualified as an S corporation for the entire tax year through the date the refund is requested.

Example 2: Estimated tax payments were made by a corporation that will not be required to file a return for the tax year for which the estimated tax payments were made.

Example 3: The estimated tax payments were intended for the Internal Revenue Service but were sent to the Department of Revenue in error.

Example 4: Taxpayer provides proof that the taxpayer intended the payment for another account or liability and the payment was misapplied to their estimated tax by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.505
Hist.: 9-74; 12-1975; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 4-2003, f. & cert. ef. 12-31-03; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.505-(B)
Estimated Tax: When Estimates Are Required For Tax Exempt Corporations

Tax exempt corporations subject to tax on their "Unrelated Business Income" and that are required to file and pay federal income taxes, must also file an Oregon tax return. If their Oregon tax liability is more than $500, estimated tax payments must be made.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.305
Hist.: TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-314.505-(C)

150-314.505(2)
Estimated Tax: Affiliated Corporations

(1) If two or more affiliated corporations file a consolidated state return as described in ORS 317.710 through 317.725, each shall be jointly and severally liable for the filing and payment of the estimated tax liability. Estimated tax shall be made on a consolidated basis.

(2) See OAR 150-314.525(1)-(B) for an explanation of how to compute an underpayment of estimated taxes for corporations filing a consolidated Oregon return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.505
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-314.515
Estimated Tax: Due Dates of Payments for Short-Period Returns

If a return is filed for a short period of less than 12 months, the estimated tax payments are due as follows:

(1) If the period covered is less than four months, only one payment is required. It is equal to 100 percent of the estimated tax and is payable on the due date of the return.

(2) If the period covered is four months or longer but less than six months, two payments are required. One-half of the estimated tax is due on the 15th day of the fourth month. The balance is due on or before the due date of the tax return, not including extensions.

(3) If the period covered is six months or longer but less than nine months, three payments are required. One-third of the estimated tax is due on the 15th day of the fourth month, one-third on the 15th day of the sixth month and the balance on or before the due date of the tax return, not including extensions.

(4) If the period covered is nine months or longer, but less than twelve months, four payments are required. One-fourth of the estimated tax is due on the 15th day of the fourth month, one-fourth on the 15th day of the sixth month, one-fourth on the 15th day of the ninth month, and the balance on or before the due date of the tax return, not including extensions.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.515
Hist.: 9-74; 1-1-77; 12-31-77; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81, Renumbered from 150-314.515; Repealed by: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-314.515-(A); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.515(2)
Estimated Tax: Application of Payments

(1) Overpayments of tax

(a) Election. When a corporation files its completed excise or income tax return and the tax shown due thereon is less than the amounts previously paid for that year, the corporation may make an irrevocable election to have the overpayment of tax either refunded or applied as a payment of estimated tax. The election is made by entering the amount in the appropriate space provided on the corporation excise tax return or corporation income tax return.

(b) Application to estimated tax installment. The department will apply the elected amount to the estimated tax installment that next becomes due on or after the due date of the return (not including extensions) or the date the overpayment of tax was made, whichever is later. The amount will be credited to the estimated tax installment as of the due date of the return (not including extensions) or the date the overpayment of tax was made, whichever is later. In the case of an amended or delinquent return, the amount will be credited to the estimated tax installment as of the date the amended or delinquent return was filed.

(c) Short-year returns — application to estimated tax installment. If a taxpayer files a tax return for a period of less than twelve months and that return requests an overpayment of tax be applied to an installment of estimated tax, the department will credit the overpayment of tax to the estimated tax installment as explained in subsection (1)(b) of this rule unless the taxpayer requests that the department apply the amount to the estimated tax installment due immediately following the installment that next becomes due.

Example: Corporation Zee is a fiscal year taxpayer that changed its accounting period to a calendar year. Zee's short year return is a four-month return. Zee files its short year return on November 15th (the due date of the short year return). Zee requests its overpayment of tax be applied to estimated tax. As explained in subsection (1)(b) of this rule, the department will credit the amount to the installment of estimated tax due December 15th. Alternatively, Zee could request that the department instead credit the amount to the first installment for the following tax period; April 15th, the first estimated tax installment due date for calendar year filers.

(2) Payments of estimated tax. The department will credit estimated tax payments as of the date that they are received. The department will apply estimated tax payments to any prior underpayment and the remainder, if any, will be applied to the next required installment.

Example: Corporation A is a calendar year taxpayer. A's return is filed timely on April 15, 2014. Its 2013 tax after credits is $12,000. The corporation must make the following estimated tax payments on or before the indicated dates to avoid having an underpayment of estimated tax:
April 15, 2013 — $3,000.
June 16, 2013 — $3,000.
Sept. 15, 2013 — $3,000.
Dec. 15, 2013 — $3,000.
Corporation A pays as follows:
April 15, 2013 — $3,000.
June 16, 2013 — $3,000.
Sept. 15, 2013 — $0.
Sept. 30, 2013 — $3,500.
Dec. 15, 2013 — $0.
The $3,500 payment will be credited as of September 30, 2013. Of the $3,500 payment, $3,000 is applied to the payment due September 15, 2013. The $500 remainder is applied to the payment due December 15, 2013.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.515
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 6-2014, f. 12-23-14, cert. ef. 1-1-15

150-314.518
Requirement to Use Electronic Funds Transfer

(1) For tax years beginning on or after January 1, 2002, corporations are required to make estimated Oregon Corporation Excise or Income Tax payments by electronic funds transfer (EFT) if required to pay federal corporation estimated taxes by EFT.

(2) A taxpayer disadvantaged by the requirement to pay by EFT may request an exemption. The request must be in writing and sent to the address for EFT registration. The request must explain why the requirement to pay by EFT is a disadvantage to the taxpayer. An example of a disadvantage to the taxpayer is when the taxpayer's bank or the bank of the taxpayer's payroll service is unable to provide the service. Requests for an exemption will be evaluated on a case by case basis. If granted, the exemption will be for a period of 12 months, during which the taxpayer is expected to make arrangements to comply with the requirement to use EFT. The department will grant only one exemption period to a taxpayer.

(3) Corporations not meeting the requirement to pay by EFT may do so voluntarily by completing and submitting to the department an application for either ACH Debit or ACH Credit EFT. Applications can be requested from the department.

(4) After beginning to make payments electronically, a volunteer may discontinue electronic payments by sending a written request to stop paying to EFT. The request must be sent at least 30 days prior to the date the volunteer wishes to stop paying by EFT. If the volunteer has not reached the then current mandate threshold, the department shall allow the employer to discontinue electronic payments. The volunteer shall continue to make payments by EFT until 30 days after sending the request to the department or the volunteer receives notice from the department agreeing to the discontinuance, whichever occurs earlier.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.518
Hist.: REV 6-1998, f. 11-13-98 cert. ef. 12-31-98; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01

150-314.525(1)-(A)
Corporation Estimated Tax: Delinquent or Underestimated Payment or Both, Constitutes Underpayment

(1) An underpayment of corporation estimated tax exists when the payments received on or before a payment due date are less than the required payment due as determined under section (3) of this rule.

(2) *For returns processed on or after January 1, 2001*. If none of the exceptions as provided in section (3) of this rule are met, interest on underpayment of estimated tax is computed on the difference between the lowest amount determined under section (3) of this rule and the total estimated tax payments for the installment period made on or before the due date.

Example: *Interest on underpayment of first installment*
1999 tax liability on return filed April 15, 2001 — $2,000
1998 tax liability — 1,600
Amount determined under subsection (3)(a) of this rule ($2,000 x 25%) — 500
Amount determined under subsection (3)(b) of this rule ($1,600 x 25%) — 400
Amount determined under subsection (3)(c) of this rule — 375
Amount determined under subsection (3)(d) of this rule — 350
First quarter payment received by the first quarter installment due date — 100
Interest for the first quarter is calcualted on $250, the difference between $350, the lowest amount determined under section (3) of this rule, and $100, the total payments received before the first quarter installment due date.

(3) *Exceptions*. Underpayment charges will not be imposed if each estimated tax payment is equal to or more than 25 percent (or the appropriate percentage of tax for short periods provided in OAR 150-314.515) of any one of the following:

(a) One hundred percent of the tax for tax years beginning on or after January 1, 1996.

(b) One hundred percent of the tax shown on the return for the preceding tax year (after credits and any state surplus refund) provided that the preceding tax year was a period of twelve months and an Oregon return showing a liability was filed for such tax year.

(A) When applying this subsection to a current taxable year of less than 12 months, the tax for the preceding tax year is reduced by multiplying it by the number of months in the short tax year and dividing the resulting amount by 12.

(B) This subsection applies only to the first required estimated tax payment due for a tax year by a large corporation. When a large corporation's first required payment is reduced under this subsection, the second required payment must be increased by the amount of the reduction. A large corporation is a corporation with federal taxable income, prior to net operating loss or capital loss deductions, of $1 million or more in any of the three prior tax years.

(c) An amount equal to 100 percent of the tax computed on annualized taxable income. Annualized taxable income is computed as provided in ORS 314.525(2)(c)(A) or using the same annualization periods as used for federal tax purposes. Tax credits available on the date of the payment may be deducted from the annualized tax. An estimated or anticipated tax credit may not be used.

(d) An amount equal to 100 percent of the amount obtained by applying Section 6655(e)(3)(C) of the Internal Revenue Code to Oregon taxable income for any corporation with seasonal income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.525
Hist.: 9-74; 1-1-77; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85, Renumbered from 150-315.525(1)?; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2002, f. & cert ef. 12-31-02

150-314.525(1)-(B)
Estimated Tax: Consolidated Return Underpayments

(1) If a consolidated state return is filed, any underpayment shall be computed on a consolidated basis. In computing the underpayment on a consolidated basis, the tax and facts shown on the returns for the preceding year shall be aggregated regardless of whether consolidated or separate returns were filed.

Example 1: Corporation A and B file a consolidated state return in 1995. They filed separate state returns in 1994 and for 1995 made separate estimated tax payments. [Example not included. See ED. NOTE.]

(2) If separate returns are filed and estimated tax is paid on a consolidated basis, then the payments and prior year's tax may be divided between the various corporation's liabilities in any manner designated by the Oregon taxpayers.

Example 2: In 1995, Corporations A and B are required to file separate state returns. They had filed consolidated in 1994 and made consolidated estimated tax payments for 1995. [Example not included. See ED. NOTE.]
[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.525
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.525(1)(c)-(A)
Estimated Tax: Apportioned Returns

Corporations that are required to apportion income between Oregon and other states, are required to use either the current period's actual or the prior full year's apportionment factor to meet the annualization exception to underpayment of estimated taxes. The prior year's apportionment factor may only be used if the prior year's return covered a full 12 months and the Oregon apportionment factor was greater than zero.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.525
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99

150-314.525(1)(d)
Estimated Tax: Application of Net Loss, Annualized Income Exception

In computing the annualized income, the net loss from a prior year carried forward shall be applied in the same manner as in the Internal Revenue Service Revenue Ruling (RR) 67-93. The RR 67-93 provides that the net loss shall be applied in full against income for the appropriate period prior to annualization of the income for such period. For computation of the net loss to be carried forward refer to OAR 150-317.476(4) or 150-314.675.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.525
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-314.525(2)-(A)
Estimated Tax: Interest on Underpayment

(1) When an estimated tax payment is underpaid, as defined in OAR 150-314.525(1)-(A), interest accrues on the underpaid amount at the rate provided in OAR 150-305.220(1) from the due date of the payment to the earlier of the date the tax is paid or the date the tax return is due.

(2) Interest on underpayment of estimated tax (under ORS 314.525) will not be imposed if the tax on the prior year's return was not over $10. A large corporation, as defined in ORS 314.525(5), may only use the exception for the first installment required.

(3) Underpayment interest will not be imposed for a quarter in which the annualized taxable income results in a net annualized tax of $10 or less.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.525
Hist.: 9-74; 12-19-75; 1-1-77; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85, Renumbered from 150-314.525(2)?: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 11-1992, f. 12-30-92, cert. ef. 12-31-92; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.525(2)-(B)
Estimated Tax: Computation of Underpayment

(1) Underpayment charges shall be assessed on the last filed return received before the due date for such return. That return shall be considered the "original return," and the tax due shall be used as the basis for computing the underpayment charges.

(2) Once underpayment charges are assessed on the original return, an amended return, reducing the tax liability, shall not reduce the underpayment charges.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.525
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 11-1992, f. 12-30-92, cert. ef. 12-31-92

150-314.525(5)
Underpayment of Estimated Tax; First and Second Installment for Large Corporations

(1) The first required installment is the lowest payment computed under ORS 314.525(2)(a) through (2)(d).

(2) If a large corporation qualifies for the exception to paying interest on underpayment of estimated tax for the first installment under ORS 314.525(2)(b), the second required installment is calculated by adding:

(a) The reduction to the first installment from using the amount determined under ORS 314.525(2)(b), and

(b) The required second installment determined without regard to ORS 314.525(2)(b).

(3) The reduction to the first installment from using the amount determined under ORS 314.525(2)(b) is:

(a) The lowest first installment determined under ORS 314.525(2) without regard to ORS 314.525(2)(b), less

(b) The first installment determined under ORS 314.525(2)(b).

Example: Big, Inc. (Big) qualifies as a "large corporation" under ORS 314.525(5) and had tax, payments, and required payments under ORS 314.525(2) as follows: [Table not included. See ED. NOTE.]
[ED. NOTE: Table referenced is available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.525
Hist.: REV 2-2003, f. & cert. ef. 7-31-03

150-314.610(1)-(A)
Business and Nonbusiness Income Defined

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.653, Article I, section 2 and 314.605 to 314.667.

(1) Apportionment and Allocation. ORS 314.610(1) and (5) require that every item of income be classified either as business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income.

(2) Business Income. Business income means income of any type or class, and from any activity, that meets the relationship described either in (4), the "transactional test," or (5), the "functional test." The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or non-business income.

(3) Terms Used in Definition of Business Income and in Application of Definition. As used in the definition of business income and/or in the application of the definition,

(a) "Taxpayer" means any corporation subject either to ORS Chapter 317 or 318, or both, or a nonresident individual subject to ORS Chapter 316.

(b) "Apportionment" refers to the division of business income between states by the use of a formula containing apportionment factors.

(c) "Allocation" refers to the assignment of nonbusiness income to a particular state.

(d) "Business activity" refers to the transactions and activities occurring in the regular course of a particular trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations.

(e) "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Oregon.

(f) "To contribute materially" includes, without limitation, "to be used operationally in the taxpayer's trade or business." Whether property materially contributes is not determined by reference to the property's value or percentage of use. If an item of property materially contributes to the taxpayer's trade or business, the attributes, rights or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business.

(4) Transactional Test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(a) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Oregon, the resulting income of the transaction or activity is business income for Oregon. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Oregon.

(b) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(5) Functional test. Business income also includes income from tangible and intangible property, if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. "Property" includes any interest in, control over, or use in property (whether the interest is held directly, beneficially, by contract, or otherwise) that materially contributes to the production of business income. "Acquisition" refers to the act of obtaining an interest in property. "Management" refers to the oversight, direction, or control (directly or by delegation) of the property for the use or benefit of the trade or business. "Disposition" refers to the act, or the power, to relinquish or transfer an interest in or control over property to another, in whole or in part. "Integral part" refers to property that constituted a part of the composite whole of the trade or business, each part of which gave value to every other part, in a manner which materially contributed to the production of business income.

(a) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within this State. Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time (generally, five years is sufficient) or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes has lost its character as a business asset and is not subject to the rule of the preceding sentence. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.

(b) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income, if the property is or was used in the taxpayer's trade or business operations. (Property that has been converted to nonbusiness use (see subsection (4)(a)) has lost its character as a business asset and is not subject to the rule of the preceding sentence.) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(c) Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

(d) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Oregon.

(e) If with respect to an item of property a taxpayer:

(A) Takes a deduction from business income that is apportioned to Oregon; or

(B) Includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

(f) Application of the functional test is generally unaffected by the form of the property (e.g., tangible or intangible property, real or personal property). Income arising from an intangible interest, as, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. (Property that has been converted to nonbusiness use (see subsection (4)(a)) has lost its character as a business asset and is not subject to the rule of the preceding sentence.) Thus, while apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment.

(6) Relationship of transactional and functional tests to U.S. Constitution. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict States from apportioning income as business income that has no rational relationship with the taxing State. The protection against extra-territorial state taxation afforded by these Clauses is often described as the "unitary business principle." The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in Oregon. The unitary business that is conducted in Oregon includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) be tied to the same trade or business that is being conducted within Oregon. Determination of the scope of the unitary business being conducted in Oregon is without regard to extent to which Oregon requires or permits the filing of a consolidated Oregon return.

(7) Nonbusiness income. Nonbusiness income means all income other than business income.

(8) The revisions to the rule effective on December 31, 2003 apply to all tax years open to adjustment on or after that date.

Stat. Auth.: ORS 305.100, 305.653 & 314.605 - 314.667
Stats. Implemented: ORS 314.610
Hist.: 12-70; 8-73; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 4-2003, f. & cert. ef. 12-31-03

150-314.610(1)-(B)
Business and Nonbusiness Income; Application of Definitions

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.653, Article I, section 2 and 314.605 to 314.667. The rule applies the principles provided in OAR 150-314.610(1)-(A) for determining whether particular income is business or nonbusiness income. (The examples used throughout this rule are illustrative only and are limited to the facts they contain.)

(1) Rents and royalties from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is or was used in the taxpayer's trade or business and therefore is includable in the property factor under OAR 150-314.655(1)-(A). Property that has been converted to nonbusiness use (see 150-314.610(1)-(A)(4)(a)) has lost its character as a business asset and is not subject to the rule of the preceding sentence.

Example 1: The taxpayer operates a multistate car rental business. The income from car rentals is business income.

Example 2: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

Example 3: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two floors are held for future use in the trade or business, and are leased to tenants on a short-term basis in the meantime. The rental income is business income.

Example 4: The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not business income of the grocery store trade or business. Therefore, the net rental income is nonbusiness income.

Example 5: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not done in furtherance of but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not business income of the clothing store trade or business. Therefore, the net rental income is nonbusiness income.

Example 6: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold 18 months later. The rental income is business income and the gain on the sale of the plant is business income.

Example 7: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an investment company under a five-year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The net rental income received over the lease period is nonbusiness income and the gain (or loss) on the sale of the building is nonbusiness income.

(2) Gains or losses from sales of assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of, the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income or otherwise was removed from the property factor before its sale, exchange or other disposition, the gain or loss will constitute nonbusiness income. (See OAR 150-314.655(1)-(A) to 314.655(1)-(D)).

Example 8: In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business income.

Example 9: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later sold the property at a gain while it was in operation by the taxpayer. The gain is business income.

Example 10: Same as Example 9 except that the plant was closed and put up for sale but was not in fact sold until a buyer was found 18 months later. The gain is business income.

Example 11: Same as Example 9 except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business income.

Example 12: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. Because the taxpayer did not intend to reoccupy the old building, the taxpayer rented the old building to an unrelated investment company under a five-year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The gain (or loss) on the sale is nonbusiness income and the rental income received over the lease period is nonbusiness income.

(3) Interest. Interest income is business income where the intangible with respect to which the interest was received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

Example 13: The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business income.

Example 14: The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund pertaining to the taxpayer's trade or business and collects a judgment against a debtor of the business. Both the tax refund and the judgment bore interest. The interest income is business income.

Example 15: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as workmen's compensation claims, rain and storm damage, machinery replacement, etc. The moneys in those accounts are invested at interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state and local tax obligations pertaining to the taxpayer's trade or business. The interest income is business income.

Example 16: The taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income.

Example 17: The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling $200,000 that it regularly invests in short-term interest bearing securities. The interest income is business income.

Example 18: In January the taxpayer sold all the stock of a subsidiary for $20,000,000. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is nonbusiness income.

(4) Dividends. Dividends are business income where the stock with respect to which the dividends was received arose out of or was acquired in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

Example 19: The taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income.

Example 20: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer maintains special accounts to cover such items as workmen's compensation claims, etc. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on the national stock exchanges. Both the interest and any dividends are business income.

Example 21: The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply of materials used in its manufacturing business. The dividends are business income.

Example 22: The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

Example 23: The taxpayer receives dividends from the stock of its subsidiary or affiliate that acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.

Example 24: The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock and interest-bearing securities, the acquisition and holding of which are unrelated to the manufacturing business. The dividends and interest income received are nonbusiness income.

(5) Patent and copyright royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arose out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding of the patent or copyright is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations.

Example 25: The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.

Example 26: The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are thereafter used by the taxpayer in its business. Any royalties received on these copyrights are business income.

Example 27: Same as example (26), except that the acquired company also held the patent on a method of producing digital audio recordings. The taxpayer does not manufacture or sell digital audio recordings. Any royalties received on the patent would be nonbusiness income.

(6) The revisions to the rule effective on December 31, 2003 apply to all tax years open to adjustment on or after that date.

Stat. Auth.: ORS 305.100, 305.653 & 314.605 - 314.667
Stats. Implemented: ORS 314.610
Hist.: 12-70; 8-73; REV 4-2003, f. & cert. ef. 12-31-03

150-314.610(1)-(C)
Proration of Deductions

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.653, Article I, section 2 and 314.605 to 314.667.

(1) Proration of deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business incomes of more than one trade or business or to several items of nonbusiness income. In such cases the deduction must be prorated among such trades or businesses and such items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

(2) Year to year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer must disclose in the return for the current year the nature and extent of the modification.

(3) State to state consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer must disclose in its return to this state the nature and extent of the variance.

Stat. Auth.: ORS 305.100, 305.653 & 314.605 - 314.667
Stats. Implemented: ORS 314.610
Hist.: 12-70; 8-73; REV 4-2003, f. & cert. ef. 12-31-03

150-314.615-(A)
Apportionment and Allocation of Income Generally

(1) If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with ORS 314.615 to 314.675. In such cases, the first step is to determine which portion of the taxpayer's entire net income constitutes "business income" and which portion constitutes "nonbusiness income." The various items of nonbusiness income are then directly allocated to specific jurisdictions pursuant to the provisions of 314.625 to 314.645. The business income (or loss) of the taxpayer is divided between the jurisdictions in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in 314.650 to 314.665 and 314.675. The sum of (1) the items of nonbusiness income (or loss) directly allocated to this state, plus (2) the amount of business income (or loss) attributable to this state by the apportionment formula constitutes the amount of the taxpayer's entire net income which is subject to tax under the income tax laws of this state.

(2) In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax purposes Act are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance. ORS 314.605 to 314.670 exclude financial organizations and public utilities (as defined in 314.610). For financial institutions not excluded, such as production credit associations and small loan companies, the three

factors ordinarily will be property, payroll and gross revenue. The definitions of "property" and "gross revenue" that appear in OAR 150-314.280-(E) are incorporated herein by reference.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 1-65; 12-70; 8-73; 12-19-75

150-314.615-(C)
Application of ORS 314.610 to 314.667: Allocation

Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with ORS 314.625 to 314.645.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 1-65; 12-70; 8-73

150-314.615-(D)
Apportionment and Allocation for a Taxpayer Carrying on a Unitary Business

Where the taxpayer's Oregon business activities are a part of a unitary business carried on both within and without the state, use of the apportionment method is mandatory to determine the portion of the unitary business income attributable to Oregon. If the business activities within Oregon are integrated with, dependent upon or contribute to the business activities outside the state, the entire operation is unitary in character, and the income from Oregon business activities is determined by the apportionment method. Whether the Oregon activities engaged in for financial profit actually result in a financial profit or loss is not determinative. A unitary business may be carried on by a single corporation or by a group of affiliated corporations.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.615
Hist.: 1-65; 12-70; 8-73; 12-31-77; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.615-(E)
Two or More Businesses of a Single Taxpayer

A taxpayer may have more than one "trade or business". In such cases, it is necessary to determine the business income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula that takes into consideration the factors, both in and out of state that relate to the trade or business, the income of which is being apportioned.

Example: The taxpayer is a conglomerate with three operating divisions. One division is engaged in manufacturing aerospace items for the federal government. Another division is engaged in growing tobacco products. The third division produces and distributes motion pictures for theaters and television. There is no strong central management as each division operates independently of one another. Each division operates in this state as well as in other jurisdictions. In this case, it could be concluded that the taxpayer is engaged in three separate "trades or businesses." Accordingly, the amount of business income attributable to the taxpayer's trade or business activities in this state is determined by applying an apportionment formula to the business income of each business.

The determination of whether the activities of the taxpayer constitute a unitary business will turn on the facts of each case. In general, the activities of the taxpayer will be considered unitary if there is evidence to indicate that the divisions under consideration are integrated with, dependent upon, or contribute to each other and to the operations of the taxpayer as a whole. (See OAR 150-314.615-(D).) The following factors are considered to be good indicia of a unitary business; and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a unitary business:

(1) Same type of business. A taxpayer is generally engaged in a unitary business when all of its activities are in the same general line. For example, a taxpayer operating a chain of retail grocery stores will most always be engaged in a unitary business.

(2) Steps in a vertical process. A taxpayer is almost always engaged in a unitary business when its various divisions are engaged in different steps in a large vertically structured enterprise. For example, a taxpayer that explores for and mines copper ores; concentrates, smelts and refines the copper ores; and fabricates the refined copper into consumer products, is engaged in a unitary business regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the taxpayer's executive offices.

(3) Strong centralized management. A taxpayer which might otherwise be considered as engaged in more than one trade or business is properly considered a unitary business when there is a strong central management coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Thus, some conglomerates may properly be considered a unitary business when the central executive officers are involved in the operations of the various divisions and there are centralized offices which perform for the divisions the normal matters which a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.615
Hist: 12-70; 8-73; 12-19-75; Material formerly contained in rule transferred to OAR 150-314.363-(A), (B), and (C). Former rule OAR 150-314.615-(F) renumbered (E).); REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.615-(F)
Apportionment for Long-Term Construction Contracts

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.653, Article I, section 2 and 314.605 to 314.667. If a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from sources within this state, including income from such long-term contracts, is determined pursuant to this rule. In such cases, the first step is to determine what portion of the taxpayer's income constitutes "business income" and "nonbusiness income" under 314.610 and the rules thereunder. Nonbusiness income is directly allocated to specific states pursuant to the provisions of 314.625 to 314.645. The business income of the taxpayer is divided between or among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state, constitutes the taxpayer's entire net income that is subject to tax. For definitions, rules and examples for determining business and nonbusiness income, see 314.610 and the rules thereunder.

(1) *Apportionment of Business Income.*

(a) *In General.* Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved.

(b) *Percentage of Completion Method.* Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price that has been completed during the taxable year exceeds all expenditures made during the taxable year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the taxable year for use in each such contract.

Example 1: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for $9,000,000. The contract allowed three years for completion and, as of the end of the second taxable year, the taxpayer's books of account, kept on the accrual method, disclosed the following: [Table not included. See ED. NOTE.]

(c) *Completed Contract Method.* Under this method of accounting, business income derived from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract (see section (2) below). Thus, all receipts and expenditures applicable to such contracts, whether completed or not as of the end of the taxable year, are excluded from business income derived from other sources. For example, income from short-term contracts, interest, rents, royalties, etc., is apportioned by the regular three-factor formula of property, payroll, and sales.

(d) *Property Factor*. In general, the numerator and denominator of the property factor is determined as set forth in ORS 314.655 and the rules thereunder. However, the following special rules are also applicable:

(A) The average value of the taxpayer's costs (including materials and labor) of construction in progress, to the extent such costs exceed progress billings (accrued or received depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) is included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state are included in the numerator of the property factor.

Example 2: The taxpayer commenced a long-term construction project in this state as of the beginning of a given year. By the end of its second taxable year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows: [Table not included. See ED. NOTE.]

(B) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though such rental expense may be included in the cost of construction.

(C) The property factor is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately (see section (2) below).

(e) *Payroll Factor*. In general the numerator and denominator of the payroll factor is determined as set forth in ORS 314.660 and the rules thereunder. However, the following special rules are also applicable:

(A) Compensation paid employees that is attributable to a particular construction project is included in the payroll factor, even though it is included in the cost of construction.

(B) Compensation paid to employees engaged in performing services at a construction site are attributed to the state in which the services are performed. Compensation paid all other employees is governed by ORS 314.660(2).

Example 4: A taxpayer engaged in a long-term contract in state X assigns several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to state Y where the main office is maintained and where the employees reside. For payroll factor purposes, such compensation is assigned to the numerator of state X.

(C) The payroll factor is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately (see section (2) below).

(f) *Sales Factor*. In general, the numerator and denominator of the sales factor is determined as set forth in ORS 314.665 and the rules thereunder. However, the following special rules are also applicable:

(A) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio that construction costs for the project in this state bear to the total of such construction costs for the entire project during the taxable year. Any other method, such as engineering cost estimates, may be used if it provides a reasonable apportionment.

Example 5: A construction project was undertaken in this state by a calendar-year taxpayer that had elected one of the methods of accounting for long-term contracts. The following gross receipts (progress billings) were derived from the contract during the three taxable years the contract was in progress.
— 1st Year — 2nd Year — 3rd Year
Gross Receipts — $1,000,000 — $4,000,000 — $3,000,000
The gross receipts to be reflected in both the numerator and the denominator of the sales factor for each of the three years are the amounts shown.

Example 6: A taxpayer contracts to build a dam on a river at a point that lies half within this state and half within state X. During the taxpayer's first taxable year, construction costs in this state were $2,000,000. Total construction costs for the project during the taxable year were $3,000,000. Gross receipts (progress billings) for the year were $2,400,000. Accordingly, gross receipts of $1,600,000 ($2,000,000 ÷ $3,000,000 = 66⅔% x $2,400,000) are included in the numerator of the sales factor.

(B) If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price that corresponds to the percentage of the entire contract completed during the taxable year.

Example 7: A taxpayer that elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current taxable year (the first since starting the project) it estimated that the project was 30 percent completed. The bid price for the project was $9,000,000 and it had received $2,500,000 from progress billings as of the end of its current taxable year. The amount of gross receipts to be included in the sales factor for the current taxable year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method for accounting for receipts and disbursements.

(C) If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Example 8: A taxpayer that entered into a long-term construction contract elected the completed contract method of accounting. By the end of its current taxable year (the second since starting the project) it had billed and accrued on its books a total of $5,000,000. Of that amount, $2,000,000 accrued in the first year the contract was undertaken, and $3,000,000 accrued in the current year. The amount of gross receipts to be included in the sales factor for the current taxable year is $3,000,000.

Example 9: Same facts as in Example 8 except that the taxpayer keeps its books on the cash basis and, as of the end of its current taxable year, had received only $2,500,000 of the $3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current taxable year is $2,500,000.

(D) The sales factor, except as noted above in paragraphs (B) and (C), is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately.

(g) *Apportionment Percentage*. The apportionment percentage provided in ORS 314.650 is applied to business income to establish the amount apportioned to Oregon.

(2) *Completed Contract Method — Special Computation*. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year the construction project is completed and accepted. Accordingly, a separate computation is made for each such contract completed during the taxable year regardless of whether the project is located within or without this state in order to determine the amount of income attributable to sources within this state. The amount of income apportioned to this state from each contract completed during the taxable year, plus other business income (such as interest income, rents, royalties, income from short-term contracts, etc.) apportioned to this state by the regular three factor formula, plus all nonbusiness income allocated to this state, is the measure of tax for the taxable year. The amount of income (or loss) from each contract derived from sources within this state using the completed contract method of accounting is computed as follows:

(a) In the taxable year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined in (a) is apportioned to this state by the following method:

(A) A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator is the total of all such construction costs for the project.

(B) Each percentage determined in (A) is multiplied by the apportionment formula percentage for that particular year as determined in section (1)(g) of this rule.

(C) The products determined at (B) for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract determined in (a) is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from such contract derived from sources within this state.

Example 10: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts: Contract L in this state, Contract M in state X, and Contract N in state Y. In addition, it has other business income (less expenses) during the taxable year 1986 from interest, rents, and short-term contracts amounting to $500,000, and nonbusiness income allocable to this state of $8,000. During 1986, it completed Contract M in state X at a profit of $900,000. Contracts L in this state and N in state Y were not completed during the taxable year. The apportionment percentages of the taxpayer as determined in subsection (g) of this rule and the percentages of contract costs as determined in subsection (b) above for each year Contract M in state X was in progress are as follows: [Table not included. See ED. NOTE.]

(3) Computation for Year of Withdrawal, Dissolution or Cessation of Business — Completed Contract Method. Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution, or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state. The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in section (2)(b) of this rule must be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which that portion of the gross contract price of each such contract that corresponds to the percentage of the entire contract that has been completed as the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made in connection with each such contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

Example 13: A construction contractor qualified to do business in this state elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L was started in Oregon in 1981 and completed at a profit of $900,000 on December 16, 1983. The taxpayer withdrew on December 31, 1983. Contract M was started in state X in 1982 and was incomplete on December 31, 1983. The apportionment percentages of the taxpayer as determined in section (1) of this rule, and percentages of construction costs as determined in section (2)(b) of this rule for each year during which Contract M in state X was in progress are as follows: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.615

Hist.: f. 12-6-82, ef. 12-31-82, Renumbered from OAR 150-314.670-(D) to OAR 150-314.618-(F), 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; REV 4-2003, f. & cert. ef. 12-31-03

150-314.615-(G)
Special Rules: Installment Sales

(1) Income from installment sales is reported at least in part in a year other than the year in which the sale took place. Apportionment of installment sale income on the basis of the factors in the years other than the year of sale would result in such income being apportioned by activities which had no connection with the earning of the income.

(2) This rule applies to taxpayers who use the installment method of reporting income from the sale of property and whose Oregon apportionment percentage for the year of the sale is different than that for any year in which proceeds from that sale are received by the taxpayer. A taxpayer shall apportion the income from the installment sale using the Oregon apportionment percentage of the year of sale.

Example: X is doing business in States A, B and C. During Year 1, the taxpayer sold a plant in State A and realized a $500,000 gain on the sale. The taxpayer elected to report the sale under the installment basis since two equal payments ($250,000 each) are to be received in years 2 and 3. The taxpayer's apportionment factors were as follows: [Example not included. See ED. NOTE.]

State A would realize a taxable gain of $55,000 ($500,000 x 11%) if the sale was not reported under the installment method. Since the apportionment factors have changed to 1 percent and 32 percent in years 2 and 3 respectively, a taxable gain of $2,500 is reported to State A in year 2 and $80,000 in year 3.

Use of the year of sale factor results in $27,500 gain being reported to State A in years 2 and 3 (total: $55,000).

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented:

Hist.: 10-5-84, 12-31-84, Renumbered to 150-314.670-(G); 12-31-85

150-314.615-(H)
Modified Factors for Motion Picture and Television Film Producers

(1) This regulation applies to motion picture and television film producers and producers of television commercials.

(2) Definitions.

(a) "Film" means the physical embodiment of a play, story or other literary, commercial, educational or artistic work, as a motion picture, video tape, disc or other similar medium, except that it does not include news or sports films produced for telecast. "Film" does not include video cassettes or discs intended for home viewing.

(b) Each episode of a series of films produced for television shall constitute a separate film notwithstanding that the series relates to the same principal subject and is produced during one or more television seasons.

(c) "Release date" means the date on which a film is placed in service. A film is placed in service when it is first telecast or exhibited to the primary audience for which the film was created. Thus, a motion picture theater film is placed in service when it is first publicly exhibited for entertainment purposes and an educational film is placed in service when it is first exhibited for instructional purposes. Each episode of a television series is placed in service when it is first telecast. A film is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for telecast or exhibition, or merely because it is telecast or exhibited to prospective exhibitors, sponsors, or purchasers, or is shown in a "sneak preview" before a select audience.

(d) A "film" is deemed to be tangible personal property.

(e) "Rent" shall include license fees for the exhibition or telecast of films.

(f) "Tangible personal property" used in the business, whether owned or rented, shall include but is not limited to sets, props, wardrobes, and other similar equipment or property.

(g) A "subscriber" to a subscription television telecaster is the individual residence or other outlet which is the ultimate recipient of the transmission.

(h) "Telecast" means the transmission of an electronic signal by radiowaves or microwaves or by wires, lines, coaxial cables, wave guides or other tangible conduits of communication.

(3) Apportionment of Business Income. The property, payroll and sales factor of the apportionment formula for Motion Picture and Television Film Producers shall be computed pursuant to ORS 314.655 through 314.665 and the regulations thereunder except as provided in this regulation.

(a) Property Factor.

(A) In General.

(i) In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage and other permanent equipment such as sound recording equipment, etc., except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.

(ii) The value of films shall:

(I) Be the original cost of producing the film as determined for federal income tax purposes, before any adjustment for federal credits which have not been claimed for state purposes, and

(II) Include talent salaries.

(iii) The value of a film shall not be included in the property factor until its release date.

(iv) Video cassettes and discs shall be included in the property factor at their inventory cost as shown in the taxpayer's books and records.

(B) Denominator.

(i) All real property and tangible personal property (other than films) whether owned or rented, which is used in the business, shall be included in the denominator.

(ii) Films, other than films the cost of which is expensed for Oregon tax purposes at the time of production, shall be included in the property factor at original cost for twelve years beginning with the release date.

(iii) Films of a topical nature including news or current event programs, sporting events or interview shows, the cost of which is expensed for Oregon tax purposes at the time of production, shall be included in the property factor at original cost for one year beginning with the release date.

(iv) All films, other than those included in the denominator under clause (ii) or (iii) of this subparagraph, shall be aggregated and treated as a single film property which shall be included in the property factor. Such property shall be valued at eight times the gross receipts generated during the income year from theater distribution, television syndication, cable television, subscription television and the marketing of video cassettes and discs through licensing or direct selling, or similar receipts, but in no event in an amount greater than the total original cost of such aggregated film property.

(C) Numerator.

(i) If tangible personal property (other than films) is located or used in this state for part of the income year, its value shall be determined by applying the ratio which the number of days the property is located or used in this state bears to the total number of days such property was owned or rented during the income year.

(ii) The total value of films that are included in the property factor under subparagraph (B) of paragraph (3)(a) shall be attributed to this state in the same ratio in which the total Oregon receipts from such films as determined in subparagraphs (A), (B), and (C) of paragraph (3)(c) pertaining to the sales factor bears to the total of such receipts everywhere.

(iii) If a film producer sells copies of a film to an affiliated corporation for distribution, at a price which does not reflect the actual cost of producing the film, the cost of the film in the hands of the distributor shall be redetermined under the provisions in subparagraph (A)(ii) of this paragraph, as if the distributor was the producer.

(b) Payroll Factor.

(A) Denominator. The denominator shall include all compensation paid to employees during the income years, including talent salaries. Residual and profit participation payments constitute compensation paid to employees.

(B) Numerator. Compensation of employees engaged in the production of a film on location shall be attributed to the state where the services are or were performed. Compensation of all other employees shall be governed by OAR 150-314.660(2).

(c) Sales Factor Numerator. The numerator shall include all gross receipts of the taxpayer from sources within this state including the following:

(A) Gross receipts from films in release to theaters and television stations located in this state.

(B) Gross receipts from films in syndicated release shall be attributed to this state in the ratio that the audience for such films located in Oregon bears to the total audience for the syndicated film everywhere. The audience shall be determined by rate card values published annually in the Television & Cable Factbook, Vol I, "Stations Volume," Television Digest, Inc., Washington, D.C., if available, or by other published market surveys, or, if none is available, by population data published by the U.S. Bureau of the Census.

(C) Gross receipts from films in release to subscription television telecasters shall be attributed to this state in the ratio that the subscribers for such telecaster located in Oregon to the total subscribers of such telecaster everywhere. If the number of subscribers cannot be determined accurately from records maintained by the taxpayer, the ratio shall be determined on the basis of the applicable year's statistics on subscribers published in Cable Vision, International Thompson Communications Inc., Denver, Colorado, if available, or by other published market surveys, or, if none is available, by population data published by the U.S. Bureau of the Census for all states in which the telecaster has subscribers.

(D) Receipts from sales and rentals of video cassettes and discs shall be included in the sales factor as provided in the rules under ORS 314.665.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.615
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-314.620-(A)
Taxable in Another State; In General

Under ORS 314.615 the taxpayer is subject to the allocation and apportionment provisions of ORS 314.610 to 314.667 if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity (i.e., the transactions and activity occurring in the regular course of a particular trade or business), is taxable in another state within the meaning of ORS 314.620. A taxpayer is "taxable in another state" if it meets either one of two tests:

(1) If by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in ORS 314.620(1), namely: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) If by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not that state imposes such a tax on the taxpayer. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in such other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 1-65; 12-70; 8-73

150-314.620-(B)
Taxable in Another State; When a Taxpayer is "Subject To" Tax Under ORS 314.620(1)

(1) A taxpayer is "subject to" one of the taxes specified in ORS 314.620(1) only if it carries on business activity in such state and such state imposes such a tax thereon. Any taxpayer which asserts that it is subject to one of the taxes specified in ORS 314.620(1) in another state shall furnish to the Department upon its request evidence to support such assertion. The Department may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one of the taxes specified in ORS 314.620(1) in such other state. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but (a) does not actually engage in business activity in that state, or (b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of ORS 314.620(1).

Example: State A has a corporation franchise tax measured by net income, for the privilege of doing business in that state. Corporation X files a return and pays the $50 minimum tax, although it carries on no activity in State A. Corporation X is not "taxable" in State A.

(2) The concept of taxability in another state is based upon the promise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in ORS 314.620(1) which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in ORS 314.620(1) in another state.

Example (i): State A requires all nonresident corporations which qualify or register in State A to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of $50 and a maximum fee of $500. Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State

A and pays the required fee to the Secretary of State but does not carry on any business activity in State A (although it may utilize the courts of State A). Corporation X is not "taxable" in State A.

Example (ii): Same facts as Example (i) except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is "subject to" the net income tax of State A and is "taxable" in State A.

Example (iii): State B requires all nonresident corporations qualified or registered in State B to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of (1) outstanding capital stock, and (2) surplus and undivided profits. The fee or tax base attributable to State B is determined by a three factor apportionment formula. Nonresident Corporation X which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is "taxable" in State B.

Example (iv): State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based upon its business activity in the state but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-70; 11-71; 8-73

150-314.620-(C)
Taxable in Another State; When a State has Jurisdiction to Subject a Taxpayer to a Net Income Tax

The second test, that of ORS 314.620(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 USCA Sections 381-385. In the case of any "state" as defined in subsection (8) of ORS 314.610, other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that "state." If jurisdiction is otherwise present, such "state" is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

Example: Corporation X is actively engaged in manufacturing farm equipment in State A and in foreign country B. Both State A and foreign country B impose a net income tax but foreign country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and foreign country B.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-70; 8-73

150-314.620-(D)
Taxable in Another State; Washington Business and Occupation Tax

For the purposes of Oregon taxation, the Washington Business and Occupation (B & O) tax qualifies as a tax described in ORS 314.620(1). If the taxpayer is "subject to" the Washington B & O tax, it is not necessary that the business activity be of such a nature or of sufficient magnitude to cause the taxpayer to be subject to a net income tax. If the taxpayer is subject to the B & O tax, the requirement of taxability in Washington is met regardless of whether or not Public Law 86-272 would protect the taxpayer from an imposition of a Washington net income tax. It is important to note that the taxpayer must be "subject to" and not just making a minimal voluntary payment. OAR 150-314.620-(B) provides that the taxpayer will not be considered to be "subject to" the tax merely by making a voluntary minimal payment. The taxpayer must be filing returns and paying the tax. Oregon will follow the determinations by the State of Washington as to what activities create tax jurisdiction under the B & O tax.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.620
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

Allocation of Nonbusiness Income

150-314.640
Allocation of Interest and Dividends

(1) Where it appears to the Department that a corporation using the apportionment method is improperly using interest deductions to avoid Oregon tax, the corporation will be required to include in apportionable income interest received to the extent of the deduction claimed for interest paid. See U.P.R.R. Co. et al v. Oregon State Tax Comm., 240 Or 628, 402 P2d 519 (June 3, 1965).

(2) Nonbusiness dividends are subtracted from modified federal income to compute apportionable business income. The subtraction shall be net of the Oregon dividend deduction claimed for such dividends under ORS 317.267. Nonbusiness dividends allocated to Oregon, net of the Oregon dividend deduction, shall be added to business income apportioned to Oregon.

Example: In 1991, Corporation D received $30,000 in dividends, $10,000 of which were nonbusiness dividends allocable to Oregon. Corporation D owned less than 20 percent of the stock in the corporations paying the dividends, so a 70 percent dividend received deduction is allowed on the Oregon return. In the computation of Oregon taxable income, $3,000 of nonbusiness dividends (net of the dividend deduction) are subtracted from net income before apportionment and then added to income apportioned to Oregon. The $3,000 is computed as follows: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.640
Hist.: 1-65; 6-68; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

Apportionment of Business Income

150-314.650
Apportionment Formula

(1) All business income of each trade or business of the taxpayer must be apportioned to this state by use of the apportionment formula set forth in ORS 314.650. The apportionment formula includes the property factor provided in ORS 314.655 and the rules thereunder, the payroll factor provided in ORS 314.660 and the rules thereunder, and the sales factor provided in ORS 314.665 and the rules thereunder.

(2) For tax years beginning on or after July 1, 2005, business income is apportioned using only the sales factor.

(3) For tax years beginning on or after July 1, 2005, the apportionment formula for a taxpayer in the forest products industry meeting the criteria provided in ORS 314.650(2)(a) is the formula provided in sections (5) and (7) of this rule.

(4) For tax years beginning on or after May 1, 2003 and before July 1, 2005, the apportionment formula is 10 percent of the property factor, plus 10 percent of the payroll factor, plus 80 percent of the sales factor.

(5) For tax years beginning on or after January 1, 1991 and before May 1, 2003, the numerator of the apportionment formula is the sum of the property factor, plus the payroll factor, plus two times the sales factor. The denominator of the apportionment formula is four.

(6) For tax years beginning before January 1, 1991, the numerator of the apportionment formula is the sum of the property factor, plus the payroll factor, plus the sales factor. The denominator of the apportionment formula is three.

(7) For tax years beginning on or after January 1, 1989 and before May 1, 2003, if the denominator of the property, payroll, or sales factor is zero, the denominator of the apportionment formula is reduced by the number of factors with a denominator of zero.

(8) The apportionment factors of a corporation that is a member of a partnership, limited liability company treated as a partnership or unincorporated joint venture (i.e. the "related entity"), that is a part of the corporation's overall business operations, must include the corporation's share of the property, payroll and sales of the related entity. For the purpose of computing the apportionment factors, transactions between the corporation and the related entity must be eliminated to the extent of the corporation's percentage of interest in the related entity. The corporation's share of the related entity's

property, payroll and sales are based on its percentage of interest in the related entity that is equal to the ratio of its capital account plus its share of the related entity's debt to the total of the capital accounts of all members of the related entity plus total related entity debt. The capital accounts of the members must reflect the average of the accounts for the period of the tax return. The average of the capital accounts may be computed by averaging the beginning and ending balances or monthly balances. Capital accounts of a related entity must be adjusted to reflect a member's adjusted basis in contributed property, rather than fair market value. The corporation's share of a related entity's debt is determined under IRC 752(a) and 752(b) and the regulations thereunder, irrespective of whether or not the related entity is a true partnership.

(9) For the purpose of computing the apportionment factors for a consolidated Oregon return, inter-company transactions between a unitary affiliate of a partner or member and the related entity described in section (8) of this rule are treated the same as inter-company transactions directly between the affiliated corporations, to the extent of the corporate partner's or member's ownership share of the related entity. Inter-company transactions between affiliated corporations filing a consolidated Oregon return are eliminated as provided in section (3) of OAR 150-317.715(3)(b).

Example: Corporations A, B, and C file a consolidated Oregon return. A and B each own 50 percent of partnership P. P is part of the overall business operations of the three corporations. P buys 80 percent of its raw materials from C. The intercompany sales between P and C must be eliminated from the apportionment formula for the consolidated Oregon return of the corporations. Transactions between C and P are considered to be directly between the three corporations.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.650

Hist.: 8-73; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.655(1)-(A)
Sales Factor; In General

(1) Subsection (7) of ORS 314.610 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by a taxpayer from transactions and activity in the regular course of such trade or business. See OAR 150-314.665(6) regarding inclusion of income from the disposition of intangible assets in the sales factor. The following are rules for determining "sales" in various situations:

(a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (excluding sales taxes) will be included as part of such receipts if such taxes are passed on to or collected from the buyer or included as part of the selling price of the product.

(b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

(c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(d) In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

(e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(f) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(g) If a taxpayer derives income from the operations of casinos, "gross drop" rather than "net drop" will be used in computing the gross receipts factor. "Gross drop" is computed as follows:

(A) Keno. Gross drop is the cumulative total cash paid in at the keno windows determined by totaling the amounts set forth on the customer's tickets.

(B) Slots. Gross drop is the cumulative total of all coins removed from the machines, plus jackpots paid less the coins previously added to the machines.

(C) Table games. Gross drop is the cumulative total of all cash funds and credit slips dropped in the cash boxes. When the cash method is used, only credit slips relating to chips removed from the tables should be considered.

(2)(a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts will be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, business automobiles, etc.

(c) Under the authority provided in ORS 314.667, for tax years beginning on or after January 1, 2014, the treatment prescribed in paragraphs (a) and (b) of this section for an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business applies to any intangible assets associated with that sale including, but not limited to, goodwill.

(3) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer will disclose in the return for the current year the nature and extent of the modification.

(4) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer will disclose in its return to this state the nature and extent of the variance.

(5) The denominator of the sales factor will include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business.

(6) Gross premium receipts. Gross premium receipts are all receipts paid in by the subscribers to the various coverages offered by the company, and are assigned to the state of the domicile of the subscriber. In the case of a group policy, the assignment is to the state of the domicile of the employer-agent who collects and remits the premiums to the company.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.665 & 314.667

Hist.: 12-70; 8-73; REV 2-2014, f. & cert. ef. 7-31-14

150-314.655(1)-(B)
Property Factor; Property Used for the Production of Business Income

Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

Example (i): Taxpayer closed its manufacturing plant in State X and held such property for sale. The property remained vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

Example (ii): Same as above except that the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold.

Example (iii): Taxpayer closed its manufacturing plant and leased the building under a five-year lease. The plant is included in the property factor until the commencement of the lease.

Example (iv): The taxpayer operates a chain of retail grocery stores. Taxpayer closed Store A, which was then remodeled into three small retail stores such as a dress shop, dry cleaning, and barber shop, which were leased to unrelated parties. The property is removed from the property factor on the date the remodeling of Store A commenced.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-70; 8-73

150-314.655(1)-(C)
Property Factor; Consistency in Reporting

In filing returns with this state if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-70; 8-73

150-314.655(1)-(D)
Property Factor; Numerator

The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-70; 8-73

150-314.655(2)-(A)
Property Factor; Valuation of Owned Property

(1) Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

Example (i): The taxpayer acquired a factory building in this state at a cost of $500,000 and 18 months later expended $100,000 for major remodeling of the building. Taxpayer files its return for the current taxable year on the calendar year basis. Depreciation deduction in the amount of $22,000 was claimed on the building for its return for the current taxable year. The value of the building includable in the numerator and denominator of the property factor is $600,000 as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.

Example (ii): During the current taxable year, X Corporation merges into Y Corporation in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, X Corporation owns a factory which X built five years earlier at a cost of $1,000,000. X has been depreciating the factory at the rate of two percent per year, and its basis in X's hands at the time of the merger is $900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation, i.e., $1,000,000.

Example (iii): Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under Section 338 of the 1986 Internal Revenue Code (i.e. stock possessing 80 percent of voting power and stock value is purchased within a 12 month period.) Under these circumstances, Y's cost of the assets is the purchase price of the X stock, prorated over the X assets.

(2) If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

(3) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes. Payments for extracted natural resources shall be included in the property factor as inventory.

(4) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.655
Hist.: 12-70; 8-73, RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-314.655(2)-(B)
Property Factor; Valuation of Rented Property

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.653, Article I, section 2 and 314.605 to 314.667.

(1) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer.

(2) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

Example 1: The taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income they are not deducted from rent paid by the taxpayer for the food market.

Example 2: The taxpayer rents a 5-story office building primarily for use in its multistate business, uses three floors for its offices and subleases two floors to various other businesses on a short-term basis because it anticipates it will need those two floors for future expansion of its multistate business. The rental of all five floors is integral to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer.

Example 3: The taxpayer rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining

18 floors are subleased to others. The rental of the 18 floors is not integral to but rather is separate from the operation of the taxpayer's trade or business. Since the subrents are nonbusiness income they are to be deducted from the rent paid by the taxpayer.

(3)(a) If the subrents taken into account in determining the net annual rental rate produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the department or requested by the taxpayer.

(b) In no case however may such value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

Example 4: The taxpayer rents a 10-story building at an annual rental rate of $1,000,000. Taxpayer occupies two stories and sublets eight stories for $1,000,000 a year. The net annual rental rate of the taxpayer must not be less than two-tenths of the taxpayer's annual rental rate for the entire year, or $200,000.

(c) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property must be determined on the basis of a reasonable market rental rate for such property.

(4) "Annual rental rate" is the amount paid as rental for the property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental is the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short period must be annualized. If the rental term is for less than 12 months, the rent may not be annualized beyond its term. Rent may not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

Example 5: Taxpayer A, that ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid under a lease with 5 years remaining is $2,500 a month. The rent for the tax period January 1, to April 30 is $10,000. After the rent is annualized the net rent is $30,000 ($2,500 x 12).

Example 6: Same facts as in Example (5) except that the lease would have terminated on August 31. In this case the annualized net rent is $20,000 ($2,500 x 8).

(5) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(a) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

Example 7: A taxpayer, pursuant to the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of the year pays the lessor one percent of its gross sales of $400,000. The annual rent is $16,000 ($12,000 plus one percent of $400,000 or $4,000).

(b) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent must be determined by consideration of the relative values of the rent and the other items.

Example 8: A taxpayer, pursuant to the terms of a lease, pays the lessor $12,000 a year rent plus taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

Example 9: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was $1,000 of which $700 was for the use of storage space and $300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is $700.

(6) "Annual rent" does not include:

(a) Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.; and

(b) Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental or otherwise.

(7) Payments for lease bonus and delay rental expensed in the current tax year must be treated as rental property and valued at eight times the amount paid.

(8) Leasehold improvements must, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements must be included in the factor.

(9) The revisions to the rule effective on December 31, 2003 apply to all tax years open to adjustment on or after that date.

Stat. Auth.: ORS 305.100, 305.653 & 314.605 - 314.667
Stats. Implemented: ORS 314.655
Hist.: 12-70; 8-73; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 4-2003, f. & cert. ef. 12-31-03

150-314.655(2)-(C)
Property Factor; Timber

The property factor includes all standing timber which the taxpayer owns and which is situated on land owned by the taxpayer, and includes timber which has been cut and has become a part of inventory. The factor does not include any standing timber to which the taxpayer has acquired cutting rights under a contract, regardless of when title passes under the terms of the contract.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-31-81

150-314.655(2)-(E)
Property Factor; Intangible Drilling Costs

Intangible drilling costs incurred by oil and gas producing companies in connection with producing oil and gas properties located within a taxing jurisdiction are included in the property factor. An election to expense intangible drilling costs for federal tax purposes has no effect on their inclusion in the property factor.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.655
Hist.: RD 10-1986, f. & cert. ef. 12-31-86

150-314.655(3)
Property Factor; Averaging Property Value

(1) As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Department may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period. Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Example: The monthly value of the taxpayer's property was as follows: [Example not included. See ED. NOTE.]

(2) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in OAR 150-314.655(2)-(B).

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 12-70; 8-73

150-314.660(1)
Payroll Factor; In General

(1) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount of compensation paid by the taxpayer in the regular course of its trade or business during the tax period.

(2) The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer,

compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

(3) The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

Example 1: The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used in the regular course of taxpayer's trade or business. The wages paid to those employees are treated as a capital expenditure by the taxpayer. The amount of such wages is included in the payroll factor.

Example 2: The taxpayer owns various securities which it holds as an investment separate and apart from its trade or business. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor.

(4) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Guaranteed payments representing compensation for services to a partnership are considered remuneration paid to employees for personal services. Other than this exception relating to guaranteed payments, payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

(5) Guaranteed payments which represent a return of capital, interest paid on a capital account, or for any purpose other than compensation for services are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.

(6) The term "employee" means (1) any officer of a corporation, or (2) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(7) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid as used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(8) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(9) The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation are included in the denominator of the payroll factor.

Example 3: A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition the taxpayer has other employees whose services are performed entirely in State C where the taxpayer is immune from taxation by Public Law 86-272. As to these latter employees, the compensation will be assigned to State C where their services are performed (i.e., included in the denominator-but not the numerator-of the payroll factor) even though the taxpayer is not taxable in State C.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.660
Hist.: 12-70; 8-73; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.660(2)
Payroll Factor; Numerator

(1) The numerator of the payroll factor is the total amount of compensation paid in this state during the tax period by the taxpayer. The tests in subsection (2) of ORS 314.660 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under OAR 150-314.660(1) above. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(2) Guaranteed payments which represent compensation for services are included in the numerator of the factor if the compensation would have been subject to Oregon unemployment insurance tax if paid to an employee.

(3) Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

(a) The employee's service is performed entirely within the state.

(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) If the employee's base of operations is in this state; or

(B) If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(4) The term "base of operations" is the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the taxpayer or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of the trade or profession.

(5) The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.660
Hist.: 12-70; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.665(1)-(A)
Sales Factor; In General

(1) Subsection (7) of ORS 314.610 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by a taxpayer from transactions and activity in the regular course of such trade or business. See OAR 150-314.665(6) regarding inclusion of income from the disposition of intangible assets in the sales factor. The following are rules for determining "sales" in various situations:

(a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) will be included as part of such receipts if such taxes are passed on to or collected from the buyer or included as part of the selling price of the product.

(b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

(c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(d) In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

(e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(f) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(g) If a taxpayer derives income from the operations of casinos, "gross drop" rather than "net drop" will be used in computing the gross receipts factor. "Gross drop" is computed as follows:

(A) Keno. Gross drop is the cumulative total cash paid in at the keno windows determined by totaling the amounts set forth on the customer's tickets.

(B) Slots. Gross drop is the cumulative total of all coins removed from the machines, plus jackpots paid less the coins previously added to the machines.

(C) Table games. Gross drop is the cumulative total of all cash funds and credit slips dropped in the cash boxes. When the cash method is used, only credit slips relating to chips removed from the tables should be considered.

(2)(a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts will be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, business automobiles, etc.

(3) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer will disclose in the return for the current year the nature and extent of the modification.

(4) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer will disclose in its return to this state the nature and extent of the variance.

(5) The denominator of the sales factor will include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business.

(6) *Gross premium receipts*. Gross premium receipts are all receipts paid in by the subscribers to the various coverages offered by the company, and are assigned to the state of the domicile of the subscriber. In the case of a group policy, the assignment is to the state of the domicile of the employer-agent who collects and remits the premiums to the company.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665
Hist.: 12-70; 8-73; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00

150-314.665(1)-(B)
Sales Factor; Numerator

(1) For purposes of this rule:

(a) "No activity" means that the foreign corporation has no property or employees carrying on the business of the corporation in Oregon. Telephone and catalog solicitation and delivery by common carrier of goods sold do not constitute activity in the state.

(b) "Due process nexus" arises, for purposes of this rule, when a corporation engages in activities in this state that are protected from state taxation by Public Law 86-272. The protection provided by Public Law 86-272 applies to taxpayers whose only Oregon activity is the solicitation of sales of tangible personal property.

(c) "Jurisdiction to tax" is acquired by Oregon, for purposes of this rule, when a corporation engages in activities in this state that are not protected from state taxation by Public Law 86-272, e.g., maintaining an office or warehouse in Oregon, salespersons who accept orders or payment, etc.

(2) The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(3) If a foreign corporation has no activity in Oregon prior to the date Oregon acquires jurisdiction to tax, the numerator of the sales factor shall only include Oregon sales from the date Oregon acquired jurisdiction to tax.

Example: Corporation A operates on a calendar year basis. From the beginning of 1988, Corporation A of California solicited sales in Oregon by telephone and delivered its product by common carrier. On September 1, 1988, Corporation A sent salespersons into Oregon to take and approve orders, accept payment, and handle complaints and returns. Corporation A shall include sales from September 1, 1988 through the end of 1988 in the numerator of the sales factor.

(4) If a foreign corporation had due process nexus in Oregon and Oregon acquired jurisdiction to tax during the year, the numerator of the sales factor shall include sales from the date due process nexus arose or the beginning of the tax year, whichever is later.

Example: Corporation B of Washington began sending missionary salespersons to Oregon to merely solicit sales in July, 1987. Corporation B operates on a calendar year basis. On September 1, 1988, Corporation B added collection of payment and maintenance of a small inventory to the duties of its salespersons. Corporation B shall include sales for the entire 1988 tax year in its sales factor numerator.

(5) If a foreign corporation had no prior activity in Oregon and due process nexus arose during the tax year, and later during the tax year Oregon acquired jurisdiction to tax, the numerator of the sales factor shall include sales from the date due process nexus arose.

Example: Corporation C of Idaho has had catalog sales in Oregon, shipped via common carrier since 1970. Corporation C operates on a calendar year basis. On June 1, 1988, Corporation C sent salespersons into Oregon to merely solicit sales. On September 1, 1988, Corporation C authorized the salespersons to approve sales and accept payment. Sales from June 1, 1988, through the end of 1988 shall be included in the numerator of the sales factor.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665
Hist.: 12-70; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.665(2)-(A)
Sales Factor; Sales of Tangible Personal Property in this State

The rule adopts provisions of a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states.

(1) For purposes of ORS 314.665 and the rules thereunder, "tangible personal property" means personal property that can be seen,

weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

(2) For purposes of apportioning income under ORS 314.665 and this rule, gross receipts from the sales of tangible personal property (except sales to the United States Government; see OAR 150-314.665(2)-(B)) are in this state:

(a) If the property is delivered or shipped to a purchaser within this state (Oregon) regardless of the f.o.b. point or other conditions of sale; whether transported by seller, purchaser, or common carrier; or

(b) If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Example 1: A seller with a place of business in State A is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including Oregon, makes arrangements to hire a common carrier to pick up merchandise, f.o.b. plant, at the seller's place of business and have it delivered to the purchaser's outlet in Oregon. The seller, who is subject to Oregon excise tax, must treat this as a sale of property delivered or shipped to a purchaser in Oregon.

Example 2: A seller with a place of business in Oregon is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including State A, sends its own truck to pick up the merchandise at the seller's place of business and have it transported to the purchaser's outlet in State A. The seller is taxable in State A. The seller must treat this as a sale of property delivered or shipped to a purchaser in State A.

(c) Notwithstanding subsection (2)(b) of this rule, for tax years beginning on or after January 1, 2006, the sale of goods from a public warehouse is not considered to take place in Oregon if:

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

(B) 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.

(3) Property is deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example 3: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including Oregon. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in Oregon. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

(4) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example 4: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Oregon at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in Oregon is property "delivered or shipped to a purchaser within this state."

(5) The term "purchaser within this state" includes the ultimate recipient of the property if the taxpayer in Oregon, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within Oregon.

Example 5: A taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Oregon pursuant to purchaser's instructions. The sale by the taxpayer is in Oregon.

(6) When property being shipped by a seller from the state of origin to a purchaser in another state is diverted while enroute to a purchaser in Oregon, the sales are in Oregon.

Example 6: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Oregon, in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Oregon.

(7) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to Oregon if the property is shipped from an office, store, warehouse, factory, or other place of storage in Oregon.

(a) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state imposes a net income tax on the seller.

(b) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state would have jurisdiction to tax the seller on net income under the constitution of the United States and federal Public Law (P.L.) 86-272.

(c) OAR 150-314.620-(C) provides that sales and activities in a foreign country will be treated the same as those in another U.S. state for determining if the foreign country has jurisdiction to tax the seller on net income.

(d) The guidelines provided by federal P.L. 86-272 apply equally to activities regarding sales to unrelated parties and sales to affiliated corporations.

(e) The immunity provided by P.L. 86-272 is not lost when a business engages in de minimis activities unrelated to the solicitation of orders in a state or foreign country where its only other activities are those protected by P.L. 86-272. Examples of such immune activities include the following:

(A) The board of directors of a corporation based in Oregon holds a meeting at a hotel in another state or in a foreign country,

(B) The president of a parent corporation based in Oregon meets with the managers of a subsidiary in a foreign country to discuss the subsidiary's five-year plan and capital acquisitions budget.

(C) The controller of a parent corporation based in Oregon meets with the accounting staff of a subsidiary in a foreign country to discuss federal financial reporting requirements.

Example 7: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Oregon. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Oregon for approval and are filled by shipment from the inventory in Oregon. Since taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Oregon, the state from which the merchandise was shipped.

Example 8: A parent company sells its product to a subsidiary, organized in a foreign country, that uses the parent's product in manufacturing its product. Because of the parent-subsidiary relationship, orders are not solicited in the same way as sales to unrelated customers. Instead, the products are shipped as needed to the subsidiary. Officials from the parent company maintain a close liaison with the foreign subsidiary on the planning and design of the items sold. After the parties agreed on a contract in which the parent would manufacture and sell certain items to the subsidiary, the close working relationship continued between the technicians of both companies. Many of the parent's employees made regular trips to the subsidiary after the contract was signed, to take care of such items as manufacturing problems, installation problems, repair work, redesign discussions, and/or production problems. Parent's production engineers, production workers, metallurgists, quality control managers, and assembly supervisors were some of the personnel who spent several weeks of the year working closely with the foreign subsidiary. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is not considered to be protected under P.L. 86-272 and therefore is not required to attribute sales to Oregon.

Example 9: A subsidiary organized in a foreign country purchases products from its parent, a manufacturing company in Oregon. The subsidiary places a purchase order with the parent on an "as needed" basis. The parent, upon receipt of the purchase order, makes shipment to the subsidiary. The subsidiary, upon receipt of the product, makes payment to the parent. The parent has a relationship with its foreign subsidiary that is unrelated to the sale of its product. Officials from the parent company occasionally visit the foreign subsidiary to discuss matters unrelated to the sale of its product, including: (1) public relations, (2) personnel matters, and (3) government relations. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is considered to be protected under P.L. 86-272 and is required to attribute the sales to Oregon.

(8) If a taxpayer whose salesman operates from an office located in Oregon makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply, under authority of ORS 314.667:

(a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in Oregon.

Example 10: The taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Oregon.

Publications: Publications referenced are available from the Agency

Stat. Auth.: ORS 305.100 & 314.667
Stats. Implemented: ORS 314.665
Hist.: 12-70; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; REV 14-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11; REV 1-2011, f. & cert. ef. 3-21-11

150-314.665(2)-(B)
Sales Factor; Sales of Tangible Personal Property to United States Government in this State

(1) Gross receipts from the sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state, except as prohibited in paragraph (2) of this rule. For the purposes of this rule, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

Example 1: A taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

Example 2: The taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for $1,000,000. A sale by the subcontractor to the prime contractor is not a sale to the United States Government.

(2) For tax years beginning on or after January 1, 1994, gross receipts from the sales of tangible personal property to the United States Government are not in this state if:

(a) The sales are properly 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, foreign country or the District of Columbia has properly imposed a tax on or measured by the apportioned business income.

Stat. Auth.: ORS 305.100
Stat. Implemented: ORS 314.665
Hist.: 12-70; 8-73; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-314.665(2)-(C)
Sales Factor; Sale of Electricity or Natural Gas

(1) A sale of tangible personal property, including but not limited to the sale of a commodity like electricity or natural gas, which is delivered or shipped to a purchaser with a contracted point of delivery in Oregon is a sale in this state. This is regardless of whether the purchaser uses the property in Oregon, transfers the property to another state, or resells the property in Oregon. If the contract states the point of delivery is at the border with another state, the sale is presumed to be in Oregon unless the taxpayer can demonstrate to the satisfaction of the department that delivery occurred in some other place.

Example 1: A provider of wholesale electricity enters into a contract to deliver a specified amount and duration of a supply of electricity to a purchaser who takes possession at a specified point of delivery in Oregon. The sale is an Oregon sale.

(2) A taxpayer who contracts to sell electricity to and also buy electricity from the same entity during the same period or partial period of time will have an offsetting contractual amount, also known as a book-out transaction. The gross sales of electricity, without regard to the offsetting purchase amount, are considered to be Oregon sales if the contracted point of delivery is in Oregon.

Example 2: Company A signed a contract on January 2, 2006, to purchase 50 megawatts of electricity for a period of 10 hours starting November 15, 2006, from Company B with a delivery point of Malin, Oregon. For this same time period, Company A signed a contract on March 15, 2004, to sell 30 megawatts of electricity to Company B with a point of delivery at Malin, Oregon. The 30 megawatts of power is recorded as a book-out transaction on both companies' books for reporting to Oregon. The offsetting transaction for the 30 megawatts is deemed to be delivered in Oregon for the purposes of computing the Oregon sales factor. Company A will report the sale of 30 megawatts in its Oregon sales factor numerator and Company B will report the sale of 50 megawatts (20 megawatts to complete the sales contract plus 30 megawatts from the book-out transaction) of electricity in its Oregon sales factor numerator.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665
Hist.: REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; Suspended by REV 15-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11; REV 1-2011, f. & cert. ef. 3-21-11

150-314.665(3)
Sales Factor; Sales of Software and Database Services

(1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing this service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) Database services have two different parts for purposes of the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665
Hist. : REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.665(4)
Sales Factor; Sales Other Than Sales of Tangible Personal Property in This State

(1) This rule is effective August 31, 2008 and applies to tax years beginning on or after January 1, 2008. For tax years beginning prior to January 1, 2008 an "income producing activity" did not include transactions performed on behalf of a taxpayer, such as those conducted on the taxpayer's behalf by an independent contractor.

(2) In General. ORS 314.665(4) provides for the inclusion of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government) in the numerator of the sales factor); under this section gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance. Income Producing Activity; Defined. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity includes transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income producing activity includes but is not limited to the following:

(a) The rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the utilization of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service.

(b) The sale, rental, leasing, franchising, licensing or other use of real property.

(c) The rental, leasing, franchising, licensing or other use of tangible personal property.

(d) The sale, franchising, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(3)(a) Where the income producing activity in respect to business income from intangible personal property can be readily identified, the income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property (OAR 150-314.665(1)–(A)) and income from the sale, licensing or other use of intangible personal property.

(b) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and must be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends and interest must be excluded from the denominator of the sales factor.

(4) Costs of Performance; Defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer to perform the income producing activity that gives rise to the particular item of income. Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property which give rise to the particular item of income. For purposes of this rule, direct costs do not include costs that are not part of the income producing activity itself, such as accounting or billing expenses.

(5) Application.

(a) In General. Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity performed by the taxpayer are in this state if:

(A) The income producing activity is performed wholly within 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.

(b) Under the authority provided in ORS 314.667, paragraphs (A)–(C) of this subsection describe when receipts from certain income producing activities are in this state.

(A) Gross receipts from the sale, lease, rental, franchising, or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, franchising, or licensing of tangible or intangible personal property are in this state if the property is located in this state.

(i) The rental, lease, franchising, licensing or other use of tangible or intangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if the property is within and without this state during the rental, lease, franchising or licensing period, gross receipts attributable to this state must be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

Example 1: Taxpayer is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this state was 50 days. The receipts attributable to the use of the 10 railroad cars in this state are a separate item of income and are determined as follows: 10 cars x 50 days = 500 car days 10 cars x 365 days = 3,650 car days x Total Receipts = Receipts Attributable to this State

(ii) Intangible personal property is located in this state if the property is used in business activity in this state, whether the use is by the taxpayer, a third-party licensee, or another entity with the right to use the property. Intangible personal property may be used in more than one state at the same time. The use of intangible personal property in this state is a separate income producing activity from use of the same property in another state. Use is determined in each tax year.

(C) Gross receipts for the performance of personal services are attributable to this state to the extent the services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts from the performance of the services are attributable to this state only if a greater proportion of the services were performed in this state, based on costs of performance. Usually, where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity; in these cases the gross receipts for the performance of services attributable to this state must be measured by the ratio which the time spent in performing the services in this state bears to the total time spent in performing the services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

Example 2: Taxpayer, a road show, gave theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.

Example 3: The taxpayer, a public opinion survey corporation, conducted a poll by its employees in State X and in this state for the sum of $9,000. The project required 600 hours to obtain the basic data and prepare the survey report. Two hundred of the 600 hours were expended in this state. The receipts attributable to this state are $3,000. 200 hours/ 600 hours x $9,000

(c) Services on behalf of taxpayer. An income producing activity performed on behalf of a taxpayer by an agent or independent contractor is attributed to this state if the income producing activity is in this state.

(A) In order to determine if income producing activity is in this state, consider the following list in sequential order:

(i) When the taxpayer can reasonably determine at the time of filing that the income producing activity is actually performed in this state by the agent or independent contractor, but the activity occurs in more than one state, the location where the income producing activity is actually performed shall be deemed to be not reasonably determinable at the time of filing under this subsection;

(ii) If the taxpayer cannot reasonably determine at the time of filing where the income producing activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in this state and the portion of the taxpayer's payment to the agent or contractor associated with the performance is determinable under the contract;

(iii) If it cannot be determined where the income producing activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in this state and the portion of the taxpayer's payment to the agent or contractor associated with the performance is determinable under the contract; or

(iv) If it cannot be determined where the income producing activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with the performance, when the domicile of the taxpayer's customer is in this state. If the taxpayer's customer is not an individual, "domicile" means commercial domicile as defined in ORS 314.610.

(B) If the location of the income producing activity by an agent or independent contractor, or the portion of the payment associated with the performance, cannot be determined under OAR 150-314.665(4)(5)(c)(a)(i) through 150-314.665(4)(5)(c)(a)(iii), or the taxpayer's customer's domicile cannot be determined under 150-314.665(4)(5)(c)(a)(iv), or, although determinable, the income producing activity is in a state where the taxpayer is not taxable, the income producing activity will be disregarded.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665 & 314.667
Hist.: 12-70; 8-73; 12-31-85, Renumbered from 150-314.665(3); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2008, f. & cert. ef. 9-23-08

150-314.665(5)
Gross Receipts Related to Deferred Gain or Loss

(1) *In general*. In all cases where gain or loss is realized for accounting purposes in the year of the associated transaction, but not fully recognized for tax purposes in that year, the total gross receipts from the transaction must be included in the sales factor for the year of the transaction if the associated gain or loss is considered business income or loss under ORS 314.610, except where:

(a) The gross receipts are excluded from "sales" under ORS 314.665(6)(a) and (6)(c); or

(b) The net gain rather than gross receipts is included in the sales factor under ORS 314.665(6)(b). Also see OAR 150-314.615-(G) regarding the apportionment of installment sale income and OAR 150-314.650 regarding apportionment of deferred gain subject to tax in a year after the year of disposition.

Example 1: Big Equipment Sales Corporation (BESC) has locations in Oregon and Idaho. BESC sold a large piece of construction equipment in 2003 on an installment contract. The total sales price was $1,000,000. BESC must include the full sales price of $1,000,000 in the sales factor for tax year 2003.

(2) *Gross receipts from deferred gain on exchanges of property*. In regard to exchanges of property qualifying for the deferral of tax on the gain or loss under section ORS 317.327 and sections 1031 or 1033 of the Internal Revenue Code, "gross receipts" means the fair market value of the property acquired on the date of exchange.

Example 2: Major Manufacturing Corporation (MMC) exchanges tangible personal property used in its business activity in Oregon for property of like kind in California during tax year 2002. The fair market value of the acquired property is $800,000 on the date of the exchange. The gross receipts from the exchange of property are not excluded from MMC's "sales" under ORS 314.665(6)(a) or (6)(c). MMC's sales factor numerator and denominator for tax year 2002 must include $800,000, the gross receipts from the exchange as measured in 2002.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665 & 317.327
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-314.665(6)
Sales Factor; Inclusion of Income from Disposition of Intangible Assets; Determination of Primary Business Activity

(1) As provided in ORS 314.665, paragraph (6), the sales factor may or may not include gross receipts or net gains from the disposition of intangible assets, depending on what the taxpayer's "primary business activity" is.

(2) If a taxpayer files a separate Oregon excise tax return, the primary business activity is determined for that separate corporation. If the taxpayer files a consolidated Oregon return, the primary business activity is determined for the entire unitary group.

(3) A taxpayer's "primary business activity" is determined for a particular tax year based on consideration of criteria including, but not limited to, the following:

(a) The stated business in the articles of incorporation.

(b) The business category entered on the Securities and Exchange Commission Form 10-K of a publicly held corporation.

(c) The business designation in a "mission statement."

(d) The business activity with the greatest average investment in tangible and intangible assets from the balance sheet for the tax return.

(e) The business designation in advertising.

(f) The business with the greatest amount of net sales of product and services as reported under Generally Accepted Accounting Principles.

(g) The business activity from which working capital is transferred to investments in intangible assets and to which the working capital and income is returned.

Example 1: A Corporation (A) is headquartered in Seattle Washington and manufactures and sells household appliances. A has a warehouse in Portland, Oregon. It has large amounts of temporary excess working capital each year during the summer after big spring sales and before buying raw materials in the fall. Employees of A at its headquarters invest the temporary excess working capital in short-term debt instruments that are bought and sold each week for a three month period before the invested principal and any earnings are returned to the working capital of the manufacturing business. The income from the investment activity is business income. B's primary business activity is the production and sale of tangible personal property, not the purchase of, holding of, dealing in or sales of intangible assets. A must include the net gain from sales of short-term debt instruments in its sales factor.

(4) When some criteria for a corporation indicate the primary business activity is dealing in intangible assets while other criteria indicate the primary business activity is the production or sale of tangible property or the provision of services, more weight will be given to criteria reflecting what the corporation actually did during the tax year as opposed to what the corporation did in the past or represents itself as doing.

Example 2: For the current tax year, over 60 percent of B Corporation's (B's) assets are invested in intangible oil royalty rights and over 70 percent of B's net sales come from the sale of intangible oil royalty rights. The SIC code on its last 15 corporate tax returns has been for "Oil Royalty Traders." B's 25 years old articles of incorporation and it's current advertising indicate that B is in the business of selling petroleum products. B's primary business activity is the acquisition, holding and disposal of intangible assets and it must include the gross receipts from oil royalties and the sale of oil royalty rights in the sales factor on it's Oregon return.

(5) The provisions of this rule do not apply to financial corporations subject to the provisions of OAR 150-314.280-(N).

Stat. Auth.: ORS 305.100
Stats. Implemented.: ORS 314.665
Hist.: REV 12-2000, f. 12-29-00, cert. ef. 12-31-00

150-314.665(6)(a)
Sales Factor for Affiliated Group: Inclusion of Gross Receipts From Disposition or Holding of Intangible Assets

(1) If a taxpayer's primary business activity, as defined in OAR 150-314.665(6), produces income from the disposition (*i.e.*, sale, exchange, redemption) or holding of intangible assets, and the taxpayer files an Oregon consolidated return (See OAR 150-317.715(3)(b)), the gross receipts from the disposition or holding of the intangible assets must be included in the sales factor numerator and denominator if:

(a) The taxpayer is the only member of a unitary affiliated group that is subject to Oregon taxation of income; or

(b) The taxpayer is one of a number of members of a unitary affiliated group subject to Oregon taxation of income, and the unitary group as a whole is engaged in a primary business activity that produces income from the disposition or holding of intangible assets.

(2) If the taxpayer filing an Oregon consolidated return is a member of a unitary group that includes one or more corporations not subject to Oregon taxation, and the nonsubject corporations' primary business activity produces income from the disposition or holding of intangible assets, the gross receipts from that activity must be excluded from the sales factor.

Stat. Auth.: ORS 305.100
Stats. Implemented.: ORS 314.665
Hist.: REV 1-2001, f. 7-31-01, cert. ef. 8-1-01

150-314.665(6)(b)
Sales Factor: Definition of Net Gains

For purposes of including net gains from the sale, exchange, or redemption of intangible assets not derived from the taxpayer's primary business activity in the sales factor under ORS 314.665(6)(b), "net gains" means the excess of gains over losses from asset sales. If the net of gains and losses results in a negative amount, the correct amount for factor purposes is zero.

Example 1: Heavy Equipment Manufacturing Corporation (Heavy) sold two short-term investments in commercial paper during calendar tax year 2000. The first sale resulted in a net gain of $100,000, and the second resulted in a net loss of $30,000. The income from selling the commercial paper was not derived from Heavy's primary business activity of manufacturing, and Heavy must include net gain of $70,000 ($100,000 gain less $30,000 loss) in the sales factor.

Example 2: Assume the same set of facts as in Example 1, except that the first sale resulted in a $100,000, loss and the second sale resulted in a $30,000 gain. The net result of sales of intangible assets not derived from the taxpayer's primary business activity is a negative amount, so no amount

of net gain from sale of intangible assets is included in Heavy's sales factor.
Stat. Auth.: ORS 305.100
Stats. Implemented.: ORS 314.665
Hist.: REV 1-2001, f. 7-31-01, cert. ef. 8-1-01

150-314.665(6)(c)
Sales Factor: Definition of Gross Receipts

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.653, Article I, section 2 and 314.605 to 314.667.

(1) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction which produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Except as provided in ORS 314.665(6)(a), gross receipts, even if business income, generally do not include such items as:

(a) Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of Deposit or similar marketable instrument;

(b) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(c) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(d) Damages and other amounts received as the result of litigation;

(e) Property acquired by an agent on behalf of another;

(f) Tax refunds and other tax benefit recoveries;

(g) Pension reversions;

(h) Contributions to capital (except for sales of securities by securities dealers);

(i) Income from forgiveness of indebtedness; or

(j) Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(2) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of ORS 314.610 through 314.667.

(3) This rule applies to all tax years open to adjustment on or after December 31, 2003.

Stat. Auth.: ORS 305.100, 305.653, Article I, section 2, 314.605 - 314.667
Stats. Implemented: ORS 315.164
Hist.: REV 4-2003, f. & cert. ef. 12-31-03

150-314.670-(A)
Modified Factors for Publishing

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material. The rule adopts a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of these items by the states.

(1) In General. Except as specifically modified by this rule, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity will be determined pursuant to ORS 314.650 through 314.665 and the rules thereunder.

(2) Definitions. The following definitions are applicable to the terms contained in this rule.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material will be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither of such terms will mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" will include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(3) Apportionment of Business Income.

(a) The Property Factor.

(A) Property Factor Denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business will be included in the denominator of the property factor.

(B) Property Factor Numerator.

(i) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period will be included in the numerator of the property factor.

(ii) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period will be included in the numerator of the property factor in the ratio that the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere. The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state will be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outerjurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state will be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(iii) Outer-jurisdictional property will be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of $400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the total original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state.

Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and such mobile property was used in this state for 95 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state: $3,000,000

Value of mobile property:

95/365 (or .260274) x $4,000,000: $1,041,096

Value of leased satellite property used in-state:

.02 x $100,000,000: $2,000,000

Total value of property attributable to state: $6,041,096

Total property factor %: $6,041,096/$500,000,000: 1.2082%

(b) The Payroll Factor. The payroll factor will be determined in accordance with OAR 150-314.660 and the rules thereunder.

(c) The Sales Factor:

(A) Sales Factor Denominator. The denominator of the sales factor will include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under ORS 314.665 and the rules thereunder.

(B) Sales Factor Numerator. The numerator of the sales factor will include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(i) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(ii) Except as provided in subsection (3)(c)(B)(iii), gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof will be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor will be determined for each individual publication by the taxpayer of printed material containing advertising and will be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication will be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor will be determined from the taxpayer's books and records.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Department of Revenue may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph (3)(c)(B)(ii). Such attribution will be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method will be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state, will be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

Stat. Auth.: ORS 305.100 & 314.670

Stats. Implemented: ORS 314.670

Hist.: REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-314.675
Apportionment of Net Loss

(1) When a corporation or consolidated group of corporations is taxable both within and without this state, their Oregon net loss must be computed using the apportionment provisions in ORS 314.280, or 314.610 through 314.667.

(2) If a corporation filed a combined return (prior to 1986) or a separate (not consolidated) return in the year of the loss, and files a consolidated return in the year to which the loss is carried, the net loss deduction may be limited. The allowable net loss deduction cannot exceed the Oregon net income attributed to the corporation with the net loss carryover. For the purpose of determining the net loss deduction allowable, the consolidated Oregon net income must be attributed to the corporation based on its share of the Oregon apportionment percentage. The following example demonstrates the application of this section: **Example**: [Example not included. See ED NOTE].

(3) If a corporation was included in a consolidated return in the year of the net loss and now files a separate return, or is included in a different consolidated return in the year to which the net loss is carried, the consolidated Oregon net loss must be apportioned to the corporations included in the net loss return for purposes of determining the allowable net loss carryover. The consolidated Oregon net loss must be apportioned to the corporations with taxable activities in Oregon, based upon their Oregon apportionment percentages. The net losses computed can be carried forward and deducted in subsequent years' returns (subject to the carryover limitations specified in OAR 150-317.476(4)). The following example demonstrates the application of this section: **Example**: [Example not included. See ED NOTE].

(4) Net losses that are attributed to corporations which continue to be included in the same consolidated Oregon return can be deducted fully against the Oregon consolidated net income. **Example**: [Example not included. See ED NOTE].

(5) Paragraphs (2), (3), and (4) of this rule apply to Oregon net losses carried forward and deducted in tax years beginning on or after January 1, 1986.

(6) The net loss carryover to a consolidated return when the loss is from a separate return of a prior year in which the taxpayer should have filed a combined or consolidated return must be recalculated as if the taxpayer had filed a combined or consolidated return.

Example: Corporation A reported a loss in 1999 on a separate return. Corporation A should have filed a consolidated return with Corporation B in 1999 A 1999 consolidated return would have resulted in net income. The net loss carryover for Corporation A from 1999 is zero.

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.675

Hist.: 1-65; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; REV 5-2000, f. & cert. ef. 8-3-00

150-314.684(4)
Sales Factor for Interstate Broadcasters

(1) In general, if a taxpayer broadcasts to subscribers or to an audience that is located both within and without this state and the broadcaster is taxable in another state under the provisions of ORS 314.620, then the interstate broadcaster is required to use an audience factor to determine the amount of gross receipts from broadcasting attributable to this state.

(2) The audience factor for television, radio, or network programming shall be determined by the ratio that the taxpayer's in-state

viewing or listening audience bears to its total United States viewing or listening audience. In the case of television, the audience factor shall be determined by reference to the rating statistics as reflected in such sources as Arbitron, Nielsen or other comparable resources or by the average circulation statistics published annually in the Television and Cable Factbook, "Stations Volume" by Television Digest, Inc., Washington, D.C., provided that the source selected is consistently used from year to year for such purpose. In the case of radio, the audience factor shall be determined by reference to rating statistics as reflected in such sources as Arbitron, Birch/Scarborough Research, or other comparable resources, provided that the source selected is consistently used from year to year for such purpose.

(3) If none of the forgoing sources are available, or if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of the broadcast area located within this state bears to the population of the broadcast area in all states.

(4) Gross receipts from live telecasts and films in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the number of subscribers located in this state for such cable television system bears to the total number of subscribers of such cable television system in the United States. If the number of subscribers cannot be accurately determined from the records maintained by the taxpayer, the audience factor ratio shall be determined on the basis of the applicable year's subscription statistics published in Cable Vision, International Thompson Communications, Inc., Denver, Colorado, if available, or, if not available, by other published market surveys.

(5) If none of the foregoing resources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of the area served by the cable system service located within this state bears to the population of the area served by the cable system in all states in which the cable system has subscribers.

(6) To the extent that the gross receipts from such live television broadcasting, film, or radio programming, as determined pursuant to paragraphs (2) through (5), include receipts derived from broadcasts to audiences located outside the United States ("foreign-based receipts"), the total gross receipts against which the audience factor shall be applied shall be modified so that such foreign-based receipts are not used to affect the amount of receipts that are to be apportioned to the state. Such modification shall consist of deducting from total receipts, prior to the application thereto of the audience factor, that amount of receipts derived from broadcasts to audiences located outside the United States.

Example: XYZ Television Network Co. has gross receipts from all broadcasting of films of $1 billion of which a total of $200,000,000 was derived from advertising receipts and license fees attributable to releases of its films in foreign television markets and $800,000,000 attributable to the United States market. Assume that the foreign countries into which its programming has been telecast or sold or licensed for telecast would have jurisdiction to impose their income tax upon XYZ Television Network Co., then its in-state gross receipts attributable to its telecasting activity would be determined as follows: $1,000,000,000 – $200,000,000 ($800,000,000) = (audience factor).

(7) Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in OAR 150-314.665(2)-(A) and 150-314.665(2)-(B).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.684
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-314.686
Interstate Broadcasters: Net Income Attributable to this State

(1) The allocation and apportionment provisions in ORS 314.610 to 314.670 as modified by ORS 314.684, are required for interstate broadcasters unless the application of those provisions does not fairly and accurately reflect the extent of the taxpayer's business activities in this state. The burden is on the taxpayer to show that the allocation and apportionment provisions do not fairly and accurately reflect their activities within the state.

(2) If the application of the allocation and apportionment provisions do not fairly and accurately reflect the extent of the taxpayer's business activities in this state, Oregon net income shall be computed using segregated accounting.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.686
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

Partnerships

150-314.714(3)
Consistent Treatment of Partnership Items

(1) General Rule.

(a) In general, the treatment of a partnership item on the partner's return must be consistent with the treatment of that item by the partnership in all respects including the amount, timing, and characterization of the item. The following examples illustrate instances of inconsistent treatment:

Example 1: B is a partner of Partnership P. Both B and P use the calendar year as the taxable year. In December 1993, P receives an advance payment for services to be performed in 1994 and reports this amount as income for calendar year 1993. However, B reports B's distributive share of that amount on B's income tax return for 1994 and not on B's return for 1993. B's treatment of this partnership item is inconsistent with the treatment of the item by P.

Example 2: Partnership P incurred certain start-up costs before P was actively engaged in business. P capitalized these costs. C, a partner in P, deducted C's proportionate share of these start-up costs. C's treatment of the partnership expenditure is inconsistent with the treatment of the item by P.

(b) If a partner does not treat a partnership item on the partner's return in a manner that is consistent with the treatment of that item by the partnership, and the partner does not notify the department in the manner described in section (2) of this rule, the department may conform the partner's return to the partnership return and assert against the partner a deficiency as described in ORS 305.265. The notice of deficiency may be issued in this case without the department opening a formal examination or an audit of either the partnership return or the partner's return.

(c) Partner notification of an inconsistent treatment of a partnership item does not bind the department into acceptance of the partner's treatment of that item.

(2) Manner of Notification of Inconsistency. If a partner does not treat a partnership item on the partner's return in a manner that is consistent with the treatment of that item by the partnership, the partner must notify the department of the inconsistent treatment. Such notification shall be made by attaching a statement to the partner's return. The statement must contain the following information:

(a) Partner name and identification number;

(b) Partnership name and identification number;

(c) Beginning and ending date of partner's tax year;

(d) Beginning and ending date of partnership's tax year;

(e) A description of each inconsistently treated item. Include whether the inconsistent treatment is in the amount, timing or characterization of the item;

(f) The amount of each inconsistent item as shown on Schedule K-1;

(g) The amount of each inconsistent item as reported on the partner's return;

(h) A complete explanation as to the reason for treating the items in an inconsistent manner.

(3) Multiple Inconsistencies. A partner who reports the inconsistent treatment of partnership items on the partner's return is protected from computational adjustments under section (1) of this rule only with respect to those partnership items the inconsistent treatment of which is reported. Thus, if a partner notifying the department with respect to one item fails to report the inconsistent treatment of another item, the partner is subject to a computational adjustment with respect to that latter item.

Example: Partner A of Partnership P treats a deduction and a capital gain arising from P and A's return in a manner that is inconsistent with the treatment of those items by P. A reports the inconsistent treatment of the deduction but not of the capital gain. A is subject to a computational adjustment under section (1) of this rule with respect to the capital gain.

(4) Adjustments Not Limited. If the department conducts a formal examination or audit of a return of a partner whose partnership items have been reported as being treated inconsistently, the department is not limited to making adjustments that merely conform the partner's return to the partnership return.

Example: Partnership P allocates to E, one of its partners, a loss of $8,000. E. however, claims a loss of $9,000 and reports the inconsistent treatment. As a result of an examination of E's return, the department may issue a deficiency notice which could include reducing the loss to $3,000.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.714
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-314.722
Publicly Traded Partnerships Taxed as Corporations

(1) "Publicly traded partnership" means a partnership with interests traded on an established securities market or readily tradable on a secondary market (or its substantial equivalent), including master limited partnerships, under the provisions of IRC 7704. Oregon adopted the provisions of IRC 7704 retroactively.

(2) Publicly traded partnerships deriving less than 90 percent of their gross income from qualifying passive-type income sources are treated as corporations for federal and Oregon tax purposes. Examples of qualifying income sources include interest, dividends, real property rents, gain from the disposition of real property, mining and natural resource income, and gain from the disposition of capital assets or IRC 1231(b) property held for the production of such income.

(3) A publicly traded partnership that was not an existing partnership on December 17, 1987, shall be treated as a corporation for tax years beginning after December 31, 1987.

(4) A publicly traded partnership that was an existing partnership on December 17, 1987, shall be treated as a corporation for tax years beginning after December 31, 1997.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.722
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-314.724
Partnership Information Returns

(1) Partnership required to file. A partnership shall file for Oregon an information return of its business activity and include other information as required by section (2) of this rule if the partnership:

(a) Has income that is derived from or connected with sources within Oregon; or

(b) Has one or more Oregon resident partners during the taxable year of the partnership.

(2) Information Required. Every partnership required to file a return under section (1) of this rule shall file with Oregon:

(a) An Oregon Form 65 (Oregon Partnership Return of Income).

(b) An Oregon Depreciation Schedule if Oregon depreciation is different than federal.

(c) A copy of federal Form 1065 (U.S. Partnership Return of Income) and all attachments filed for federal. See section (3) for information regarding attachment of Schedule K-1 (Partner's Share of Income, Credits, Deductions, etc.).

(d) A schedule showing the disposition of all assets and liabilities if this is the final return of a terminated partnership. The schedule shall include each asset's Oregon adjusted basis and fair market value.

(3) Attachment of Federal Schedule K-1.

(a) The partnership shall attach a copy of each partner's federal Schedule K-1 if any of the following occurs during the partnership's taxable year:

(A) The partnership incurs a net loss (including capital losses or passive losses);

(B) There are changes to either the ownership structure or the profit/loss sharing percentages of the partnership; or

(C) Any Oregon modifications or amounts shown on the federal Schedule K (including guaranteed payments) are not divided according to each partner's partnership share of profits and losses.

(b) Exception. Partnerships that have no income connected with or derived from sources within Oregon and have no activity within Oregon shall file a copy of the partner's federal Schedule K-1 only when:

(A) The partner was an Oregon resident partner at some time during the taxable year of the partnership; and

(B) Any of the situations described in paragraph (3)(a) occur. All other filing requirements of section (2) of this rule must still be satisfied.

(c) Substitute Schedule K-1. If the number of Schedule K-1s required to be attached to the Oregon return exceeds ten, the partnership shall attach a summary of partner information in lieu of attaching each partner's Schedule K-1. The summary shall include the partner's names, social security numbers or federal identification numbers, addresses, and profit/loss sharing percentages.

(4) Multiple Nonresident Income Tax Returns. See ORS 314.760 for multiple nonresident income tax return filing requirements.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.724
Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-314.724(3)
Partnership Penalty

(1) A penalty is assessable against a partnership that transacts business in Oregon, but fails to timely file a partnership return (including extensions) or fails to show the required information as defined in ORS 314.724. Under ORS 305.229, a penalty will not be imposed unless the partnership fails to file or to supply required filing information after requested in writing by the department to do so.

(2) The penalty is $50 per month or part of a month that the partnership return is late or incomplete up to a maximum of five months. The penalty amount is multiplied by the total number of partners in the partnership during any part of the tax year for which the return is due. Although the penalty is assessed against the partnership each partner is individually liable for the penalty to the extent that the partner is liable for partnership debts generally.

Example 1: A partnership return for 2006 is due April 17, 2007. However, the return is not filed until July 3, 2007. No penalty will be assessed even though the partnership return is filed late.

Example 2: A partnership return for 2006 is due April 17, 2007. After written requests to file by the department, the partnership still does not file a return. The partnership has one general partner and three limited partners. Penalty will be assessed for failure to file a return. The penalty computation is shown below:

$50 - 5 months - 4 partners = $1,000 penalty

(3) The penalty described above is in addition to any other penalty provided by law. Any partnership assessed with this penalty may appeal to the director as provided in ORS 305.275.

(4) The department may waive all or any part of the penalty if the partnership can show that there was a circumstance beyond the partnership's control that caused the failure to file a complete or timely return. See OAR 150-305.145(4).

[ED. NOTE: Computations referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.724
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-316.467; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-314.732(2)(c)
Corporation Tax Credits — Converting a C Corporation to an S Corporation

Tax credits carried forward from a tax year of C corporation status are only available to offset corporate tax liabilities when S corporation status is elected. They are not available for pass through to S corporation shareholders. In addition, Oregon corporate taxes attributable to an S corporation's built-in gains or C corporation taxes following termination of S corporation status can be offset by such carryover credits. S corporation taxes attributable to excess net passive investment income cannot be offset by carryover credits.

Example: Corporation Z is a C corporation in 1988 with a $6,000 tax liability. Corporation Z qualifies for a $7,000 tax credit for investment in a dependent care facility. The $1,000 unused tax credit is carried forward to 1989. Corporation Z elects to be an S corporation in 1989 and has a corporate tax liability of $5,000 from built-in gains. Corporation Z shall offset its tax with the $1,000 credit carry forward. The credit carry forward is not available for pass through to the shareholders.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.732
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-314.732(2)(d)
Corporation Tax Credits — Converting an S Corporation to a C Corporation

Tax credits passed through to shareholders and not used entirely to offset the shareholders' tax liabilities in the year of pass-through shall be carried forward by the shareholders. Such unused credits may not offset corporation tax liabilities in future years when C corporation status has been elected.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.732
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-314.752
Business Tax Credits Available to S Corporation Shareholders

The following credits may be claimed by shareholders of an S corporation filing individual returns, as provided in subsection (2) of ORS 314.752, but are not available to shareholders included in a composite return as provided in subsection (2)(b) of OAR 150-314.775:

(1) Voluntary removal of riparian land from farm production credit provided by ORS 315.113,

(2) On-farm processing facilities credit provided by ORS 315.119,

(3) Employee and dependent scholarship program payments provided by ORS 315.237,

(4) First break program credit provided by ORS 315.259,

(5) Individual development accounts credit provided by ORS 315.271,

(6) Emission reducing production technology or process (pollution prevention) credit provided by ORS 315.311,

(7) Long term care insurance credit provided by ORS 315.610,

(8) Trust for cultural development account contributions credit provided by ORS 315.675,

(9) Lending institution loans for affordable housing credit provided by ORS 317.097,

(10) Energy conservation loans to residential fuel oil customers or wood heating residents credit provided by ORS 317.112,

(11) Long term enterprise zone facilities credit provided by ORS 317.124,

(12) Farmworker housing loans credit provided by ORS 317.147,

(13) Contribution of computers or scientific equipment for research to educational organizations credit provided by ORS 317.151,

(14) Qualified research activities credit provided by ORS 317.152,

(15) Alternative qualified research activities credit provided by ORS 317.154,

(16) University venture development fund contributions credit provided by ORS 315.521,

(17) Water transit vessels credit provided by ORS 315.517, and

(18) Film production development contributions credit provided by ORS 315.514.

Stat. Auth.: ORS 305.100 & 314.752
Stats. Implemented: ORS 314.752
Hist.: REV 2-2003, f. & cert. ef. 7-31-03; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09

Nonresident Return by Shareholder or Partner

150-314.775
Definitions for Composite Tax Returns and Pass-through Entity Withholding

The following definitions apply for purposes of ORS 314.775 to 314.784, this rule, and OAR 150-314.778 to 150-314.784:

(1) "Disregarded entity" is an entity that is not recognized for income tax purposes and all items related to the entity are reported on the owner's income tax return. Examples of disregarded entities are:

(a) Single member limited liability company (LLC), and

(b) Grantor trusts.

(2) "Distributive income" means the net amount of income, gain, deduction, or loss of a pass-through entity for the tax year of the entity and includes those items directly related to the entity that are considered in determining the federal taxable income of the owner or, in the case of an owner that is a corporation, would be included in its federal taxable income if the corporation were an individual.

(3) "Electing owner" means a nonresident owner that elects to participate in an Oregon composite tax return filed by a pass-through entity. An electing owner also includes the nonresident owner of a disregarded entity.

(4) "Modified distributive income" means the distributive income as defined in section (1) of this rule, of a pass-through entity, with the modifications provided in ORS Chapter 316 and other Oregon law that directly relate to those items taken into consideration by the pass-through entity in arriving at its distributive income. Such modifications include, but are not limited to, any Oregon modification necessary for depreciation, depletion, gain or loss difference on the sale of depreciable property, and any modification for federal tax credits, and do not include the federal tax subtraction, itemized deductions, and the Oregon standard deduction. Guaranteed payments are treated as a business income component of the entity's distributive income and attributed directly to the owner receiving the payment.

(5) "Nonelecting owner" means a nonresident owner of a pass-through entity that is eligible, but does not elect to participate in a composite return and who is required to file an Oregon tax return.

(6) "Oregon-source distributive income" means the portion of the entity's modified distributive income that is derived from or connected with Oregon sources. For entities operating in Oregon and one or more other states, Oregon-source distributive income is determined by attributing to Oregon sources that portion of the modified distributive income of the entity, as defined in section (3) of this rule, determined in accordance with the allocation and apportionment provisions of ORS 314.280 or 314.625 to 314.675.

(7) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes. Examples include:

(a) A partnership;

(b) An S corporation;

(c) A limited liability company that is treated as one of the above for tax purposes; and

(d) A trust that has been established or maintained primarily for tax avoidance purposes, including: an abusive tax shelter as defined in ORS 314.402, an entity subject to a penalty for promoting an abusive tax shelter under Internal Revenue Code (IRC) section 6700, and a tax shelter as defined under IRC section 6662 and related Treasury regulations.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.775
Hist.: REV 3-2005, f. 12-30-05, cert. ef 1-1-06; REV 2-2006, f. & cert. ef. 7-31-06, Renumbered from 150-2005 OL, Ch. 387; REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.778
Oregon Composite Tax Return

(1) General provisions. A pass-through entity (PTE) doing business in or deriving income from sources within this state is required to file an Oregon composite tax return if requested by one or more electing owners. Estimated tax payments are required for the composite return if the total Oregon tax due for any electing owner is expected to be $1,000 or more for an individual; or $500 or more for a corporation.

(a) Computation of tax. Each PTE filing a composite return on behalf of electing owners must calculate the tax for each electing owner. The tax liability for each electing owner on the composite return, determined without regard to the tax credits allowed under subsection (1)(b) of this rule, is calculated by applying the Oregon tax rates based on the owner's filing status to the difference between the owner's share of the entity's Oregon-source distributive income for the taxable year and the owner's self-employment tax deduction, as provided for in subsection (1)(b) of this rule. If distributive income is apportioned, the deduction must also be apportioned by multiplying the owner's federal deduction for one-half self-employment tax (attributable to the owner's share of the entity's net earnings from self-employment) by the apportionment percentage provided in ORS 314.650 through 314.675. The PTE will report on the Oregon composite return the tax computed for each electing owner and total amounts for all electing owners.

(b) Credits and deductions. Below is a list of items that may or may not be allowed for electing owners. [Table not included. See ED. NOTE.]

(c) Losses.

(A) Net operating losses for Oregon nonresidents are computed under ORS 316.028. A PTE that has filed an Oregon composite tax return on behalf of nonresident individual owners may file amended returns to carry back the Oregon net operating losses incurred by the PTE. A schedule must be attached to any return filed under these provisions indicating the taxpayers affected and calculations of the loss amounts. These losses may also be carried forward. The allowed carryback and carryforward periods (including elections to forego the carryback period) are the same as provided under Internal Revenue Code section 172. The election to forego the carryback period must be made by attaching a statement to the Oregon composite return filed on or before the due date (including extensions) of the return for the loss year. Corporations are not allowed to carry back a net operating loss (ORS 317.476).

(B) Any refund of tax made pursuant to an original or amended composite return filed under these provisions will be paid to the PTE, regardless of changes in ownership or changes in the identity of nonresidents participating in an Oregon composite filing.

(2) Election to participate in an Oregon composite tax return. The following provisions apply:

(a) The owner must make a separate election for each tax year;

(b) The owner must not have been a resident of Oregon at any time during the owner's tax year;

(c) The owner is considered to have made the election on the date the PTE files the composite return that includes the electing owner;

(d) By making the election, the owner elects to have the owner's Oregon tax liability paid and reported by the PTE; and

(e) An electing owner is ultimately liable for tax, penalty and interest if the PTE fails to file a composite tax return or pay the tax on behalf of the owner.

(f) An electing owner may be a disregarded entity. The PTE must look to the owner of the disregarded entity to determine whether the owner of the disregarded entity will choose to join in the composite filing.

Example 1: Hermiston Partners is owned by four individuals, one grantor trust, and one single-member LLC. Both of these owners are disregarded entities. Therefore, Hermiston Partners will look to the nonresident owner of each disregarded entity to determine if that nonresident owner elects to join in the filing of a composite return.

The grantor trust is owned by a nonresident individual. Hermiston Partners looks to the individual who owns the grantor trust. Hermiston Partners must allow the individual to join in the filing of the composite return. Hermiston Partners will use the individual's name and Social Security number on the composite, not the name or tax identification number of the disregarded trust. If the individual doesn't join in the composite filing or file an affidavit, Hermiston Partners must send in estimated payments on the individual's behalf as required in OAR 150-314.781.

The single-member LLC is solely owned by another partnership, Ontario LP. A partnership can't join in the filing of a composite return. Thus, Hermiston Partners cannot include Ontario LP in the composite return and is not required to send in estimated payments on behalf of the LP. Ontario LP is the entity responsible for filing a composite return or sending estimated payments for its owners.

(3) Filing and payment requirements.

(a) Due date. The Oregon composite tax return is due the 15th day of the fourth month after the close of the tax year of the majority of the electing owners, in accordance with ORS 314.385.

Example 2: Around-the-Bend LLC (ATB) has a tax year ending June 30. The electing owners consist of four individuals and three corporations. Because the individuals are all calendar year taxpayers, the majority of the electing owners have a calendar tax year which ends December 31. Therefore the composite return and any estimated payments are due using a calendar tax year. For tax year 2010, the composite return will include the income reported by ATB for its 2009 tax year ending June 30, 2010. The 2010 composite return that ATB will file on behalf of its owners is due April 15, 2011.

Example 3: Coast Around Oregon Incorporated (CAO) is an S Corporation with a tax year ending October 31. The electing owners consist of 15 individuals, so they are all calendar year taxpayers. For tax year 2010, the composite return will include the income reported by CAO for its 2009 tax year ending October 31, 2010. The 2010 composite return that CAO will file on behalf of its owners is due April 15, 2011.

(b) Payment of amounts due. Payment of the amount due is made by the PTE on the owner's behalf and must accompany the filing of the Oregon composite tax return in accordance with ORS 314.395. The payment must include the tax due plus any penalty or interest provided by Oregon law.

(c) Extensions of time to file. If the entity is granted a federal or Oregon extension of time to file the entity's return (partnership return or S corporation return), an extension for filing the Oregon composite return is allowed. This is true even if the composite return reports the income in a different tax year than the entity's partnership or S corporation return. The entity must keep a copy of the federal extension with its tax records. The extension to file the composite return is 6 months from the composite return due date regardless of the length of extension the entity received for its partnership or S corporation tax return.

Example 4: Pendleton LLC filed for extension for its 2012 fiscal tax year ending June 30, 2013 (2012 partnership return). The partnership return had a due date of October 15, 2013. Partnerships receive a 5-month extension so the due date with extension is March 15, 2014 for the partnership return. The owners of Pendleton LLC are calendar year filers. Therefore, they report the income in tax year 2013. The nonresident owners that elect to participate in the 2013 composite return filed by Pendleton have an extension to file because the partnership has an extension to file for the partnership return. The 2013 composite return reporting this income is due April 15, 2014; however, with the extension, it is due October 15, 2014. The 6-month extension applies, even though the income is reported in a different tax year for the owners and Pendleton LLC received a 5-month extension for filing its partnership return.

(d) An electing owner may file a separate tax return without revoking the election to join in the filing of a composite return. The income reported on the composite return is subtracted on the electing owner's separate return and tax is paid only on the Oregon source income not reported on the composite return.

(4) Ineligibility or revoking an election to participate in a composite return.

(a) One or more owners may revoke the election to join in the Oregon composite tax return after the Oregon composite tax return has been filed. The revocation of the election must be made within three years from the date the Oregon composite tax return was filed. To revoke a previous election:

(A) The PTE must file an amended Oregon composite return removing the owner and request a transfer of any payment made on the owner's behalf to the now nonelecting owner's account, and

(B) The owner must file a separate return with the department showing all items of income and deduction from the PTE. This separate return will be treated as an original return and, if filed after the due date, any tax liability shown on the return is subject to interest and penalties in the same manner as any other delinquently filed original return. The decision to revoke a previous election by one or more owners has no effect on the election of the remaining owners.

(b) If any of the owners becomes ineligible, revokes an election, or declines to participate in filing an Oregon composite tax return, and the PTE made tax payments on the owner's behalf, the PTE must submit a written transfer request to the department. The department will transfer the tax payment to the account of the nonresident owner only if the entity submits such a written request to the department. The request must contain:

(A) The name and federal employer identification number of the entity that made the tax payment(s);

(B) The name and social security number of the nonresident owner; and

(C) The specific dollar amount to transfer to the account of the owner.

(c) An owner who does not or cannot elect to participate, or who revokes a prior election, is subject to withholding on the owner's share of the Oregon source distributive income under ORS 314.781 and OAR 150-314.781.

(5) Payment of tax on behalf of electing owners. An entity may be required to make quarterly tax payments to the department on behalf of all electing owners. The tax liability required to be paid is the sum of each electing owner's estimated tax liability for that quarter that is attributable to each owner's interest in the entity. In determining the electing owner's tax liability, the provisions of ORS 314.505 to 314.525 or 316.579 to 316.589 regarding calculation of estimated tax apply. The entity must remit the tax payments to the department using forms and instructions provided by the department.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.778

Hist.: REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-314.781
Pass-through Entity Withholding Requirements

(1) Withholding requirement. A pass-through entity with Oregon-source distributive income and one or more nonresident owners that have no other Oregon-source income, is required to withhold tax on behalf of the owner unless that owner makes an election as described in OAR 150-314.778 or meets an exception described in 150-314.784. "Tax payment" or "owner payment" means pass-through entity withholding, which is an estimated tax payment sent on behalf of the owner. The entity must withhold tax as follows:

(a) For nonelecting owners subject to tax under ORS Chapter 316, each owner's share of estimated Oregon-source distributive income for the taxable year multiplied by the highest percent in 316.037; and

(b) For nonelecting owners subject to tax under ORS Chapter 317 or 318, each owner's share of estimated Oregon-source distributive income for the taxable year multiplied by the rates in 317.061.

(2) Information retention requirement. The pass-through entity must retain in its records the information listed in this section and submit it to the Department of Revenue on request:

(a) Calculation of the amount required to be withheld pursuant to this rule;

(b) Whether payments were submitted in addition to the quarterly withholding tax amounts required to be remitted under section (4) of this rule; and

(c) A detailed summary of the nonelecting owner's share of the aggregate withholding tax payments made by the pass-through entity for the taxable year and the nonelecting owner's share of the aggregate additional withholding tax liability paid. See the annual report requirement in section (5) of this rule.

(3) Information reporting to owner requirement. The pass-through entity, by the due date of its information return, must provide each applicable nonelecting owner with an information statement containing the owner's share of the entity's withholding tax payments to be claimed as estimated tax payments on the owner's tax return.

(4) Periodic remittance requirement.

(a) The entity must remit amounts required to be withheld to the department on a quarterly basis using a method approved by the department. The quarterly withholding tax remittance amounts are generally the sum of:

(A) The highest marginal tax rate for the end of the entity's tax year in ORS 316.037 multiplied by the sum of the noncorporate nonelecting owner's estimated share of the entity's Oregon-source distributive income and then multiplied by 25 percent; and

(B) The applicable rate in ORS 317.061 multiplied by the sum of the corporate nonelecting owner's estimated share of the entity's Oregon-source distributive income and then multiplied by 25 percent.

(b) The due dates of these required payments are the 15th day of the 4th, 6th, 9th, and 12th month of the entity's tax year. Due dates are moved to the next business day when they occur on a weekend or legal holiday. Exception: Fiscal year entities whose owners are all noncorporate taxpayers using a calendar tax year can elect to use the due dates for the owners' calendar tax year instead. This is the 15th day of the 4th, 6th, and 9th month of the tax year and the 1st month of the succeeding tax year for the calendar year containing the entity's fiscal year end.

Example 1: Mountain LLC uses a fiscal tax year ending April 30th. Its fiscal year 2013 is from May 1, 2013 to April 30, 2014. Using its tax year, the quarterly payments are due August 15th, 2013; October 15th, 2013; January 15, 2014; and April 15, 2014. Since all of the owners of Mountain LLC are individuals using a calendar tax year, the LLC can opt to use the due dates for the owners' tax year instead. Because those owners report this income on their 2014 calendar year return, those due dates are: April 15, 2014; June 16, 2014; September 15, 2014; and January 15, 2015.

(5) Annual report requirement. For estimated tax payments due on or after January 1, 2013, the entity will submit an annual report. The report is due the last day of the second month following the close of the entity's tax year. The report will have the following information for each owner included in the pass-through entity withholding payments: owner's name, owner's federal tax identification number, owner's mailing address, owner's share of each payment made on the owner's behalf, and any additional information requested by the department in the filing instructions. The department may request other information as needed. The owners will not receive credit for payments made on their behalf until the annual report has been filed by the entity.

Example 2: ABC Partners, an Oregon partnership, has 2 nonresident owners who each own 25 percent of the partnership. One is an individual, Rachel, and one is a corporation, Eli & Alexandria Inc. (E&A). Because neither elects to join in filing a composite return and neither has filed an affidavit, ABC must withhold Oregon tax. ABC Partners estimates its Oregon-source distributive income for 2013 will be $1,500,000. For 2013, the entity will calculate the tax payment for each period based on the nonresident owners' share of 25 percent of $1,500,000 and the appropriate tax rate. Rachel's pass-through entity withholding is 9.9 percent (the highest marginal tax rate for 2013) multiplied by $375,000 multiplied by 25 percent. This is $9,281 (rounded) for each period. E&A's pass-through entity withholding is 6.6 percent multiplied by $375,000 multiplied by 25 percent. This is $6,188 (rounded) for each period. ABC Partners will add together the amounts estimated for all owners and send in one payment each period of $15,469. ABC Partners will submit these payments using its tax year. Since ABC Partners uses a calendar tax year, the due dates for each payment for tax year 2013 are April 15, June 17, September 16, 2013 and January 15, 2014. If ABC Partners was a fiscal year taxpayer, then it would submit pass-through entity owner payments by the estimated tax payment due dates for that fiscal tax year instead. At the end of its tax year, ABC Partners will submit an annual report. Since it has no changes to account for, it will show $9,281 of each quarterly payment belongs to Rachel and $6,188 of each quarterly payment belongs to E&A Inc.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.781

Hist.: REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 9-2012, f. 12-18-12, cert. ef. 1-1-13; REV 2-2013, f. & cert. ef. 3-28-13

150-314.784
Exceptions to Pass-through Entity Withholding Requirements

(1) A pass-through entity may be required to withhold tax on behalf of an owner unless the owner makes an election as described in OAR 150-314.778 or meets an exception described in this rule.

(2) A pass-through entity is not required to withhold income taxes for an owner if:

(a) The owner is an electing owner as defined in OAR 150-314.775;

(b) The owner's share of Oregon-source distributive income from the entity is less than $1,000;

(c) The owner made estimated tax payments the prior tax year based on the owner's share of Oregon-source distributive income from the entity and continues to make estimated tax payments for the current tax year;

(d) The entity is a publicly traded partnership, as defined in Internal Revenue Code section 7704(b), that:

(A) Is treated as a partnership for federal tax purposes; and

(B) Files an annual information report including the nonresident's name, address, social security number or taxpayer identification number, ownership percentage, and share of the federal income; or

(e) The owner files with the Department of Revenue a signed affidavit that contains:

(A) The owner's name, address, and social security number or tax identification number (i.e. federal employer identification number or Oregon business identification number);

(B) The entity's name and tax identification number;

(C) The entity's tax year and end date

(D) A statement that the owner agrees to file the owner's Oregon income or excise tax return and make timely payments of all taxes imposed with respect to the owner's share of the Oregon income of the entity; and

(E) Acknowledgement that the owner is subject to the jurisdiction of the State of Oregon for purposes of collection of unpaid income tax, penalties, and interest.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.784
Hist.: REV 10-2010, f. 7-23-10, cert. ef. 7-31-10

150-314.835
Divulging Particulars of Returns and Reports Prohibited

(1) This section applies generally to deputies, agents, officers, or other employees of the Department of Revenue. Disclosure of information from a taxpayer's filed return or report to a third person is prohibited under this statute, it being essential to encourage voluntary reporting and payment of taxes and to assure taxpayers that they will not suffer any adverse consequences of being frank and honest on their return. Other persons or entities having acquired information disclosed in a taxpayer's filed return or report pursuant to ORS 314.840(2) are bound by the same rules of secrecy under this section as any member of the Department of Revenue and are subject to the same penalties for violation of 314.835.

(2) Except as provided by ORS 314.840, it is illegal to divulge in any manner any particular set forth or disclosed in any report or return filed with the department in compliance with any law imposing a tax upon or measured by net income. Penalties are those provided in ORS 314.991. The meaning of "any particular" must be interpreted in its broadest concept to include, but not necessarily limited to, such items as the taxpayer's name, address, telephone number, any item or amount of income, deductions, refund amount, amount due, any information entering into the computation of tax, including the tax itself, or any credit or debit card number, card expiration date, personal identification number, password, bank account number and routing number if that information was obtained from a report or return to which ORS 314.835(1) applies.

(3) The disclosure of information from a report includes not only such reports as are required to be filed with the individual's return, but any report required under a law imposing a tax upon or measured by gross or net income, such as quarterly and reconciliation withholding reports filed by employers. Any information obtained from sources not covered by the prohibitions of ORS 314.835 or any other confidentiality provision in any law administered by the department may be released at the department's discretion, provided the information requested is necessary and is to be used for lawful purposes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.835
Hist.: 11-71; 11-73; 12-19-75; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 7-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; REV 8-2001, f. & cert. ef. 12-31-01

150-314.840
Information That May Be Furnished

(1) *Definitions*. For purposes of ORS 314.840 and this rule:

(a) "Taxpayer," includes:

(A) The executor or personal representative of a decedent's estate or a person who is appointed or authorized by law to pay the taxes of a decedent, and a trustee or other person who, by law, must pay the income taxes of a trust, and

(B) Any entity required to file a return with the department.

(b) An "authorized representative" is a person authorized to represent the taxpayer under ORS 305.230 and any of its related administrative rules.

(c) A "designee" is a person, firm, organization, or agency designated by a taxpayer to receive the taxpayer's confidential information. For entities, designations are to be made by an individual authorized by law to act for the entity.

(2) As permitted by law, the department may disclose and give access to information described in ORS 314.835 to certain categories of persons, including, but not limited to:

(a) *Department of Human Services:*

(A) Under provisions of ORS 412.094, the Department of Human Services may request in writing any information contained in the department's tax files as to the location, income, and property of parents who, according to the Department of Human Services, have abandoned or deserted or are failing to support their children receiving public assistance. The request must clearly specify the information desired and must supply the information the department requires. The request must contain a certification by the Department of Human Services that the information is being requested pursuant to ORS 412.094. The information must be used only for the purposes specified by the law authorizing the disclosure.

(B) Upon written request of the Department of Human Services, the department will disclose the names, addresses and social security numbers of applicants for elderly rental assistance under ORS 310.630 to 310.706 as authorized by ORS 314.860. The department must maintain a record of all requests for such disclosure. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(b) *Division of Child Support*. Under the provisions of ORS 412.094 and 180.320, the Division of Child Support of the Department of Justice may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in paragraph (2)(a)(A) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(c) *District Attorneys*. Under provisions of ORS 412.094 , the District Attorney of any county in the state may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in paragraph (2)(a)(A) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the law authorizing the disclosure.

(d) Corporations. The returns of a corporation will be open to inspection by any officer of the corporation or its authorized representative.

(e) Partnerships and Limited Liability Partnerships (LLPs). The return of a partnership or LLP will be open to inspection by any person who was a partner during any part of the tax year covered by the return, provided that a showing satisfactory to the department is made that the person was a partner during the tax year covered by the return. In the event of the death of a partner, the return of the partnership or LLP will be open to inspection by the executor as defined in ORS 118.005 who is responsible for filing an inheritance tax return with respect to the deceased partner. Any person requesting information under this subsection must make known to the department the reason for the request and the use to be made of the information.

(f) Limited Liability Companies (LLCs). Under ORS 63.810, an LLC is classified for tax purposes in the same manner as it is classified for federal income tax purposes. Therefore:

(A) If an LLC is classified as a corporation for tax purposes, the returns may be disclosed as provided in subsection (2)(d) above. Any manager or member-manager will be treated in the same manner as an officer except as otherwise provided in the LLC's organizational documents.

(B) If an LLC is classified as a partnership for tax purposes, the returns may be disclosed as provided in subsection (2)(e) above.

(g) *Registered Agents*. The department may serve an entity that has a registered agent any notice, demand, or process required or permitted by law to be served on the entity by serving the notice, demand, or process to the entity's registered agent on file with the Secretary of State or as otherwise determined by law.

(3) Conflicting Claims to a Dependency Deduction. The returns of two taxpayers claiming the same dependent(s) will be open to inspection by those two taxpayers as allowed in ORS 305.215.

(4) Husband and Wife Filing Separately. If a husband and wife have filed separate tax returns, neither spouse nor authorized representative will be permitted to inspect the separate return of the other spouse or to obtain any information from it or any related report without first having obtained written consent to do so from such other spouse except as provided in section (3) above.

(5) Taxpayer, Authorized Representative, or Designee. Upon request and unless otherwise prohibited by an Internal Revenue Service agreement, the department will permit the taxpayer, the taxpayer's authorized representative, or the taxpayer's designee to obtain copies of the taxpayer's income tax returns filed with the department for any tax year, copies of reports filed by the taxpayer in connection with such returns, and any other information that the department considers necessary in the administration of the tax laws. Upon request and payment of the charges set forth in OAR 150-192.440, the department will furnish copies of these documents. Such requests may be made in person, in writing, or by telephone, e-mail or other generally used means of communication.

(6) Taxpayer Authorization and Designation. Taxpayer authorization to disclose to a designee may be in writing, verbal, or implied. See OAR 150-305.193.

(a) The department will recognize that a person is authorized to represent the taxpayer upon the filing with the department or magistrate division of a document signed by the taxpayer clearly authorizing such representation, or if the magistrate division is satisfied that the person is so authorized. If the magistrate division accepts a document signed by a person on behalf of a taxpayer, or has issued an order declaring that the person is authorized to represent the taxpayer, the department will consider the magistrate division to be satisfied that the person is an authorized representative. Unless a written authorization by the taxpayer clearly provides otherwise, the department will presume the person is authorized to represent the taxpayer only with respect to the proceeding before the department or the magistrate division and will disclose only documents and information relating to the tax years at issue in that proceeding.

(b) Only the tax information that relates to the duty of an executor, a decedent estate's personal representative, a person who is appointed by law to pay the taxes of a decedent, or a trustee or other person who, by law, must pay the income taxes of a trust may be disclosed.

(c) *Power of Attorney*. The department may accept a signed power of attorney as consent from the taxpayer to disclose confidential information. The department may accept a signed power of attorney as a taxpayer's designation to appoint another individual as their agent. The department will not accept a federal power of attorney Form 2848 unless the taxpayer has specifically indicated that it applies to the Oregon Department of Revenue.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.840, 63.810, 63.130
Hist.: 11-71; 11-73; 12-19-75; 1-1-77; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; REV 2-1998, f. & cert. ef. 5-1-98; REV 6-2002(Temp), f. & cert. ef. 10-3-02 thru 3-31-03; REV 8-2002, f. & cert. ef. 12-31-02; Rev 4-2003, f. & cert. ef. 12-31-03; REV 10-2010, f. 7-23-10, cert. ef. 7-31-10

150-314.855
Rewards for Information

The Department, under the secrecy clause, ORS 314.835, cannot reveal to an informer whether or not the information offered is useful to the Department, and the Department can make no payment of an award until the additional tax recovered by virtue of the information has actually been paid and received. Informers must be advised in advance that they must rely on the Department for fair treatment and have no recourse, and that payments of rewards may be long delayed while issues involved in determination of tax liability are finally resolved.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 1955

Special Provisions

150-314.870
Combat Zone Benefits

The rule under OAR 150-316.789(2) shall be followed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.870
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

DIVISION 315

PERSONAL INCOME TAX CREDITS

150-315.068
Claim of Right Credit

(1) Credit qualifications. If you repaid income that was taxed in a prior year, you may be eligible for a credit on your Oregon return. This rule applies to repayments made on or after January 1, 2013 that are claimed on returns filed after the effective date of this rule. To claim the credit, you must:

(a) Claim a federal credit or deduction under Internal Revenue Code (IRC) section 1341; and

(b) Have paid Oregon tax in a prior year on the income that you repaid.

(2) Credit calculation. Your Oregon claim of right credit is the difference between the Oregon tax you paid in the prior year and the Oregon tax you would have paid without including the repaid income. Calculate your credit as follows:

(a) Refigure the Oregon tax before credits in the year the income was originally taxed by determining the tax for the year in which the income was originally taxed without the repaid income. Do not change the federal tax subtraction or any other items on the Oregon return.

(b) Subtract the refigured tax before credits from the Oregon tax before credits as filed (or amended or adjusted, if applicable). This is your claim of right credit.

Example 1: In 2012, Jerry was required to repay $10,000 of the unemployment compensation he had received in 2011. He claimed the claim of right credit on his federal return, so he can also claim the credit for Oregon. For 2011, Jerry had federal adjusted gross income (AGI) of $50,000 and Oregon tax before credits of $3,568. Jerry refigures his 2011 Oregon tax before credits without the repaid income. He reduces his federal AGI compared to what was included in his original 2011 federal return by the amount repaid, $10,000. All other Oregon items stay the same (including the federal tax subtraction). The recalculated Oregon tax before credits is $2,668. The difference between the refigured and original tax before credits is $900 ($3,568 minus $2,668). Jerry's claim of right credit is $900.

(3) Federal deduction. If you claim a deduction under IRC § 1341 on your federal return, you can allow the deduction to flow through or you can claim a credit on your Oregon return. Determine by comparing the following amounts:

(a) Calculate Oregon tax before credits for the year of repayment with the deduction.

(b) Add back the federal deduction and figure your Oregon tax before credits. Then subtract the Oregon claim of right credit.

(c) If the tax in (a) is less, allow the deduction for Oregon also. If the tax in (b) is less, add back any deduction as required under ORS 316.680(2)(i) and claim the Oregon credit.

Example 2: In 2012, Shannon had to repay wages of $3,800 from tax year 2010. She qualifies to claim itemized deductions and chooses to claim the deduction on her federal return. Oregon allows this deduction to flow through or allows her to claim the credit instead. Her itemized deductions are mostly Oregon taxes, so her Oregon itemized deductions are less than the standard deduction. Therefore, she will not claim itemized deductions for Oregon and will claim the credit instead.

In 2010, she had federal AGI of $45,000 and her 2010 tax was $2,988. If Shannon had not received the $3,800 she had to repay, her 2010 tax would have been $2,679. Her 2012 credit is the difference of $342, which she will claim on her 2012 Oregon return as a claim of right credit. There's no addition required because she claimed the standard deduction for Oregon, so the federal deduction did not flow through.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.104

Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2000, f. & cert. ef. 8-3-00; REV 8-2001, f. & cert. ef. 12-31-01; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; REV 4-2013(Temp), f. & cert. ef. 6-5-13 thru 12-2-13; Administrative correction, 12-19-13; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-315.104(1)
Qualified Reforestation Costs

(1) For credits first claimed in tax years beginning on or after January 1, 2001, a credit is allowed in an amount equal to 50 percent of reforestation project costs paid or incurred to reforest underproductive Oregon forest lands. Qualified reforestation project costs are determined in accordance with Oregon State Department of Forestry rules, chapter 629, division 023 (e.g., Oregon Administrative Rules 629-023-410 to 629-023-460) and by ORS 315.104. Qualified project costs do not include amounts paid through federal or state cost share, financial assistance or other incentive programs.

(2) Subject to the credit carryover provisions of ORS 305.104(5), one-half of the credit must be taken in the tax year for which the Department of Forestry issues a preliminary certificate certifying that certain conditions exist as stated in ORS 315.104(1). The balance of the credit must be taken in the tax year for which the forest is certified as being established.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.104

Hist.: TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.094(1); REV 8-2001, f. & cert. ef. 12-31-01; REV 4-2009, f. & cert. ef. 7-31-09

150-315.104(2)
Procedure for Claiming the Reforestation Credit

(1) The Oregon Department of Revenue will accept the preliminary certificate issued by the Department of Forestry as evidence of completion of the project. In addition to the preliminary certificate, the taxpayer shall obtain a statement from the landowner or person in possession of the land:

(a) That the land within the project area will be used primarily for the growing and harvesting of trees of an acceptable species as provided in ORS 315.104; and

(b) That the taxpayer is aware that maintenance practices, including release, may be needed to insure that a new forest is established and will remain established.

(2) Upon request of the department, the taxpayer will provide copies of the certificate(s) issued by the Department of Forestry for any year in which the credit is claimed.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.104

Hist.: TC 8-1980, f. 11-28-80, cert. ef. 12-31-80, Renumbered from 150-316.094(2)(a); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.094(2); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 150-315.104(2)-(A)

150-315.104(5)
Change of Ownership

If there is a change of ownership between when the project is completed and when the forest is established, only the initial owner (investor) will qualify for the total credit. If the forest is not established, the initial owner must repay the initial credit. The new owner does not qualify for any credit for the project the initial owner started.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.104

Hist.: TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.094(6)

150-315.104(10)
Reforestation Credit: Reasons Beyond the Taxpayer's Control

For purposes of reforestation credit, the Department of Revenue adopts the definition of "reasons beyond the taxpayer's control" defined in Department of Forestry rule OAR 629-23-420 filed 8-1-08 and certified effective 9-1-08.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.104

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.094(10); REV 4-2009, f. & cert. ef. 7-31-09

150-315.113
Voluntary Removal of Riparian Land from Farm Production

(1) Definitions. For purposes of ORS 315.113 and this rule:

(a) "Riparian land" means land that:

(A) Is voluntarily removed from farm production to employ conservation practices;

(B) Lies between a river, stream, or other natural water course and land that is in farm production; and

(C) Does not exceed 35 feet in width.

(b) "Forgone crop" means the crop grown on the riparian land in the year prior to taking it out of production.

(c) "Yield" means the amount of crop harvested per acre in the year of the credit as is commonly reported by the County Extension Office for that crop (e.g., pounds, bushels, etc.)

(d) "Market value" means the average county price for that crop as reported for the year of the credit by the County Extension Office.

(2) The credit is determined each year based on yield and market value for the forgone crop using the formula: A x B x C x D, where:

A = the total acreage of riparian land removed from production
B = the crop yield per acre
C = the market value of the forgone crop
D = 75 percent

Example 1: John leases farmland along the Luckiamute River and grows grass seed within 10 feet of the river. In 2004, he voluntarily decides to widen the unplanted area along the river to 35 feet. To claim the credit for not planting the 25 feet of newly created riparian land, John determines the credit based on the crop planted there in 2003 and the average 2004 yield and market value. In 2005, John continues to not plant the 25 feet of riparian land and claims the credit. The credit amount is again based on the crop last grown on the land in 2003, using 2005 yield and market value averages.

Example 2: Hillary created 4 acres of riparian land in the Willamette valley in 2004. In the prior year, she grew a crop on that land that yielded 600 pounds per acre and sold for $0.50 per pound. In 2004, the County Extension Office reported the averages for that crop were 500 pounds per acre and $0.40 a pound. Her credit in 2004 is $600 (4 x 500 x $0.40 x .75).

(3) A credit is not allowed in a year in which a crop is not grown on the land adjacent to the riparian land. Land lying fallow under normal farming practices for the area is considered to be a crop and is not affected by this subsection.

Example 3: Sam owns 6 parcels of farm land in eastern Oregon all of which border Bully Creek. Unlike previous years, when planting begins in 2004, Sam voluntarily does not plant within 35 feet of the creek bed. Parcel 1 was planted with peppermint in 2001, but was fallow in 2002 and 2003 under normal farming practices in Malheur County. Parcels 2 through 5 are planted in sweet potatoes after growing alfalfa in 2003. Parcel 6 is very rocky and Sam has not planted on any of that parcel for the ten years he has owned it. To determine the 2004 riparian land credit for parcel 1, Sam uses the crop last grown in 2001 (peppermint). For parcels 2 through 5, he uses the crop (alfalfa) grown in 2003. Sam cannot claim the riparian land credit for parcel 6 as it was not in farm production.

Stat. Auth.: ORS 305.100 & 315.113

Stat. Implemented: ORS 315.113

Hist.: REV 4-2003, f. & cert. ef. 12-31-03

150-315.138(9)
Fish Screening Device Credit; Substantiation

(1) The fish screening device credit can be claimed for devices installed in tax years beginning on or after January 1, 1990.

(2) Upon request of the department, the taxpayer shall provide a copy of the final certificate issued by the State Department of Fish and Wildlife in the initial year in which the credit is claimed. The taxpayer will provide a statement which contains the computation of the

allowed credit if this information is not contained in the final certificate.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.138
Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.139(9); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-315.144
Transfer of Biomass Credit

(1) As provided by ORS 315.053, a person that has obtained a tax credit under ORS 315.141 may transfer the credit to:

(a) A C corporation;

(b) An S corporation; or

(c) A personal income taxpayer.

(2) Transfers. The value of the credit earned under ORS 315.141 is the greater of the market value upon transfer or the minimum discounted rate established by the Department of Energy. A credit may be transferred or sold only once. In order for the transfer to be effective:

(a) The Department of Energy must certify the credit;

(b) The person who earned the credit must complete and submit the transfer schedule on the back of the certificate provided by the Department of Energy to be attached to the return of the person who transferred the credit (the transferor);

(c) The person who earned the credit and the taxpayer claiming the credit must complete and file a joint statement on a form provided by the Department of Revenue to be attached to the return of the taxpayer receiving the credit (the transferee); and

(d) The credit must be transferred on or before the due date of the tax return (including extensions) for the first tax year in which the credit may first be claimed. After that date, no portion of the credit allowed under ORS 315.141 may be transferred.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.144
Hist.: REV 10-2010, f. 7-23-10, cert. ef. 7-31-10

150-315.156
Crop Gleaning Credit: Information Required

(1) In addition to the items listed under ORS 315.156(2), the form may require:

(a) The social security number, federal employer identification number, or phone number of the grower;

(b) Name and address to identify the gleaning cooperative, food bank, or other charitable organization; or

(c) A signed statement that the grower has complied with the conditions set forth under ORS 315.154(5)(a)–(c).

(2) For *tax years beginning on or after January 1, 1994*. The form required by this section should not be attached to the tax return, but must be kept with the taxpayer's records. Upon audit or examination, the information must be made available to the department to verify any credit claimed under this section.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.156
Hist.: TC 15-1979(Temp), f. & cert. ef. 12-18-79; Hist.: TC 2-1980, f. & cert. ef. 5-20-80; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.091; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-315.164
Agriculture Workforce Housing Credit

(1) General Information.

(a) A credit is available to taxpayers who construct, install, or rehabilitate housing for agricultural workers and their immediate families.

(b) The credit is available for agriculture workforce housing projects that are physically begun on or after January 1, 1990.

(c) Depreciation and amortization expenses associated with the agriculture workforce housing project are not decreased by the amount of the tax credit allowed.

(d) The taxpayer's adjusted basis in the housing project is not decreased by any tax credits allowed.

(e) For tax years beginning on or after January 1, 2004, ORS 315.167 provides that the owner or operator of agriculture workforce housing or a contributor as described in ORS 315.163(6) must apply to the Oregon Housing and Community Services Department (OHCSD) for a letter of credit approval no later than six months after beginning an agriculture workforce housing project.

(2) Qualifications for the Tax Credit.

(a) The agriculture workforce housing project must be located in Oregon to qualify for the credit.

(b) The housing project must be limited to occupancy by agricultural workers during the tax year in order to qualify for the credit. If the housing is occupied at any time during the year by persons other than agricultural workers and their immediate families, the housing will not qualify for the credit. Nor can the housing be used for any other function except housing for agricultural workers.

(c) The taxpayer claiming the credit must:

(A) Obtain a letter of credit approval from the OHCSD; and

(B) Certify on an annual basis that any units that were occupied during the tax year were occupied only by agricultural workers or their immediate families. The letter of credit approval and the certification must be maintained in the taxpayer's records and made available to the department on request.

(d) The OHCSD administers the application and eligibility process for this credit. See chapter 813, divisions 41 and 42 of the Oregon Administrative Rules, and contact OHCSD for more information.

(3) Computation of the Tax Credit For Projects Completed in Tax Years Beginning On or After January 1, 2002

(a) The credit is equal to 50 percent of the costs directly associated with the construction or rehabilitation of the agriculture workforce housing project including costs for financing, construction, excavation, installation, and permits. Construction includes acquisition of new or used prefabricated or manufactured housing. Acquisition costs of land and existing improvements on that land used for the project are not included in the computation.

(b) The credit first may be claimed in the year the project is completed or in any of the nine succeeding tax years. No more than 20 percent of the total credit may be claimed in any one tax year. The housing is not required to be occupied prior to the end of the tax year in which the project is completed in order for the credit to be claimed.

(c) Tax credits not used in a tax year may be carried forward for up to nine years. Any credit carried forward is used first, before the allowable current year credit.

(d) Costs of rehabilitation include capital expenditures only. The allowable costs are those incurred for additions or improvements to property (or related facilities) with a useful life of five years or more. Rehabilitation costs do not include the cost of acquiring the building or an interest in the building.

(4) Computation of the Tax Credit for Projects Completed in Tax Years Beginning before January 1, 2002. The credit is equal to 30 percent of costs described in subsection (3)(a) if completed after December 31, 1995, and 50 percent if completed before December 31, 1995. The credit is claimed in equal installments over a consecutive five-year period beginning in the year the agriculture workforce housing project is completed. The credits may be carried forward for up to five years. Otherwise, the computation of the credit is the same as specified in section (3) of this rule.

(5) Disallowance and Forfeiture of Tax Credit. The tax credit will be disallowed and any prior years' credits forfeited in the case of:

(a) Fraud or misrepresentation by the taxpayer to obtain the credit.

(b) A taxpayer who is an owner or operator who fails to substantially comply with occupational health and safety rules, regulations, or standards. The Department of Consumer and Business Services will notify the department of any agriculture workforce housing project failing to substantially comply with these standards.

(c) A taxpayer who is an owner or operator who fails to obtain required registration as an agriculture workforce camp with the Department of Consumer and Business Services.

(d) A taxpayer who is an owner or operator of an agriculture workforce housing project that is not operated by a person who holds a valid endorsement as a farmworker camp operator, if required under ORS 658.730.

(6) Sale of Agriculture Workforce Housing Project. If the agriculture workforce housing project is sold, the original investor may continue to claim the tax credit, provided all other provisions are met.

Example: LeRay began construction of an agriculture workforce housing project on his property on July 1, 1995. The project was completed on December 15, 1995, and on that date complied with the applicable health and safety standards. The housing was registered with the Department of Consumer and Business Services, and LeRay obtained endorsement as a farm camp operator. LeRay must claim the credit on his 1995 return, even though no units are occupied until 1996. If LeRay sells the property, he may continue to claim the credit only by obtaining a statement from the new owner of the property, certifying that any occupied units are occupied only by agricultural workers and their immediate families. Upon audit or examination, LeRay must provide a statement for each year in which the credit is claimed if requested by the department.

(7) Transfer of Credit to Contributor. For tax years beginning on or after January 1, 2005, an owner or operator may transfer up to 100 percent of the total credit the owner or operator may claim. For tax years beginning on or after January 1, 2002 and before January 1, 2005, an owner or operator of agriculture workforce housing may transfer to one or more contributors up to 80 percent of the total credit the owner or operator may claim. A contributor claiming the credit and the owner or operator must file a joint statement to be attached to the return on which the credit is claimed. The statement must include:

(a) The owner or operator's name, federal employer ID number (FEIN), Oregon business identification number (BIN), and designation as either the owner or operator;

(b) The contributor's name, FEIN, and BIN:

(c) The amount and percentage of the credit transferred;

(d) The total amount of credit the owner or operator may claim, before any transfer to contributors; and

(e) Signatures of or on behalf of the owner or operator and the contributor.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.164
Hist.: 9-20-89, 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.116(Note)-(B); RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.154; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 8-2002, f. & cert. ef. 12-31-02; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 1-2014, f. & cert. ef. 7-31-14

150-315.204-(A)
Dependent Care Credits: General Information

(1) Taxpayers must apply to the Department of Education, Early Learning Division, Office of Child Care and receive certification before being eligible for the Dependent Care Assistance or Dependent Care Information and Referral Services credits. Contact the Office of Child Care of the Department of Education for more information.

(2) For taxable years beginning on or after January 1, 1988, the following credits are available to employers that provide dependent care assistance or information and referral services to their employees:

(a) Dependent Care Assistance Credit. This credit is available to employers for the expenses paid or incurred by the employer for the care of employees' dependents.

(b) Dependent Care Information and Referral Services Credit. This credit is available to employers that provide information and referral services to assist their employees in obtaining dependent care.

(3) Any tax credit otherwise allowable that is not used by the taxpayer in a tax year may be carried forward and offset against the taxpayer's tax liability for up to five tax years. The amount of credit carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other credits, for all prior tax years that are within the carryover period.

(a) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must use the credit from the prior year first and then the current year's credit.

(b) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

(4) If the taxpayer is an individual and the tax year is changed resulting in a short period return (a return covering a period of less than 12 months), the credit must be computed in a manner consistent with ORS 314.085.

(5) If the taxpayer is a part-year resident individual, the credit must be computed in a manner consistent with ORS 316.117.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.204
Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.134-(A); REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 5-2010, f. & cert. ef. 3-15-10; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-315.204-(B)
Dependent Care Assistance Credit

As used in this rule, references to the Internal Revenue Code mean the code as in effect on the date specified in ORS 316.012.

(1) Qualifications. To qualify for this credit, the following requirements must be met:

(a) The assistance must be provided to an employee pursuant to a program which meets the requirements of Internal Revenue Code (IRC) Section 129(d).

(b) In the case of an on-site facility, the credit shall be based upon the value of the services actually provided to the dependents of employees. The value of services provided to dependents of nonemployees shall not be included. In determining the value of services actually provided to dependents of employees, the employer shall use the actual direct and indirect costs, or a fair market value amount.

(c) The provider of the dependent care cannot be the spouse, a dependent, or a child under age 19 of the employee.

(d) Dependent care assistance funded by a salary reduction cannot be included in the computation of the credit. If assistance is provided by both a salary reduction and an employer contribution, only that portion of the assistance provided by the employer contribution shall qualify for the credit.

(e) Only amounts paid or incurred for dependent care assistance services performed in Oregon are eligible for the credit.

(f) The individual receiving the dependent care must meet the requirements of IRC 21(b)(1).

(2) Computation of the Credit. The credit is equal to 50% of the qualifying expenses paid or incurred by the employer. However, no more than $5,000 paid or incurred for the care of the dependents of each employee can be included for the purpose of this computation.

Example. In 1988, Employer A reimburses three employees for the cost of dependent care services provided to the employees' qualifying dependents. The amount reimbursed is based upon the number of each employee's dependents receiving dependent care services. Assuming that Employer A otherwise qualifies for the credit, the allowable dependent care assistance credit is computed as follows: [Example not included. See ED. NOTE.]

(3) An employer must reduce deductions claimed on the employer's tax return by the dollar amount of the dependent care assistance credit allowed. In the example above, Employer A must reduce deductions for Oregon tax purposes by $6,000.

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.204
Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.134-(B); RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-315.204-(C)
Dependent Care Information and Referral Services Credit

(1) Qualifications. To qualify for this credit the employee receiving the information or referral services must perform services in Oregon.

(2) Computation of the Credit. The credit is equal to 50 percent of the qualifying expenses paid or incurred by the employer.

Example. In 1988, Employer A paid $2,500 to a dependent care referral agency to provide dependent care information and referral services to its

employees. A credit of $1,250 is allowable to the employer in 1988. The deduction allowed for 1988 is $1,250 (the $2,500 paid less the $1,250 credit allowed).
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.204
Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.134-(C); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-315.208
Dependent Care Facility Credit

(1) General Information: As used in this rule, references to the Internal Revenue Code mean the code as in effect on the date specified in ORS 316.012.

(a) A credit is available to employers that acquire, construct, reconstruct, renovate or otherwise improve real property for use as a dependent care facility. If real property is acquired by lease for use as a dependent care facility, only the costs paid or incurred for leasehold improvements qualify for the dependent care facility tax credit.

(b) An employer may have more than one facility.

(c) More than one employer may join in acquiring, constructing, reconstructing, renovating or otherwise improving real property to be used as a dependent care facility.

(d) The employer may operate the facility or may contract with others to operate it.

(e) The credit is first available in tax years beginning on or after January 1, 1988, for facilities placed into operation on or after January 1, 1988, and prior to January 1, 2002.

(f) The credit shall be spread equally over a period of ten tax years beginning with the tax year the facility is first placed into operation.

(g) Any tax credit otherwise allowable which is not used by the taxpayer in a tax year may be carried forward and offset against the taxpayer's tax liability for up to five tax years.

(A) If a taxpayer fails to meet the credit qualifications for a tax year, the current year's credit is lost, and may not be carried forward to any other tax year. Only a credit which is allowable, but unused due to insufficient tax liability, may be carried forward.

Example: Employer A constructs a dependent care facility, receives certification from Children's Services Division to operate the facility, and provides dependent care assistance in the facility as defined in Internal Revenue Code Section 129. All of these events occur in tax year 1988. The total available credit is $100,000, which may be claimed at a rate of $10,000 per year, beginning with tax year 1988 and ending with tax year 1997. In tax years 1988, 1989 and 1990, the taxpayer meets the qualifications and claims a tax credit of $10,000 for each of these years. In tax year 1991, the taxpayer fails to receive certification from Children's Services Division, thus the $10,000 tax credit for 1991 is not allowable. The 1991 credit may not be carried forward to any other tax year: it is lost forever. However, any unused credit from tax years 1988, 1989 or 1990 is carried forward and used in 1991 if sufficient tax liability exists.

(B) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer shall use the credit from the prior year first and then the current year's credit.

(C) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

(h) If the employer is a shareholder of an S corporation established to own and/or operate the facility, each shareholder's share of the cost of the facility is subject to the limitations as provided under ORS 315.208. Each shareholder's share of the cost is determined by applying the shareholder's percentage of ownership interest to the facilities total cost.

(i) If the employer is a partnership or S corporation, the tax credit shall be attributable to the partnership or S corporation. The current tax year's credit shall be allocated to the current tax year's partners or shareholders based on the partners' or shareholders' percentages of ownership interest.

(j) If the employer is a partner in a partnership established to own and/or operate the facility, each partner's share of the cost of the facility is subject to the limitations as provided under ORS 315.208. The cost of purchasing a partnership interest by a new employer-partner shall qualify for the credit to the extent the cost is attributable to the dependent care facility. The purchase must be made in a tax year beginning on or after January 1, 1988 and must be purchased prior to January 1, 2002 for the partner to qualify for the credit.

(k) Depreciation deductions attributable to a dependent care facility must be reduced by the annual credit amount each year that the credit is available. If the annual credit amount exceeds the depreciation deduction allowable, such excess must be carried over to reduce the depreciation deduction in subsequent tax years.

(2) Qualifications. To qualify for this credit, the following requirements must be met:

(a) The dependent care facility must be located in Oregon.

(b) The dependent care facility must be able to accommodate six or more children.

(c) The operator of the facility must hold a certificate of approval (either permanent or temporary) issued by the Children's Services Division, Department of Human Resources, on the last day of each tax year in which the credit is claimed. Upon request by the department, a copy of the certificate of approval shall be provided for any tax year in which the credit is claimed.

(d) The employer must have a dependent care assistance plan as provided under IRC Section 129 and by the last day of each tax year for which the credit is claimed, the employer must either make payment for, or provide for, services defined as dependent care assistance in Internal Revenue Code Section 129.

(e) The facility must be in use as a dependent care facility on the last day of the tax year for which the credit is claimed. If the facility is in use up to the end of the normal operating year of the employer, or for the entire period in which seasonal employees are normally employed, this qualification will be met. This is true even though the employer's normal operating year, or period in which seasonal employees are employed, ends before the last day of their tax year. (Seasonal employees include but are not limited to agricultural, construction and cannery.)

Example 1: Employer A is a calendar-year taxpayer. The business is normally shut down for the last week of each year to allow employees time off during the holiday season. A dependent care facility was placed in service in April, 1988. Except for the last week, the facility was used for the rest of the 1988 business year. This facility would qualify for the credit because it was in use up to the end of the normal operating year for this business.

Example 2: Assume the same facts as in Example 1, except Employer A decides to shut down the dependent care facility at the end of October, 1988. In this case, the facility wouldn't qualify for the credit because it wasn't in use up to the end of the normal operating year.

Example 3: Employer B is a farmer and a calendar-year taxpayer. Employer B hires seasonal employees during the harvest period. A dependent care facility was placed in service in July, 1988 to provide care for the dependents of these employees. It was in operation through the end of the 1988 harvest period, at which time the facility was closed. The facility wasn't used again until it was reopened to care for the dependents of seasonal employees during the 1989 harvest period. This facility would qualify for the credit in 1988 because it was in use for the entire period in 1988 in which the seasonal employees were employed.

(f) The dependent care facility shall first provide dependent care services for dependents of employees. However, dependent care services may also be provided to dependents of nonemployees when the facility is not fully used by employee's dependents. If the facility is operating at full capacity and dependents of nonemployees are receiving services and an employee requests dependent care services at the employer's facility, dependent care services must be provided by the employer to the employee. The employee shall be given priority for the first available vacancy. The employer may in addition provide such services by providing assistance to the employee in finding other dependent care arrangements.

(g) The individuals receiving the dependent care must meet the requirements under IRC 21(b)(1).

(3) Computation of the Credit.

(a) The credit is equal to the lesser of:

(A) 50% of cost; or

(B) $2,500 times the number of full-time equivalent employees (FTEs); or

(C) $100,000.

(b) For the purpose of computing the credit limitation under 3(a)(B) above, the number of FTEs used is the number on any date selected by the taxpayer during the two-year period ending on the date the tax year ends in which the credit is first claimed. Only those employees working in proximity to the facility are included in computing this limitation. All employees working within two miles of a facility are deemed to be in proximity to a facility. For employees working beyond two miles, the determination whether they are in proximity to a facility will be made on a case-by-case basis, i.e., all facts and circumstances will be considered.

(c) A single limitation under(3)(a)(C) above, applies to all facilities located in proximity to a job site. All facilities located more than two miles from a job site are deemed not to be in proximity to a job site. For all facilities located within two miles of a job site, a single credit limitation applies unless the facts and circumstances indicate they are not in proximity to a job site.

(d) Where more than one employer shares a facility, each employer's share is subject to the limitations listed in (3)(a) above.

Example. Employers A, B, C and D have offices and manufacturing facilities in the same business park. In 1988, they join in constructing a dependent care facility costing $575,000 within the park. Each employer's contributed cost in the facility and the computation of each employer's credit are as follows: [Example not included. See ED. NOTE.]

Employers A, B, C and D must reduce their Oregon depreciation deductions attributable to the facility each year by their respective annual credit amount.

(e) The adjusted basis of the dependent care facility must be adjusted each year by the amount of depreciation allowable using depreciation methods recognized by the Department of Revenue. The depreciation deduction is the depreciation allowable minus the amount of credit claimed. [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.208

Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.132; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-315.213(4)
Child Care Division Contribution Credit

The form required by this section should not be attached to the tax return, but kept with the taxpayer's records. Upon audit or examination, the information must be made available to the department to verify any credit claimed under this section.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.213

Hist.: REV 3-2002, f. 6-26-02, cert. ef. 6-30-02

150-315.237(8)
Scholarship Tax Credit

The form required by this section should not be attached to the tax return, but must be kept with the taxpayer's records. Upon audit or examination, the information must be made available to the department to verify any credit claimed under this section.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.237

Hist.: REV 8-2001, f. & cert. ef. 12-31-01

150-315.262
Working Family Childcare Credit

(1) Definitions. For purposes of ORS 315.262 and this rule:

(a) "Federal poverty level" means the federal poverty level for the same tax year as determined by the federal Department of Health and Human Services.

(b) "Household size" generally means the number of individuals related by birth, marriage, or adoption who are living in the home and are allowed as exemptions on the taxpayer's return. There are special rules for children whose parents are divorced, legally separated, or permanently living apart. See section (4) of this rule for those special rules.

Example 1: Chris and Shelly live together but are not married. They have two children together; Tyler and Alec. Each child could be the qualifying child of one parent or the other, but not both parents. Each parent may claim their qualifying child(ren) in their household size. See definition of qualifying child later in this section.

Example 2: Mike and Sarah are married and have three children and also support Sarah's parents who do not live with Mike and Sarah in their home. Because they meet the federal tests for claiming individuals not living with them, their federal return allows seven exemptions. Mike and Sarah cannot increase their household size by the people they claim as dependents on their federal return that do not live with them. Their household size for purposes of the working family childcare credit is five.

(c) "Physical or cognitive condition" means a state where an individual's ability to perform a basic activity of daily living is markedly restricted where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is unable (or requires an inordinate amount of time) to perform an activity of daily living. "Activities of daily living" include:

(A) Bathing;

(B) Dressing oneself, except that it does not include any of the activities of identifying, finding, shopping for or otherwise procuring clothing;

(C) Feeding oneself, except that it does not include any of the activities of identifying, finding, shopping for or otherwise procuring food, or the activity of preparing food to the extent that the time associated with the activity would not have been necessary in the absence of a dietary restriction or regime;

(D) Medicating oneself;

(E) Toileting; or

(F) Transferring, ambulating, and being mobile.

(d) "Qualifying child" means a son, daughter, stepson, stepdaughter, grandchild, step grandchild, brother, sister, stepbrother, stepsister, niece, nephew, step niece, step nephew, eligible foster child, child legally placed with the taxpayer for adoption by the taxpayer, or adopted child of the taxpayer, and descendents of all such individuals who:

(A) Lived more than half the year with the qualifying taxpayer;

(B) Is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption credit under ORS 316.099 is allowed; and

(C) Is not claimed as a qualifying child by another taxpayer. A child can only be the qualifying child of one taxpayer. See section (4) of this rule for the special rules for divorced and separated parents and taxpayers filing as married filing separately.

Example 3: John and Kim have never been married and have two children; Kyle who lives with John all year, and Shannon who lives with Kim all year. In the summer each child spends one month with the child's other parent and sibling. John has both Kyle and Shannon in July and Kim has both kids in August. In addition to the child care for the child that lives with them, each parent also has daycare expenses during those months where both children are living in the parent's home. John may claim one "qualifying child" because Kyle lives with him. He may claim the expenses he paid for Kyle, but he may not claim the child care expenses he paid for Shannon because Shannon is not his qualifying child; Shannon is Kim's qualifying child. Kim may claim one "qualifying child" because Shannon lives with her. She may claim the expenses she paid for Shannon, but she may not claim the child care expenses she paid for Kyle because Kyle is not her qualifying child; Kyle is John's qualifying child. John and Kim each have a household size of two.

(2) Schedule WFC. To claim the working family child care credit, the taxpayer must provide all information requested on the Schedule WFC and file the Schedule WFC with the tax return to the department. Failure to file a completed Schedule WFC with the department may result in denial of the working family child care credit.

(3) Costs associated with child care. For purposes of determining the credit, the credit is limited to costs associated with child care. The payments must be made by the parent claiming the working family child care credit. Payments made by an entity or individual other than the parent claiming the credit are not payments made by the taxpayer.

Example 4: Shannon and Caleb are not married and live together with their son, Adam. Adam's child care expense for the year is $4,600 of which each parent pays half. Caleb's adjusted gross income (AGI) is $30,000 and Shannon's AGI is $16,000. Under federal law, either Caleb or Shannon could claim the dependency exemption for Adam as their qualifying child. They agree that Shannon will claim Adam as her qualifying child, therefore Caleb cannot. Shannon may claim the working family child care credit based on the $2,300 of child care expenses she paid and a household size of two. Even though Caleb paid child care expenses, he may not claim the working family child care credit because Adam is not his qualifying child.

(a) Costs associated with child care include:

(A) Child care expenses paid with amounts excluded from income as dependent care benefits under IRC section 129;

(B) Child care expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC section 125; or,

(C) Reimbursement of child care expenses as part of a flexible spending arrangement under IRC section 125.

(b) Costs associated with child care do not include:

(A) Expenses for a child's kindergarten through twelfth grade education at a public or a private institution;

Example 5: Traci has a five-year-old son who attends a local academy. She pays $750 per month for her son's kindergarten and child care. Of the amount she pays each month, $500 is the contract price for child care and $250 is an additional amount she pays for the child's education. Traci can only claim $500 per month as qualifying child care.

(B) Expenses for extracurricular activities or elective courses such as swimming, dance lessons, or other such activities unless the activities or courses are an ordinary part of the care provided to the child and cannot be separated;

Example 6: David and Lisa are married and they have a three-year old son, Noah. David and Lisa are both gainfully employed and they send Noah to a daycare center near Lisa's work for child care. Noah's parents signed him up for a swimming class through the daycare center that costs $50 per month. The daycare center charges $400 per month for the full-time care of a toddler. The daycare center bills David and Lisa $450 per month for Noah's child care and activities. David and Lisa can use the child care expenses they paid ($400 per month or $4,800 annually) to determine the working family child care credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons.

(C) Expenses for care provided when one spouse on a joint return is not gainfully employed, not seeking employment, not a full-time or part-time student, or not disabled as explained in Section (5) of this rule.

Example 7: James and Holly are married and James stays home to take care of their four children. Holly earns $55,000 annually and they paid $4,000 in child care during the year. The child care expenses they paid are not costs associated with both James and Holly being gainfully employed, seeking employment, or being a full-time or part-time student. James and Holly cannot claim the working family child care credit.

(D) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the Employer Related Day Care program) for child care expenses on behalf of the taxpayer who is claiming the working family child care credit;

Example 8: Debbie works full time and qualifies for state assistance in paying her child care expenses. The child care provider charges Debbie $600 per month to care for her two children or $7,200 per year. Of the $600 per month, the state pays $450 and Debbie has a copay of $150. Debbie cannot claim the entire $7,200 because she did not pay it. She can only claim $1,800, the amount she actually paid.

(E) The value of a child care owner-operator's forgone revenue relating to child care that the owner-operator provided to his or her own child; or,

Example 9: Shirley is the owner-operator of a registered daycare facility. She cares for six children every day, of which two are her own children. Shirley cannot use the value of the two spaces her children use to calculate her working family child care credit because the forgone revenue is not a cost associated with child care.

(F) Transactions that are not arm's-length or have no economic substance.

(4) Divorced or Separated Parents and Married Individuals Filing Separately:

(a) Divorced or Separated Parents:

(A) For purposes of this credit, a child is the qualifying child of the custodial parent, even if the exemption was released to a non-custodial parent under Internal Revenue Code (IRC) section 152(e). In situations where both parents live in the home with the child more than 50 percent of the year, the child may be the qualifying child of either parent, but not both. If the child is claimed on both parent's returns, the child is the qualifying child of the parent with the highest adjusted gross income (AGI).

Example 10: Maria and Kendall are divorced with two children. The children live in Maria's home with Maria for more than half of the year. Kendall has the children on certain weekends, holidays, and one month in the summer. Maria pays childcare expenses for 11 months during the year. Kendall pays childcare expenses for the one month in the summer when the children are with him. Maria releases the exemption for one child to Kendall. Only Maria may claim the working family child care credit because the children are her qualifying children. Kendall may not claim the working family child care credit because he does not have a qualifying child.

(B) An individual cannot be counted in the household size on more than one tax return.

Example 11: Sam and Sally are divorced with two children, Ben and Brianna. Ben lives with Sam and Brianna lives with Sally. Each parent pays the child care expenses for the child that lives with them. Sally releases the dependent exemption for Brianna to Sam under IRC section 152(e). Brianna is counted in the household size of Sally because she lives with Sally. Ben is counted in the household size of Sam, because he lives with Sam. Sam and Sally will each have a household size of two to determine the percentage of child care costs each may claim as a working family child care credit.

(b) Married Individuals Filing Separately:

(A) Taxpayers filing separate returns who share a common household cannot claim the working family child care credit.

(B) Taxpayers maintaining separate residences at the end of the tax year, and who intend to live apart in the future, determine their household size based on the computation defined in subsection (1)(c) of this rule.

Example 12: John and Sue are married and have two children. They are legally separated and live apart permanently, and one child lives with each. John and Sue file separate returns for the tax year and each claims a child as a dependent. John and Sue will each have a household size of two to determine the percentage of child care costs each may claim as a working family child care credit. John may claim the credit based on the child care costs he paid for the child that lives with him and Sue may claim the credit based on the child care costs she paid for the child that lives with her.

(5) Disabled Spouse:

(a) Married taxpayer with disabled spouse. Beginning in tax year 2007, a qualified taxpayer is allowed to claim the working family credit based on child care expenses paid even if the expenses were paid when the taxpayer has a spouse who did not work, look for work, or attend school. The expenses may be claimed if the taxpayer's disabled spouse has a physical or cognitive condition which causes the disabled spouse to require assistance in performing basic activities of daily living and prevents the disabled spouse from working, looking for work, and attending school.

(b) Certification by physician. For a taxpayer to claim child care expenses paid when the taxpayer's spouse is unable to work, look for work, and attend school because the spouse has a disability that prevents the spouse from such tasks, the taxpayer must obtain certification from the physician or other qualified medical professional that the taxpayer's spouse meets the definition of disabled in the statute and this rule. This certification is to be kept in the taxpayer's records and provided to the department upon request.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.262
Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 4-2003, f. & cert. ef. 12-31-03; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

150-315.274(3)
Computation of Oregon Credit for Qualified Adoption Expenses

Oregon taxpayers compute the Oregon adoption credit using their qualified adoption expenses as defined in section 23(d) of the Internal Revenue Code before federal dollar and income limitations are imposed.

Example 1: Darrell and Zelma incur qualified adoption expenses of $2,000 during 1999 and $9,000 in 2000 when the adoption of their son became final. Under IRC section 23(a), Darrell and Zelma use total expenses of $11,000 to compute the credit on their 2000 federal return. Their allowed federal adoption credit is $5,000. Their federal income tax liability is $2,080 after other credits so they claim $2,080 of their federal adoption credit in the current year. They will carry forward $2,920, which is the unused portion of their allowed federal credit. Their Oregon credit is the lesser of:
(1) Qualified adoption expenses less the federal credit allowed ($11,000 - 5,000 = $6,000);
(2) The Oregon limit of $1,500; or
(3) The federal credit allowed of $5,000.
Their Oregon credit is $1,500. If their Oregon liability is less than the credit, they may carry forward any unused portion to the next year. Any carry forward that is not used within four years is lost.

Example 2: Heidi and Bryce have qualified adoption expenses of $10,000 for the year. The dollar limitation for the federal credit is $5,000. Their federal credit allowed is further reduced by the federal income limitation. Their allowable federal credit is $1,875. They compute their Oregon credit as the

lesser of:
(1) qualified adoption expenses less federal credit allowed ($10,000 - 1,875 = $8,125);
(2) the Oregon limit of $1,500; or
(3) the federal credit allowed of $1,875.
Their Oregon credit is $1,500.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.274
Hist.: REV 5-2000, f. & cert. ef. 8-3-00

150-315.274(4)
Oregon Adoption Credit Prorated for Part-Year and Nonresidents

Nonresidents and part-year residents are allowed a portion of the Oregon credit otherwise allowable. The portion is based on their Oregon percentage. The Oregon percentage is the ratio of federal adjusted gross income from Oregon sources divided by federal adjusted gross income from all sources.

Example: Heidi and Bryce lived in Washington at the beginning of the year. They move to Oregon during the year and file their Oregon return as part-year residents. They have federal adjusted gross income of $25,000 from Oregon sources and federal adjusted gross from all sources of $100,000, making their Oregon percentage 25 percent. Their qualified adoption expense is $5,000, and their allowable federal adoption credit is $875. They compute their Oregon credit before proration as the lesser of:
(a) Qualified adoption expenses less federal credit allowed ($5,000 - 875 = $4,125);
(b) The Oregon limit of $1,500; or
(c) The federal credit allowed of $875.
If they were full year Oregon residents their Oregon adoption credit would be $875. Since they are part-year residents and their Oregon percentage is 25 percent, their allowable Oregon credit is $219; that is, 25 percent of the $875 Oregon credit otherwise allowable.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.274
Hist.: REV 5-2000, f. & cert. ef. 8-3-00

150-315.304(1)(a)
Pollution Control Facilities: Types of Facilities Eligible for Certification

(1) Tax relief provisions to encourage the construction of pollution control facilities were first enacted by the 1967 legislature, and were substantially amended in subsequent legislative sessions.

(2) Under the 1967 law (ORS 316.092) and the 1969 law (316.097), the types of facilities eligible for certification were those a substantial purpose of which was to prevent, control, or reduce air or water pollution. Under the 1974 special session amendments (Chapter 37) to ORS 449.625 (since renumbered as 468.165), the types of eligible facilities were expanded to include facilities which utilize solid wastes to produce a useable source of power or other item of real economic value.

(3) Every facility certified prior to the October 5, 1973, effective date of the 1973 amendments is bound by the law in effect prior to that date (see Oregon Laws 1973, Chapter 831, Sec. 11); except that the amendments by Chapter 37 of the 1974 special session are effective May 26, 1974.

(4) Under the 1977 law, facilities built on or after January 1, 1977, for control of noise pollution are eligible for certification. Also, the definition of a solid waste facility is expanded to include certain subsequent additions, either to a facility already certified or to an operation that would have qualified as a facility but for the fact that it was built prior to January 1, 1973. The addition must be one that increases the production or recovery of useful materials or energy over the amount produced or recovered by the original facility. However, the 1977 law also sets additional eligibility requirements for solid waste facilities on which construction is commenced during the period January 1, 1981, up to December 31, 1983. These added requirements are found in ORS 468.170(9)(b).

(5) A 1983 amendment provided that hazardous waste facilities built on or after January 1, 1984 will not be required to produce a useable source of power or other item of real economic value to be eligible for certification.

(6) Facilities built on or after September 26, 1987, that use solid waste to produce a useable source of power, are not eligible for the pollution control facility credit.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 1-1-77; 12-31-77; 12-31-81; 12-31-83; 12-31-92, Renumbered from 150-316.097(1)(a); 12-31-93

150-315.304(1)(b)
Pollution Control Facilities: Information to be Furnished Upon Request

Upon request of the department, each taxpayer claiming a pollution control facility tax credit shall provide a statement containing the following information for each facility:

(1) The certificate serial number assigned under ORS 468.170.

(2) The computation of the amount of the tax credit allowable for the tax year covered by the return. For each facility show:

(a) The actual cost certified;

(b) The portion of actual cost allocable to pollution control and the percentage of cost available as a credit for the current year;

(c) The amount of credit claimed for the current year;

(d) The total amount of credit claimed for this facility on prior returns.

(3) The amount and computation of each carry-over credit claimed under ORS 315.304 as to each facility. In computing the tax credit attributable to a particular facility, the taxpayer may have to apportion the total credit used in a particular year to each separate certification of a facility or facilities. Where a part of a facility or of a group of facilities under one certificate has been sold, exchanged, or otherwise disposed of, appropriate adjustments must be made for the total prior credits claimed.

(4) The date of erection, construction, or installation.

(5) The facts showing compliance with the requirements of ORS 315.304 as to ownership (or purchase under contract), lease, conduct of the trade or business under agreement, or having a beneficial interest in a resource recovery facility. A copy of the certificate issued by the Department of Environmental Quality and copies of agreements for the conduct of a trade or business shall be attached to the statement.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.304
Hist.:1-1-77; 12-31-81; 12-31-83, Renumbered from 150-316.097(1)(b); 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96

150-315.304(2)
Pollution Control Facilities: Computation of Credit

(1) Definitions. For purposes of ORS 315.304 and this rule:

(a) "Certified cost" means that portion of total costs that the Environment Quality Commission (EQC) determines is allocable to a pollution control facility.

(b) "Facility" refers to one or more facilities certified under one certificate, with one serial number and with the same allowable percentages used in determining the certified costs and the maximum allowable credit.

(c) "Applicable percentage" means the percentage indicated on the certification issued by the EQC for that facility.

(d) "Useful life" is the remaining years of expected useful life at the time the facility is certified, but not more than 10 years.

(e) "Tax liability" is the amount of tax that is due after any offsets or other tax credits are taken, such as those permitted under ORS 316.082, 316.087, 316.102, 315.104, 315.354, and 315.324.

(2) The credit is equal to the lesser of:

(a) The applicable percentage multiplied by the certified cost and divided by the useful life of the property; or

(b) The taxpayer's tax liability after other credits.

(3) If additional costs are incurred after a pollution control certificate is issued and a revised certificate including those additional costs is issued, the credit for the additional costs may not be claimed prior to the year in which the revised certificate is issued. The credit for those additional costs must be spread equally over the remaining years on the original certificate.

(4) A pollution control facility's useful life is determined as of the date it is certified and may not be changed unless additional certified costs have been incurred. If a facility becomes obsolete and is abandoned before the end of its expected useful life, no remaining unused credit is allowable. If the life of a pollution control facility

is extended by repair, which is not eligible for additional tax credit, the taxpayer continues to claim the original credit over the original useful life. If an error in the actual amount spent prior to certification by the EQC is later discovered and the EQC issues a revised certificate, the taxpayer must amortize the correct certified cost over the original useful life, and amend returns for those years for which credits have been claimed that are still open. Any cost incurred and certified after the original certification may be amortized over the new remaining useful life to the extent that the total life of the facility over which credits are claimed does not exceed ten years. The additional credit may be claimed beginning in the year in which certification for the additional cost was obtained.

(5) If a pollution control facility's certification is revoked by the EQC pursuant to ORS 468.185(1)(b), the allowable credit for the tax year must be prorated. The amount for the portion of the tax year before the certification is revoked is allowed. If no appeal is made, the certificate is considered revoked on the date the revocation is issued.

Example 1: A calendar year taxpayer has a pollution control facility certified January 1, 1996. The credit otherwise allowable for 2000 is $500. On June 30, 2000, the facility's certification was revoked by the EQC. The credit allowable for 2000 is computed as follows: [Example not included. See ED. NOTE.]

(6) When a certification is reinstated by the EQC under ORS 468.185(5) because the facility has been brought into compliance with the EQC's guidelines, the certificate is reinstated for the remaining period of certification, less the period of revocation. The period of revocation is from the date the revocation is issued to the date of reinstatement. The credit for the period of revocation is lost.

Example 2: Assume the same facts as in Example 1, except that the facility's certification was reinstated September 30, 2000. The credit allowable for 2000 is computed as follows: [Example not included. See ED. NOTE.]

(7) If a pollution control facility's certificate is revoked by the EQC pursuant to ORS 468.185(1)(a), because the certification was obtained by fraud or misrepresentation, all tax relief allowed in prior years is forfeited. The credit forfeited will be added to any other excise or income tax due from the taxpayer who had claimed the credit, for the tax year in which the certification is revoked.

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.304
Hist.: 1-77; 12-31-77; 12-31;81; 12-31-83; 12-31-84; 12-31-87; 12-31-88; 12-31-89, Renumbered from 150-316.097(2); 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-315.304(4)
Pollution Control Facilities: To Whom Is Credit Allowable

(1) With the exception of a facility used for resource recovery certified on or after November 1, 1981, and pulp, paper and paperboard facilities discussed in paragraph (2), the credit is allowable only to the taxpayer who owns or conducts the trade or business which utilizes the facility. Therefore, if the owner of the facility also carries on the trade or business which uses the facility, such owner is entitled to the credit. But if the owner of the facility leases the property to someone who carries on a trade or business using the leased property, then the lessee is the one entitled to the credit during the period of the lease agreement.

(2) If an application for certification of a pulp, paper or paperboard facility is filed with the Department of Environmental Quality on or after January 1, 1999, the credit may be claimed by the facility's owner/lessor, including a contract purchaser, or lessee. The owner need not operate the facility or conduct the trade or business that utilizes the property to qualify for the credit.

(3)(a) For a resource recovery facility certified on or after November 1, 1981, and prior to September 27, 1987, the credit is allowable to taxpayers who own, lease, or have a beneficial interest in the facility. "Beneficial interest" refers to the right to receive a profit, benefit, or other advantage from the facility. That right must be conveyed by a contract or other written document. A capital investment is required. Beneficial interest includes but is not limited to a partner's interest in a partnership owning part or all of the facility, or a contract purchaser's interest in a facility. If more than one taxpayer has an interest in the facility, the cost may be allocated between them. It is not necessary that the cost be allocated according to percentage of interest. The total costs allocated cannot exceed the total certified cost.

(b) For a resource recovery facility certified on or after September 27, 1987, the credit is allowable only to the taxpayer who owns, or leases the facility. An allocation of the costs is not allowed for these facilities.

(c) For purposes of (a) and (b), it is not necessary that the taxpayer receiving the credit operate or use the facility in the business.

(d) The taxpayer to whom the certificate is issued must file a written statement with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed. For resource recovery facilities certified prior to September 27, 1987, the statement must designate the persons to whom the certified costs have been allocated and the cost allocated to each. For resource recovery facilities certified on or after September 27, 1987, the statement filed with the Department of Revenue must designate the taxpayer claiming the credit.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.304
Hist.: 1-1-77; 12-31-81, Renumbered from 150-316.097(5) to 150-316.097(4); 12-31-85; 12-31-86; 12-31-87, Renumbered from 150-316.097(4); 12-31-93; REV 5-2000, f. & cert. ef. 8-3-00

150-315.304(5)
Pollution Control Facilities: Years in Which Credit May Be Claimed

The credit may be claimed beginning in the tax year in which the facility is certified but not beyond the 10-year certification period provided in ORS 468.170(7), except as to the carry-forward credit.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.304
Hist.: Hist.: 1-1-77; 12-31-77, Renumbered from 150-316.097(6) to 150-316.097(5); 12-31-85; 12-31-86; Renumbered from 150-316.097(5); 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-315.304(8)
Pollution Control Facilities: Transfer of Facilities

(1) A transferee of a facility previously certified and for which tax credits had been allowed in the hands of the transferor shall, in addition to the information required under OAR 150-315.304(1)(b), include in the statement the following:

(a) The identification of each pollution control facility by the serial number issued to the transferor and the number issued to the transferee.

(b) A computation of the total amount of tax credit claimed as available for each facility.

(2) A transferee of a pollution control facility shall not claim the credit until the transferee obtains a new certificate as required by ORS 315.304(8) and 468.170.

(a) If a sole proprietorship or partnership obtains a pollution control facility certificate and the business subsequently incorporates, the new corporation must obtain a new certificate before it may claim any remaining credit for the facility. A new certificate is required even if the facility is transferred in a tax-free exchange.

(b) When two or more domestic corporations merge or consolidate, or when one or more domestic corporations and one or more foreign corporations merge or consolidate, the successor corporation is not required to apply for a new certificate.

(c) If a foreign corporation authorized to transact business in Oregon is merged or consolidated into another foreign corporation, the laws of the state in which the successor corporation is incorporated will govern the rights of the successor corporation and, hence, determine the transferability of the certificate.

(3) When a facility is sold, the seller may claim a credit for the year of sale prorated to that portion of the tax year during which the seller owned and operated the facility. The buyer also may claim a credit for the year of purchase prorated to the period of ownership and operation of the facility, provided the buyer applies for and receives a new certificate as required by ORS 315.304(8) and 468.170. If the seller's tax year does not coincide with the purchas-

er's, each taxpayer's credit is based upon the portion of each taxpayer's own tax year in which that taxpayer owned the facility.

Example. Taxpayer A sold a certified facility to taxpayer B on July 1. Taxpayer B is a fiscal year taxpayer with a tax year ending March 31. Taxpayer A's credit would be limited to 50 percent of a full year's credit (facility owned January 1 through June 30). Assuming taxpayer B applied for and received a new certificate taxpayer B would be entitled to 75 percent of a full year's credit (facility owned July 1 through March 31).

(4) Since ORS 315.304(8) provides that "the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor," it is necessary that the seller disclose to the buyer the amount of maximum allowable credit not yet claimed, based on 50 percent, or lesser applicable percentage, of the original certificate holder's investment in the facility. The transferee shall amortize the available credit over the shorter of the remaining useful life, as of the date of the new certificate, or ten years.

(5) When a facility is sold, any credit carryforward from tax years prior to the sale cannot be sold or otherwise transferred to the buyer. Such credit shall be carried forward by the seller.

Stat. Auth.: ORS 305.100
Stats. Implemented:
Hist.: 1-69; 10-73; 7-76; 1-1-77; 12-31-81, 12-31-83; 12-31-84, Renumbered from 150-316.097(10) to 150-316.097(8); 12-31-85; 12-31-88, Renumbered from 150-316.097(8); 12-31-93

150-315.304(9)
Pollution Control Facilities: Tax Credit Carry Forward

(1) The amount of pollution control facility tax credit that may be carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other credits, for all prior tax years that are within the carryover period.

Example 1: A corporate excise taxpayer built a pollution control facility in 1995 at a certified cost of $80,000. The certified percentage allocable to pollution control is 50 percent and the facility has a useful life of eight years. The maximum credit allowed in one tax year is calculated as follows: The $80,000 certified cost is multiplied by the 50 percent allocable to pollution control, yielding $40,000 as the total amount of credit to be claimed over the eight year life of the facility. The $40,000 divided by eight equals $5,000, the maximum yearly credit. See ORS 315.304(2). The taxpayer claimed the maximum credit on tax returns for 1995 and 1996. On the taxpayer's 1997 return, the taxpayer is subject to a corporate excise tax of $1,000 that is offset by $1,000 of the pollution control facility tax credit, leaving $4,000 of credit to be carried forward.

(2) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must use the credit from a previous year first and then the current year's credit.

(3) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

Example 2: The taxpayer described in the prior example computes a tax of $8,000 for 1998. The taxpayer will offset that tax with $8,000 of credit ($4,000 carried over from 1997 plus $4,000 of the current year's $5,000 credit), leaving $1,000 of the 1998 credit to be carried forward.

(4) When a facility is sold, the amount of unused credit carried forward from tax years before the sale is retained by the seller to offset tax in future years.

Example 3: Calendar year taxpayer A sold a facility to taxpayer B on January 1, 2001. A's allowable pollution control facility credit for 2000 was $500, but A had a net loss and no tax liability to offset. The unused 2000 credit will be carried forward by A to offset A's future taxes.

(5) A taxpayer that has unexpired credits at the beginning of tax year 2001 may carry those credits forward for up to three additional tax years, but only if the facility is in use and operation during the tax year to which the credit is carried.

Example 4: Calendar year corporation taxpayer B received certification for a pollution control facility with a 10 year asset life and was first eligible to claim the credit in tax year 1996. B reported losses for tax years 1996 through 2000 and was not able to claim the allowable credits for those years. The credit allowed for 1996 was carried forward to 1997, 1998, and 1999 and expired. The credit allowed for 1997 was carried forward to 1998, 1999, and 2000 and expired. The credits allowed for tax years 1998 through 2005 were unexpired at the beginning of B's 2001 tax year and are eligible to be carried forward for up to six years.

Example 5: Taxpayer B from Example 4 reports a loss in tax year 2002 and closes the pollution control facility on December 31, 2002. B's unused credits from 1998 and 1999 may not be carried forward to 2003 because the facility was not in use and operation during the tax year to which the credit is carried and the three year period for carryover expired in 2001 and 2002 respectively. The credits for tax years 2000, 2001, and 2002 are eligible to be carried forward for up to three years. No credits may be computed for tax years 2003, 2004, and 2005, but the unused credits carried forward from 2000, 2001, and 2002 may be claimed in the three later years.

Example 6: Corporation taxpayer C's pollution control facility is certified on January 1, 2001. C is able to offset only half of its allowable credit against tax on its 2001 return. The balance of the 2001 credit may only be carried forward for up to three years. C did not have unexpired credits at the beginning of its tax year beginning in 2001.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.304
Hist.: 1-69; 10-73; 7-76; 1-1-77, Renumbered from 150-316.097(11) to 150-316.097(9); 12-31-85; 12-31-86; 12-31-88, Renumbered from 150-316.097(9); 12-31-93; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-315.304(10)
Pollution Control Facilities: Adjustment of Basis

When computing adjusted basis for a facility certified in a tax year beginning before January 1, 1977, original basis is reduced by the amount of depreciation that was not deducted due to claiming the credit and by the amount of credit claimed in tax years beginning before January 1, 1977.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.304
Hist.: Hist.: 1-69; 12-31-77; 12-31-81, Renumbered from 150-316.097(12) to 150-316.097(10); 12-31-85, Renumbered from 150-316.097(10); 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-315.326
Tax Credit Auctions

(1) Definitions.

(a) "Tax Credits" means the credits authorized by Chapter 730, Section 23, Oregon Laws 2011 (HB 3672). These credits may also be referred to as the "Renewable Energy Development Contribution Credit(s)."

(b) "Qualified Bid" means a bid that is eligible to participate in the tax credit auction because:

(A) It is submitted in a manner and time prescribed by the department's instructions and this rule;

(B) It is submitted for no less than 95 percent of the tax credit value or $950 per tax credit increment;

(C) An associated payment is received by the department in the time and manner prescribed in section (4).

(c) "Non-qualified Bid" means a bid that is not eligible to participate in the auction because it does not meet the requirements of subsection (b).

(d) "Invalid or Insufficient Payments" are payments that are:

(A) Not received by the department by 5:00 p.m. (PT) on the date for payment set by the department;

(B) In a form other than one listed in section (4) of this rule;

(C) Fraudulent or otherwise not able to be immediately banked by the department;

(D) Less than the full amount of the corresponding bid received by the department; or

(E) Not submitted in a manner consistent with department's instructions (including attaching the required completed forms).

(e) "PT" means Pacific Time (Daylight or Standard as dictated by the time of year).

(2) Auction Bidding Period. The tax credits auction bidding period is no less than seven days, not to exceed 14 days; with specific dates as announced by the department.

(3) Tax Credit Certificates. 1,500 increments of $1,000 tax credit certificates ($1,500,000 total) will be available for bidding at the auction. The Oregon Department of Energy will issue tax credit certificates for the prevailing qualified bids. A taxpayer to whom a certificate is issued may claim a credit in the amount shown on the certificate against Oregon personal income or corporate income or excise tax otherwise due for that tax year. The tax credit may not exceed the liability of the taxpayer in any one year. Any credit amount unused by the taxpayer may be carried forward to offset tax liabilities in the next three succeeding tax years. No transfer of the certificate (or the credit that it represents) is allowed.

(4) Determination of Qualifying Bids and Payments.

(a) Bids must be submitted on-line in a manner consistent with the department's instructions and within the bidding period as outlined in section (2). Bids received before or after the bidding period will be considered a non-qualified bid. The department will determine the order of bids received by the electronic date and time stamp.

(b) A bidder may submit multiple separate bids.

(c) After a bid is submitted, a bidder must send, and the department must receive, a payment for the total amount bid. Invalid or insufficient payments will be returned to the bidder and the associated bid considered a non-qualified. All bid payments must be received by the department no later than 5:00 p.m. (PT) on the payment date. The department will date stamp payments when they are received. The department will not consider postmarks when determining if the payment has been timely received. It is the bidder's responsibility to ensure that the department receives the payment by the deadline. The method of payment is limited to the following:

(A) Bank-issued certified check;

(B) Bank-issued cashier's check; or

(C) Money Order.

(d) All payments will be held until the outcome of the auction is determined. As soon as practicable, the department will return payments received to bidders that do not prevail at the auction. No interest will be paid on payments.

(e) A bid, once submitted, is not revocable and may not be changed. A payment will only be returned if a bid does not result in the issuance of a tax credit certificate.

(5) Determination of the Prevailing Bid(s). After the payment deadline has passed, the department will determine the prevailing bids by placing the qualifying bids in order from highest bid amount to lowest bid amount. The department will allot up to 1,500 tax credit increments of $1,000 each to the highest qualifying bids in order from highest bid to lowest bid. In the event that two or more qualifying bids have identical bid amounts for the last tax credit increment (or increments) available, the prevailing qualifying bid will be the one the department received first as determined under section (4).

Example: Four bidders (A, B, C and D) make qualifying bids on $10,000 worth of tax credits (sold in ten increments of $1,000). Bidder A bids $950 for each of four increments on October 24. Bidder B bids $965 for each of four increments on October 26. Bidder C bids $985 for each of three increments and $965 for each of two increments on November 1. Bidder D bids $990 for each of five increments on November 4. The department will place the bids in the following order:

Bid Amount/ Increment	Date Received	Bidder	Number of Increments Bid
$990	11/04	D	5
$985	11/01	C	3
$965	10/26	B	4
$965	11/01	C	2
$950	10/24	A	4

The results of the auction are as follows:

5 of the 10 increments go to D.

3 of the 10 increments go to C (for the $985 bid).

2 of the 10 increments go to B (for the $965 bid).

NOTE 1: B only received two of the four increments he bid on because no more increments were available. The department will return the payment to B for the amount of the two non-prevailing bids.

NOTE 2: The bid C placed at $965 did not prevail because it tied with the bid B submitted. B's bid will prevail over C's bid in the event of a tie because it was received before C's bid. C's payment for the $965 bid will be returned.

NOTE 3: A's bid was not high enough to prevail. A's bid payment will be returned.

Stat. Auth.: ORS 305.100
Stats. Implemented: 315.326
Hist.: REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-315.354(5)
Business Energy Tax Credit: Transfer of Facilities

(1)(a) When a facility is sold, the seller may claim a credit for the year of sale prorated to the portion of the tax year that the seller owned and operated the facility. The buyer also may claim a credit for the year of purchase prorated to the period of ownership and operation of the facility if the buyer applies for and receives a new certificate as required by ORS 315.354(5)(a) and 469.215. If the seller's tax year is not the same as the purchaser's, each taxpayer's credit is based upon the portion of each taxpayer's own tax year in which that taxpayer owned the facility.

Example: Taxpayer A, a calendar year taxpayer, sold a certified facility to Taxpayer B on July 1. Taxpayer B is a fiscal year taxpayer with a tax year ending March 31. Taxpayer A's credit would be limited to 50 percent of a full year's credit (facility owned January 1 through June 30). Assuming Taxpayer B applied for and received a new certificate, Taxpayer B would be entitled to 75 percent of a full year's credit (facility owned July 1 through March 31).

(b) ORS 315.354(5)(a) provides that the tax credit available to the new owner is limited to the amount of credit not claimed by the former owner or, for a new lessor, the amount of credit not claimed by the lessor under all previous leases. Therefore, it is necessary for the seller to disclose to the buyer the amount of allowable credit not yet claimed based on the original certificate holder's investment in the facility.

(2) When the credit is available to co-owners of a facility and one owner purchases the interest of another, the credit must be prorated between purchaser and seller. The method of prorating partnership income when a partnership interest is sold that is provided in Internal Revenue Code Section 706(d) must be used to prorate the credit.

(3) When a facility is sold, any credit carryforward from tax periods prior to the sale cannot be sold or otherwise transferred to the buyer. Such credit carry forwards may only be used by the seller.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.354
Hist.: 9-20-89, 12-31-89, 12-31-92, Renumbered from 150-317.104(5); 12-31-93; REV 8-2001, f. & cert. ef. 12-31-01; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-315.514
Oregon Production Investment Fund Tax Credit Auctions

(1) Definitions.

(a) "Tax Credit" means the credit authorized by ORS 315.514.

(b) "Qualified Bid" means a bid that is eligible for consideration in the tax credit auction because:

(A) It is submitted in a manner and time prescribed by the department's instructions and this rule;

(B) It is submitted for no less than 95 percent of the tax credit value;

(C) An associated payment is received by the department in the time and manner prescribed in section (4).

(c) "Non-qualified Bid" means a bid that is not eligible to participate in the auction because it does not meet the requirements of subsection (b).

(d) "Invalid or Insufficient Payments" are payments that are:

(A) Not received by the department by 5:00 p.m. (PT) on the date for payment set by the department;

(B) In a form other than one listed in section (4) of this rule;

(C) Fraudulent or otherwise not able to be immediately banked by the department;

(D) Less than the full amount of the corresponding bid received by the department; or

(E) Not submitted in a manner consistent with department's instructions (including attaching the required completed forms).

(e) "PT" means Pacific Time (Daylight or Standard as dictated by the time of year).

(2) Auction Bidding Period. The tax credits auction bidding period is no less than seven days, not to exceed 14 days; with specific dates as announced by the department.

(3) Tax Credit Certificates. The Oregon Film and Video Office will issue tax credit certificates for the prevailing qualified bids. A taxpayer to whom a certificate is issued may claim a credit in the amount shown on the certificate against Oregon personal income or corporate income or excise tax otherwise due for that tax year. The tax credit may not exceed the liability of the taxpayer in any one year. Any credit amount unused by the taxpayer may be carried forward to offset tax liabilities in the next three succeeding tax years. No transfer of the certificate (or the credit that it represents) is allowed.

(4) Determination of Qualifying Bids and Payments.

(a) Bids must be submitted on-line in a manner consistent with the department's instructions and within the bidding period as outlined in section (2). Bids received before or after the bidding period will be considered a non-qualified bid. The department will determine the order of bids received by the electronic date and time stamp.

(b) A bidder may submit multiple separate bids.

(c) After a bid is submitted, a bidder must send, and the department must receive, a payment for the total amount bid. Invalid or insufficient payments will be returned to the bidder and the associated bid considered non-qualified. All bid payments must be received by the department no later than 5:00 p.m. (PT) on the payment date. The department will date stamp payments when they are received. The department will not consider postmarks when determining if the payment has been timely received. It is the bidder's responsibility to ensure that the department receives the payment by the deadline. The method of payment is limited to the following:

(A) Bank-issued certified check;

(B) Bank-issued cashier's check; or

(C) Money Order.

(d) All payments will be held until the outcome of the auction is determined. As soon as practicable, the department will return payments received to bidders that do not prevail at the auction. No interest will be paid on payments.

(e) A bid, once submitted, is not revocable and may not be changed. A payment will only be returned if a bid does not result in the issuance of a tax credit certificate.

(5) Determination of the Prevailing Bid(s). After the payment deadline has passed, the department will determine the prevailing bids by placing the qualifying bids in order from highest bid amount to lowest bid amount. The department will allot tax credit certificates to the highest qualifying bids. In the event that two or more qualifying bids have identical bid amounts for the last tax credit increment (or increments) available, the prevailing qualifying bid will be the one the department received first as determined under section (4).

Example: Four bidders (A, B, C and D) make qualifying bids on $10,000 worth of tax credits (sold in twenty increments of $500). Bidder A bids $475 for each of eight increments on October 24. Bidder B bids $480 for each of eight increments on October 26. Bidder C bids $485 for each of six increments and $480 for each of four increments on November 1. Bidder D bids $495 for each of ten increments on November 4.

The results of the auction are as follows:

10 of the 20 increments go to D.

6 of the 20 increments go to C (for the $490 bid).

4 of the 20 increments go to B (for the $480 bid).

NOTE 1: B only received four of the eight increments he bid on because no more increments were available. The department will return the payment to B for the amount of the four non-prevailing bids.

NOTE 2: The bid C placed at $480 did not prevail because it tied with the bid B submitted. B's bid will prevail over C's bid in the event of a tie because it was received before C's bid. C's payment for the $480 bid will be returned.

NOTE 3: A's bid was not high enough to prevail. A's bid payment will be returned.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.514

Hist.: REV 3-2006, f. & cert .ef. 7-31-06; REV 3-2012(Temp), f. 5-17-12, cert. ef. 6-1-12 thru 7-31-12; REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; REV 6-2013, f. & cert. ef. 12-26-13

150-315.521

University Venture Development Fund Tax Credit

(1) Under ORS 315.521, taxpayers may claim a credit for donations to a qualified university venture development fund. The total credit is equal to sixty percent of the amount contributed to the university venture development fund that is shown on the tax credit certificate issued by a university. The credit allowable in any one tax year is limited to the lesser of:

(a) $50,000;

(b) The tax liability of the taxpayer for that year; or

(c) Twenty percent of the amount contributed.

(2) The credit is claimed in the year the donation is made and in any subsequent tax years until the total credit is used.

Example 1: Ian donated $200,000 to a university venture development fund in 2007. Ian may claim a tax credit of $120,000 (60 percent of $200,000). In any one tax year, the maximum credit Ian may claim is the least of $50,000, his tax liability for the tax year, or $40,000 (20% of his 2007 contribution).

Ian's tax liability by year; 2007 — $25,000; 2008 — $65,000; 2009 — zero; 2010 — $45,000;

2011 and 2012 — $35,000

In 2007, Ian may claim $25,000 (his 2007 tax liability); the lowest of the amounts in subsections (1)(a), (1)(b), or (1)(c) of this rule. Ian has $95,000 remaining to claim in future tax years.

In 2008, Ian may claim $40,000 because he may not claim more than 20 percent of the contribution in any one year. Ian has used $65,000 of his total credit ($25,000 in 2007 + $40,000 in 2008).

In 2009, Ian may not claim any credit because he may does not have a tax liability. He has $55,000 remaining to claim in later years.

In 2010, Ian may claim $40,000 (20 percent of the contribution in any one year). Ian has used $105,000 of his total credit ($25,000 in 2007 + $40,000 in 2008 + $40,000 in 2010).

In 2011, he may claim $15,000 because he may not claim more than the total credit of $120,000 ($120,000 total credit – $105,000 already used = $15,000 available credit for 2011).

Example 2: Assume the same facts as Example 1, except that Ian contributes an additional $100,000 to the fund in 2008. The total credit that may be claimed for this contribution is $60,000 (60 percent of $100,000). In 2008, Ian has $95,000 remaining of his 2007 credit to claim in future tax years and the 2008 credit from the new contribution. Ian figures his 2008 credit as follows:

In 2008, Ian may claim $40,000 of the 2007 credit and $20,000 of his 2008 credit because he may not claim more than 20 percent of the contributions in any one year. Ian has $55,000 remaining of his 2007 credit ($120,000 – $25,000 – $40,000 = $55,000) and $40,000 of his 2008 credit ($60,000 – $20,000) to claim in future tax years.

In 2009, Ian may not claim any credit because he does not have a tax liability. He continues to have $95,000 in credits remaining to claim in later years.

In 2010, Ian may claim $40,000 of the 2007 credit because he may not claim more than 20 percent of the contribution in any one year. He may also claim $5,000 of his 2008 credit because he may not claim more than his tax liability. Ian has $15,000 remaining of his 2007 credit [$120,000 – $25,000 (in 2007) – $40,000 (in 2008) – $40,000 (in 2009) = $15,000] and $35,000 of his 2008 credit [$60,000 – $20,000 (in 2008) – $5,000 (in 2010)] to claim in future tax years.

In 2011, Ian may claim the remaining $15,000 of his 2007 credit and $20,000 of his 2008 credit. He may not claim more than $20,000 of his 2008 credit because he may not claim more than his tax liability or more than 20 percent of the contribution; in this case either is $20,000. Ian has used his entire 2007 credit and has $15,000 of his 2008 credit ($60,000 – $20,000 – $5,000 – $20,000) to claim in future tax years.

In 2012, he may claim the remaining $15,000 of his 2008 credit.

(3) ORS 315.521 requires that any amount deducted for federal tax purposes that serves as the basis of calculating the credit must be added to taxable income.

Example 3: Ian deducted the $200,000 contribution on his 2007 federal tax return. Because that amount is used as the basis for determining the tax credit, ORS 315.521(5) requires the $200,000 be added to Oregon taxable income on the 2007 Oregon tax return.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.521

Hist. REV 7-2007(Temp), f. & cert. ef. 9-21-07 thru 12-31-07; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-315.610(5)(c)

Long-term Care Insurance Premiums Credit Allowable to Spouses Filing Separately

(1) A husband and wife who file separate Oregon returns may each claim a share of the long-term care insurance premiums credit that would have been allowed on a joint return. The credit on a joint return is limited to the lesser of 15 percent of the combined long-term care insurance premiums expense, or $500. The spouses may divide the total premium cost between them based on who actually paid the premiums or by any other method that is acceptable to both spouses. If the spouses do not agree on how to divide the total premium cost, the department may allocate the payments between them. Spouses are considered not to have agreed on a method for dividing their payments if both spouses file separate returns claiming total credits that exceed the maximum that would have been allowed on a joint return.

(2) Figuring the credits. There are three steps to determine the allowable credits.

(a) Step 1: Compute a credit using the total premium cost.

(b) Step 2: Determine each spouse's allowable credit proportion by dividing each spouse's premium expense by the total premium cost.

(c) Step 3: Multiply the joint credit by each individual's proportion.

Example: Jim and Gina, husband and wife, use married filing separate status for their Oregon tax returns. During the year Jim paid $2,400 in long-term care insurance premiums. Gina paid premiums of $1,200, for total premiums paid of $3,600. First they compute the credit as if they were claiming it jointly. Their combined individual credits cannot exceed their

joint credit; that is, the lesser of 15 percent of the combined premiums or $500. A total premium of $3,600 x 15 percent is $540, so their joint credit amount is limited to $500. Next, they each determine their individual proportion of the total premiums paid. Jim divides $2,400 by $3,600 to find he paid 67 percent of the total premiums. Gina's portion is 33 percent ($1,200/$3,600). Finally, they each multiply the joint credit by their proportion to determine their separate credit. Jim's individual credit is 67 percent of $500 or $335. Gina's credit is $165 ($500 x 33 percent).
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.610
Hist.: REV 5-2000, f. & cert. ef. 8-3-00

DIVISION 316

PERSONAL INCOME TAX GENERAL PROVISIONS

150-316.007
Oregon Net Operating Losses — Treatment Before 1985

(1) Applicability of this Rule.

(a) The provisions set forth in this rule shall apply to the computation of net operating losses occurring in loss years beginning before January 1, 1985; net operating loss deductions allowed in tax years beginning before January 1, 1985, from losses that originated in loss years beginning before January 1, 1985; and net operating loss carrybacks and carryovers applied in tax years beginning before January 1, 1985, that originated in loss years beginning before January 1, 1985.

(b) For the computation and application of Oregon net operating losses; net operating loss deductions with regard to loss years and net operating loss carrybacks and net operating loss carryovers originating after December 31, 1984, see OAR 150-316.028.

(2) Negative Oregon Taxable Income Defined. For purposes of this rule, negative Oregon taxable income means federal taxable income as defined in the laws of the United States, with the modifications, additions and subtractions provided in ORS Chapter 316, which is less than zero.

(3) The Computation of a Net Operating Loss for Loss Years Beginning before January 1, 1985.

(a) For purposes of this rule, "loss years" means those tax years in which a net operating loss occurs. The computation of a net operating loss for Oregon purposes begins with negative Oregon taxable income. Internal Revenue Code Section 172 is generally applied to items of income, deduction and modification on the Oregon return in both the year of the loss and in the year or years to which the loss deduction is carried.

(b) There are five items that may reduce negative Oregon taxable income. These are: net operating loss deduction from other years; exemption deductions, if applicable; the nonbusiness deductions less nonbusiness income modification required by IRC Section 172; Oregon capital gains deduction; and the net Oregon capital loss deduction. The amount of negative Oregon taxable income remaining after the above items have been taken into account, shall be considered the amount of the taxpayer's Oregon net operating loss deduction.

Example: Sandy and Joe filed federal and Oregon tax returns for 1984. On their federal return they reported wages of $12,000, a business loss of $40,000 (a part of which was attributable to depreciation), a gain on the sale of stock of $400 (net of $600 capital gains deduction), interest income of $800, and a taxable pension from the U.S. Government of $2,000. They paid no federal or state taxes in 1984 and reported total itemized deductions of $6,800. These deductions were considered nonbusiness.
On their Oregon return Sandy and Joe also reported $500 municipal bond interest from California that was exempt from federal income tax, they were allowed to deduct $1,000 more depreciation for Oregon purposes than for federal purposes, and, they were allowed to deduct the entire pension income on their Oregon return as a U.S. Public Retirement subtraction. Their allowable Oregon net operating loss is computed as follows: [Table not included. See ED. NOTE.]

(4) Oregon Net Operating Losses-Reduction Due to the Net Oregon Capital Loss Deduction. Oregon net operating losses shall be reduced by the amount of net Oregon capital loss deduction claimed on the Oregon return. The net capital loss deduction is generally the same as the amount deducted on the federal return. However, there are modifications that are required under Oregon law which cause the capital loss deduction to be different for Oregon purposes. These modifications must be taken into account in determining the amount of capital loss deduction that is part of negative Oregon taxable income. This difference may be due to depreciation differences upon the sale of a capital asset.

Example: Gary sells a capital asset to Helen for $10,000. The federal adjusted basis is $9,000 and the Oregon adjusted basis is $12,000. For federal purposes Gary has a gain of $1,000. However, Gary has a capital loss for Oregon purposes of $2,000 ($10,000 – $12,000). For purposes of this example, assume the loss is a short-term capital loss. Gary's negative Oregon taxable income is reduced by $2,000, the amount of the capital loss deduction for Oregon purposes.

(5) Oregon Net Operating Losses-Reduction Due to Nonbusiness Deductions in Excess of Nonbusiness Income. In order to compute an Oregon net operating loss, the taxpayer's negative Oregon taxable income is reduced by the amount of excess nonbusiness deductions over nonbusiness income. Oregon modifications, additions, and subtractions used in computing negative Oregon taxable income may reduce the allowable Oregon net operating loss. Use the following list to help determine which of the more common Oregon modifications, additions or subtractions are considered business or nonbusiness. The list is not complete. It is intended to be a guide. [List not included. See ED. NOTE.]

(6) Part-year residents and Nonresidents.

(a) Tax years beginning before January 1, 1983. The base for computing an Oregon net operating loss for a part-year resident or a nonresident shall be negative Oregon taxable income. To compute an Oregon net operating loss, negative Oregon taxable income shall be modified as provided in (3) above by those modifications which relate to items of Oregon income or deduction only.

(b) Tax years beginning after December 31, 1982 and before January 1, 1984. A part-year resident or nonresident shall be allowed an Oregon net operating loss deduction only if the taxpayer had negative Oregon taxable income as defined in (2) of this rule, in the year of the loss.

(c) Tax years beginning after December 31, 1983 and before January 1, 1985. In computing an Oregon net operating loss, for part-year residents, negative Oregon taxable income shall be modified as provided in (3) above by those modifications which relate to items of Oregon income or deduction only. Nonresidents shall calculate their Oregon net operating loss as provided in (6)(a) above.

(7) Non-Oregon Source Net Operating Losses. If a non-Oregon source net operating loss arises while the taxpayer is a nonresident, the resulting net operating loss deduction shall not be allowed when computing Oregon taxable income.

(8) Oregon Source Net Operating Losses.

(a) Taxpayers shall be allowed a deduction for Oregon source net operating losses as determined in section (3) of this rule. Taxpayers may also carryover the Oregon net operating loss deduction in a manner consistent with IRC Section 172.

(b) Generally, if a taxpayer carries a net operating loss deduction back for federal purposes, the taxpayer shall carry the Oregon net operating loss back for Oregon purposes also. The same principle applies to net operating loss carryovers and carryforwards.

(c) An exception to this rule arises if the taxpayer is not required to file an Oregon return for all the years to which the federal net operating loss deduction is applied. In this case, the following rule applies: In the case of a net operating loss carryback, if the taxpayer was not required to file an Oregon return for the third year prior to the Oregon net operating loss, the Oregon net operating loss deduction shall be carried over to the year succeeding the carried back year. If the taxpayer was not required to file an Oregon tax return in that year, the Oregon net operating loss deduction shall be carried over to that year in which the loss may be first applied. The total number of years to which a net operating loss deduction may be carried back or forward shall be the same for Oregon and federal net operating losses. The number of years allowed is determined by IRC Section 172(b).

Example: Jane computed her allowable Oregon source net operating loss deduction for tax year 1984. For federal purposes, she carried back her federal net operating loss deduction back to tax year 1981. Since she carried her loss back for federal purposes, she shall carry her loss back for Oregon purposes to her 1981 Oregon tax return. If she was not required to file an Oregon tax return for 1981, she may carry her Oregon net operating loss deduction to her 1982 Oregon tax return.

(9) Filing Status.

(a) Oregon net operating losses may be split among spouses. Taxpayers who change their filing status, for example, generally need to identify their separate items of income, deductions, Oregon modifications, etc., to compute their separate Oregon net operating loss deduction.

(b) Items of income are split between the spouses in a manner consistent with Treasury Regulation Section 1.172.7. Modifications to federal adjusted gross income (AGI), as required under Chapter 316, are allocated between the spouses. Each spouse is entitled to those modifications that belong only to him or her. For those modifications which are not clearly attributable to any one spouse, multiply the dollar amount by the following percentage: [Table not included. See ED. NOTE.]

(c) Other deductions, such as itemized deductions, are treated in the same manner as modifications described in the preceding paragraph. Those deductions that specifically belong to a spouse are used in computing that spouse's separate itemized deductions. All other itemized deductions shall be allocated each spouse based on the percentage described above. State taxes are to be allocated in a manner consistent with Revenue Rulings 80-6 and 80-7.

(10) For Oregon's exemption deduction and/or credit, each spouse may claim his or her own personal exemption. Each spouse may also claim dependents based on provision of support or a spousal agreement.

[ED. NOTE: Tables & Lists referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.007
Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 4-1986(Temp), f. & cert. ef. 7-29-86; RD 7-1986, f. & cert. ef. 12-31-86; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-316.007-(A)
Policy — Application of Various Provisions of the Federal Internal Revenue Code

The policy of the State of Oregon is to follow the Internal Revenue Code as closely as possible relating to the computation of taxable income of individuals. Other areas, such as tax credits, special tax computations, and administrative provisions are not tied to federal law because they do not relate to the computation of taxable income.

(1) *Claim of right*: See Chapter 1007, Oregon Laws 1999 for provisions allowing recovery of state tax paid on items of income that are repaid.

(2) *Installment sale reporting*: A taxpayer may report a loss on the sale of an asset for federal purposes. The same sale can result in a gain at the Oregon level because of differences in the basis of the asset. The taxpayer cannot use the installment reporting method for federal purposes if the asset is sold at a loss for federal purposes. However, for Oregon tax purposes, the taxpayer may report the gain using the installment method. The difference between the loss claimed on the federal return and the Oregon gain will be an adjustment on the Oregon return.

(3) *Beneficiaries of a qualified Subchapter S trust*. ORS 316.007 provides that Oregon law is made identical in effect to the provisions of federal law. Under IRC section 1361(d)(1)(B), a beneficiary of a qualified Subchapter S trust (QSST) is treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the QSST election was made. For purposes of Chapter 316, the beneficiary of a qualified Subchapter S Trust (QSST) shall be treated as if the beneficiary were a shareholder of the S corporation whose stock is owned by the trust.

Example 1: Mr. Bishop is the trustee and sole income beneficiary of the Bishop Trust, a qualified Subchapter S trust. The trust owns 100 shares (15 percent) of the common stock of United Lumber, an S corporation. United paid income taxes during the current year to other states on income that was also taxable by Oregon. Mr. Bishop, as beneficiary of the QSST, is treated as the owner of the S corporation shares owned by the QSST. As such, Mr. Bishop is entitled to claim a credit for taxes paid by United to other states under ORS 316.082.

Example 2: Ms. Johnson is a beneficiary of a trust that owns shares of an S corporation. The S corporation is one of several partners that own and operate a waste co-generation plant. The facility placed into service equipment that qualifies for a business energy credit under ORS 315.354. As beneficiary of the QSST, Ms. Johnson is entitled to claim the portion of the credit attributable to S corporation shares owned by the trust.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.007
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2000, f. & cert. ef. 8-3-00

150-316.007-(B)
Policy — Application of Various Provisions of Tax Law to Domestic Partners

(1) Definitions.

(a) As used in this rule, "fringe benefits" means employee benefits provided to an employee's domestic partner that are tax exempt when provided to an employee's spouse. Fringe benefits typically include, but are not limited to:

(A) Health insurance;

(B) Tuition payments; and

(C) Tuition reduction programs.

(b) As used in this rule, "imputed value" means the amount included in federal taxable income of the employee because the fringe benefits are provided to the domestic partner rather than a spouse.

(c) As used in section (2) of this rule, "domestic partner" means a "partner" as that term is defined in Section 3(2) of 2007 Oregon Laws, chapter 99. The Act defines "partner" to be "an individual joined in a domestic partnership" and "domestic partnership" is defined as "a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon."

(2) Policy after effective date of the Oregon Family Fairness Act (2007 Oregon Laws, Chapter 99). The imputed value of certain fringe benefits provided by an employer on or after February 1, 2008 to an employee's domestic partner is exempt from Oregon income tax if those benefits are exempt from federal income tax for married individuals.

(3) Sections (4)–(5) of this rule are effective for benefits provided on or after January 1, 2000 through January 31, 2008.

(4) Policy from January 1, 2000 through January 31, 2008. The imputed value of certain fringe benefits provided by an employer to an employee's domestic partner are exempt from state income tax.

(5) As used in section (4) of this rule, "domestic partner" means a person in a relationship with an employee, each of whom:

(a) Is under no legal disability to marry the other person, but for the fact that each is of the same sex;

(b) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted it;

(c) Is committed to the care and support of the other person;

(d) Is responsible for the needs of the other person;

(e) Is responsible for financial obligations to others equivalent to such financial obligations that arise within a marriage recognized under Oregon law; and

(f) Is not married and has no similar commitment and responsibility relative to any other individual.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.007 & 2007 OL Ch. 99
Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 9-2000, f. 8-15-00, cert. ef. 9-1-00; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09; REV 1-2009, f. & cert. ef. 1-5-09

150-316.012
Adoption of Federal Law

With the adoption of the Personal Income Tax Act of 1969, Oregon personal income tax law was tied to the Federal Internal Revenue Code of 1954 with certain modifications. However, there have been periods during which Oregon law did not automatically adopt federal law amendments and enactments. The most recent of these periods and the federal law date to which each referenced period is connected are:

(1) For the period beginning January 1, 1985, Oregon personal income tax law is tied to federal law in effect, amended or enacted on or before December 31, 1984 with certain technical corrections, specifically Internal Revenue Code Sections 274(d) and 280F.

(2) For the period beginning January 1, 1987, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1986, with certain modifications.

(3) For the period beginning January 1, 1989, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1988, with certain modifications.

(4) For the period beginning January 1, 1991, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1990, with certain modifications.

(5) For the period beginning January 1, 1993, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1992, with certain modifications.

(6) For the period beginning January 1, 1995, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before April 15, 1995, with certain modifications.

(7) For the period beginning January 1, 1997, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986 or as in effect for that tax year of the taxpayer.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.012
Hist.: Repealed by TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.021
Tax Reform Act of 1984 Adjustments

(1) Any adjustments to a taxpayer's 1984 Oregon taxable income due to modifications required under ORS 316.021 shall be made using either of the following methods:

(a) The taxpayer may amend the 1984 Oregon tax return and include such adjustments as increases or decreases to the taxpayer's 1984 Oregon taxable income; or

(b) The taxpayer may include the amount computed in (C) below as an increase or decrease in the taxpayer's 1985 Oregon tax liability. (This method is available to taxpayers who are required to file a 1985 Oregon tax return.)

(A) Compute the taxpayer's 1984 Oregon tax liability without regard to the adjustments required in this subsection.

(B) Compute the taxpayer's 1984 Oregon tax liability with regard to the adjustments required in this subsection.

(C) Subtract the amount computed in (A) from the amount computed in (B).

(D) If the amount computed in (C) is less then zero then the difference computed in (C) decreases the taxpayer's 1985 Oregon tax liability. If the amount computed in (C) is greater than zero, then the difference computed in (C) increases the taxpayer's 1985 Oregon tax liability.

(2) For purposes of this rule, "taxpayer" means any natural person, estate, trust, or beneficiary whose income is in whole or in part subject to the taxes imposed by ORS Chapter 316.

(3) Any adjustments necessary to a partner's 1984 Oregon tax return due to the provisions of this subsection, shall be reflected on the corresponding partnership return to which such adjustment applies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.021
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-316.027(1)
Definition: "Resident"

(1) For purposes of ORS 316.027(1):

(a) "Domicile" means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time. It continues as the domicile until the person demonstrates an intent to abandon it, to acquire a new domicile, and actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections.

Example 1: Ron maintains a home in Oregon and works in Oregon. He purchased a summer home in Nevada and each year thereafter spent about three or four months in that state. He continued to spend six or seven months of each year in Oregon. He continued to maintain his home and his social, club and business connections in Oregon, but established his bank accounts in Nevada. The months not spent in Nevada or Oregon he spent traveling in other states or countries. Ron is domiciled in Oregon and is taxed as a resident of Oregon because he has not demonstrated intent to abandon his Oregon domicile nor has he shown an intent to make Nevada his permanent home.

(b) "Permanent place of abode" means a dwelling place permanently maintained by the taxpayer, whether or not owned by the taxpayer, and generally includes a dwelling place owned or leased by the taxpayer's spouse. To constitute a permanent place of abode, the taxpayer must maintain a fixed place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. It is distinguishable from "domicile" in that an individual may have several residences (or abodes), but only one domicile, at any given time.

(A) *Rented or leased premises*. A person is deemed to have a permanent place of abode even in rented premises, which he or she is free to leave at will, but from which the person has no present intent or desire to change. Factors that contribute to permanence include the amount of time spent in the locality, the nature of the place of abode, activities in the locality and the taxpayer's intentions with regard to the length and nature of the stay.

(B) *Other residential property*. Generally, residential property, such as a house, condominium, or apartment, is not considered a permanent place of abode if the individual never uses the property as a dwelling. For example, if the taxpayer acquires residential property for investment or rental purposes, as the result of an estate settlement, or as part of a settlement in a divorce proceeding, and the property is never used by the taxpayer or the taxpayer's family, the property is not considered a permanent place of abode for the taxpayer. For purposes of this rule, family includes the taxpayer, the taxpayer's spouse, and lineal ascendants and descendants of the taxpayer. If the property is used during the tax year by the taxpayer, even if for just a day, and also used by the taxpayer's family for a sufficient period of time to create a well-settled physical connection, then it is generally deemed to be a permanent place of abode for the taxpayer. However, use of the residential property by a family member will generally not be attributed to the taxpayer if the residential property is rented to the relative for fair rental value in an arm's-length transaction or if the taxpayer never uses the property as a dwelling during the tax year at issue.

(C) *Vacation home*. A camp or cottage that is suitable for and used only for vacations is not a permanent place of abode. A dwelling that does not contain facilities ordinarily found in a dwelling, such as facilities for cooking and bathing, is generally not considered a permanent place of abode. A second home that contains all the amenities found in a primary residence does not constitute a camp or cottage even if it is located in a vacation area. Therefore, a second home that contains cooking and bathing facilities and is suitable for year-round living may constitute a permanent place of abode even though used primarily for vacations or on weekends.

(D) *Temporary stay*. A place of abode, whether in Oregon or elsewhere, is not deemed permanent if it is maintained only during a temporary stay of short duration for the accomplishment of a particular purpose.

Example 2: Wayne is a long-haul truck driver for an Oregon company. His work requires that he travel throughout the United States. He is domiciled in Oregon but does not maintain a permanent place of abode in Oregon. Wayne spends less than 31 days in Oregon during the year. Wayne's only residence is in his truck, which has a sleeper unit, closet and refrigerator. Except for two weeks vacation each year, Wayne stays in any given locale only temporarily and only for the purpose of delivering or picking up a load. Because Wayne does not maintain a permanent place of abode elsewhere, he is taxable as a resident of Oregon.

Example 3: Douglas has lived and worked in Oregon all his life. On January 1, he retired, sold his personal residence, and began traveling throughout the United States. He has not established a new domicile outside of Oregon nor does he intend to give up his Oregon domicile. Because Douglas does not maintain a fixed place of abode over a sufficient period of time to create a well-settled physical connection with a given locality, he is considered not to have a permanent place of abode elsewhere. Thus, Douglas is taxed as an Oregon resident.

Example 4: James is domiciled in Oregon. After retiring, James sold his Oregon home and purchased a recreational vehicle (RV). James rents space year-round at an RV park in Arizona where he spends 7 to 9 months each year. James spends the remainder of his time traveling in the United States, including Oregon, but he does not remain in any particular locality more than thirty days. James is considered to have a permanent place of abode in Arizona, as his stay at the Arizona RV park constitutes the maintenance of a fixed place of abode over a sufficient period of time to create a well-settled physical connection with that locality. James is taxed as a nonresident as long as he does not establish a permanent place of abode in Oregon and he spends less than 31 days in this state.

(E) *Military personnel*. For purposes of this rule, an individual serving in the military is considered to have a permanent place of abode elsewhere during the time the individual resides outside of Oregon.

(2) For purposes of ORS 316.027(1)(a)(B), "temporary or transitory" means that a person's stay in Oregon is not permanent and is not expected to last indefinitely. Generally, an individual who is domiciled elsewhere and who is simply passing through this state on the way to another state or country, is here for a brief rest or vacation, or to complete a particular transaction that requires presence in this state only for a short period, is treated as being in this state for temporary or transitory purposes, and is not considered a resident by virtue of physical presence here. Whether a person's stay is temporary or transitory depends to a large extent upon the facts and circumstances of each particular case.

Example 5: Mark and Kim are domiciled in Minnesota. They maintain their family home there. Each October they come to the Oregon coast and stay through April, spending more than 200 days here during the year. Originally they rented an apartment or house for the duration of their stay. Three years ago they purchased a house in Oregon. The house is either rented or put in the charge of a caretaker from May to October. Mark has retired from active control of a Minnesota business but still keeps office space and nominal authority in it. Mark and Kim belong to clubs in Minnesota, but none in Oregon. Mark and Kim have no business interest in Oregon. Mark and Kim are not taxed as Oregon residents because their presence here is temporary or transitory.

Example 6: Juan is domiciled in Illinois. Following graduation from high school, he moved to Oregon to attend college. Juan works in Oregon during the summer and returns to Illinois to visit family several times each year. Juan is taxed as a nonresident as his stay in Oregon is for a temporary or transitory purpose.

(a) *Temporary employment in Oregon*. An individual domiciled in another state may be assigned to work in Oregon for a fixed and limited period, after which the person is to return to the permanent location. If the person takes an apartment or other housing in Oregon during this period, the individual is not deemed a resident, even though the individual spends more than 200 days of the taxable year in Oregon, because the person's stay in Oregon is temporary or transitory. The individual will be taxable as a nonresident on income from Oregon sources.

Example 7: Don, a computer consultant, is domiciled in New York where he owns a home in which his family lives and where he keeps the bulk of his personal belongings. He votes in New York, maintains bank accounts there and returns to his home whenever possible. He accepts a position in Oregon with a large corporation with the expectation that the work will take one and one-half years. He spends virtually the entire time in Oregon, living in a house built by the employer, where his wife and family join him in the summer. He intends to return to New York when the job is completed. During this period he will be taxed as a nonresident, even though he is in the state more than 200 days during the year, because he is in the state for a temporary or transitory purpose.

(b) Indefinite employment in Oregon. If a work assignment in Oregon is not for a fixed and limited period, the person is not considered to be present in Oregon for a temporary or transitory purpose. If a permanent place of abode is maintained in Oregon, and the person is in this state for more than 200 days during the tax year, then the person is taxed as a resident of Oregon.

Example 8: Fran is domiciled in California. In January, she accepts a transfer to her employer's Medford, Oregon office and rents an apartment there. The length of her assignment is indefinite, although Fran believes she may be able to obtain a promotion and transfer back to California within three years. Fran's husband and children remain at the California residence and Fran returns there on weekends and holidays. Fran is taxable as a resident of Oregon because she maintains a permanent place of abode in Oregon, spends more than 200 days here, and her presence is not temporary or transitory.

Example 9: Li is domiciled in Idaho and works as a sales person for a manufacturing company. She spends her workweek traveling in a motor home in Oregon meeting with existing and potential customers. She returns to her Idaho home when it is convenient, but may be in Oregon for 2 or 3 months at a time. Li's assignment is indefinite and thus she is not in Oregon for a temporary or transitory purpose. However, she does not maintain a permanent place of abode in Oregon, as she does not remain in any place for a sufficient period of time to create a well-settled physical connection with a given locality. Li is taxed as a nonresident.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.027
Hist.: 1-69; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-316.027

150-316.027(1)(b)
Status of Individuals in a Foreign Country

(1) *General*. For purposes of ORS Chapter 316, a nonresident includes a person who is a foreign nonresident as defined by this rule.

(2) *"Foreign nonresident" means:*

(a) An individual who is a "qualified individual" under Internal Revenue Code section 911(d)(1); and

(b) An individual who would be considered a "qualified individual" under IRC 911(d)(1) except that the person is not a U.S. citizen.

Example 1: Ricardo, a citizen of Mexico, is domiciled in Oregon. He has established his tax home & bona fide residence in Canada. Even though he is not a "qualified individual" under IRC 911(d)(1) because he is not a U.S. citizen, he is considered a foreign nonresident for Oregon tax purposes.

(3) To be considered a "qualified individual" under IRC 911, a person must maintain a tax home in a foreign country or countries and, for the same period of time, meet either:

(a) The bona fide residence test described in subsection (4); or

(b) The physical presence test described in subsection (5).

(4) To meet the requirements of the "bona fide residence" test, the taxpayer must:

(a) Establish, to the satisfaction of the Secretary of the U.S. Treasury, bona fide residence in a foreign country or countries, and

(b) Maintain bona fide residence for an uninterrupted period of time that includes a full tax year.

Example 2: Sandra is a calendar year taxpayer. She establishes bona fide residence in Russia on November 12, 1997. She is transferred back to the United States on December 30, 1998. She does not meet this test as the period of bona fide residence does not include a full tax year (i.e., all of a calendar year). Sandra may qualify under the physical presence test if she meets its requirements.

Example 3: Assume the same facts as in Example 2, except that Sandra is transferred to England on December 30, 1998. She establishes bona fide residence in England where she continues to work until October 9, 1999 before returning to the United States. She qualifies under the bona fide residence test & will be taxed as an Oregon nonresident from November 12, 1997 to October 9, 1999.

(5) *Physical presence test*. To meet the "physical presence" test, the taxpayer's tax home must be in a foreign country and the taxpayer must be physically present in a foreign country or countries for 330 full days out of a 12 consecutive month period.

(a) A full day means a period of 24 consecutive hours beginning at midnight.

(b) The 12-month period may begin on any day of the calendar month and ends with the day before the corresponding calendar day twelve months later. For example, a period beginning July 1 will end June 30 of the next year. If the period begins on February 29, it will end February 28 of the next year.

(c) The 12-month period may begin before or after arrival in a foreign country and may end before or after departure.

Example 4: John arrives in England on April 24, 1998, at noon. He remains in Europe until 2 p.m. on March 21, 1999 when he returns to the United States. John is present in a foreign country for 330 full days during at least two twelve-month periods: April 25, 1998 through April 24, 1999 & March 21, 1998 through March 20, 1999. John qualifies for foreign nonresident treatment from April 25, 1998 through March 20, 1999.

(6) *Federal employees*. Amounts paid by the U.S. government to its employees are not foreign earned income, and thus, do not qualify for a foreign earned income exclusion or a housing exclusion. However, if federal or military employees meet the bona fide residence test or the physical presence test, they may be taxed as foreign nonresidents for Oregon purposes.

(7) *Spouses of foreign nonresidents*. A spouse who does not qualify as a foreign nonresident shall be treated as a nonresident only if the spouse does not maintain a principal place of abode in Oregon for the tax year.

Example 5: Henry accepts an overseas assignment & leaves Oregon in July 1998. His wife remains in Portland at the family residence. Henry may be treated as a foreign nonresident if he meets the tests previously described. However, his wife will be taxed as a full year Oregon resident since her principal place of abode was not outside of Oregon.

(8) *Effective date:* The provisions of this rule are effective for tax years beginning on or after January 1, 1995. Claims for refund based on retroactive application of the changes to ORS 316.027 may be filed at any time.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.032
Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99

150-316.028
Oregon Net Operating Losses — Treatment After 1984

(1) Applicability of this Rule.

(a) This rule applies to the computation of net operating losses occurring in loss years beginning after December 31, 1984; and net operating loss deductions allowed or allowable in tax years beginning after December 31, 1984.

(b) For the computation and application of Oregon net operating losses for loss years beginning before January 1, 1985; net operating loss deductions with regard to loss years beginning before January 1, 1985; and net operating loss carrybacks and net operating loss carryovers applied in tax years beginning before January 1, 1985 that also originated in tax years beginning before January 1, 1985, see OAR 150-316.007.

(2) Definitions for Purposes of this rule.

(a) Prohibited amounts. "Prohibited amounts" means those amounts that the state of Oregon is prohibited from taxing, such as all stocks, bonds, Treasury notes, and other obligations of the United States as provided in 31 United States Code Section 3124. Prohibited amounts do not include such items as federally taxable social security benefits since Oregon is not prohibited from indirectly taxing such types of income.

(b) Oregon Adjusted Gross Income (Oregon AGI). For a full-year resident, Oregon AGI is generally the same as federal AGI. For a nonresident, "Oregon AGI" means the items included in federal adjusted gross income as defined in IRC Section 62 that relate to Oregon sources without modifications.

(c) Modified Oregon Taxable Income. "Modified Oregon taxable income" means Oregon AGI reduced by the sum of the following:

(A) Oregon itemized deductions. For a resident, Oregon itemized deductions are generally the same amount as federal. For part-year and nonresident taxpayers, Oregon itemized deductions are the Oregon percentage of federal itemized deductions; or

(B) Oregon standard deduction. For part-year and nonresident taxpayers, only the Oregon percentage of the standard deductions can be used;

(C) Federal personal exemption(s); and

(D) Prohibited amounts included in Oregon AGI.

(3) Computation of an NOL for a Resident.

(a) For Oregon purposes, a resident's net operating loss is computed in the same manner as for federal purposes without Oregon modifications. Generally, the Oregon NOL is the same as the federal NOL. The only modification necessary is to subtract prohibited amounts.

(b) The computation of the Oregon NOL begins with the Oregon adjusted gross income (AGI) to arrive at modified Oregon taxable income. Then the modified Oregon taxable income is adjusted as required by IRC Section 172(d).

Example 1. Susan and Joe filed joint 2009 federal and Oregon tax returns. On their federal return, they reported wages of $26,000, a business loss of $50,000, a gain on the sale of stock of $400, and interest income of $800 from a bank. They also reported total itemized deductions of $12,800 which were all nonbusiness and claimed personal exemptions of $7,300. On their Oregon return, Susan and Joe also reported $500 municipal bond interest from California that was exempt from federal income tax. Their allowable Oregon NOL is computed as follows: [Formula not included. See ED. NOTE.]

Note: Except for prohibited amounts, the Oregon NOL is computed based on the federal NOL method and definitions without Oregon modifications.

Example 2. The facts are the same as in Example 1, except that the interest of $800 is from U.S. government securities (prohibited amounts). The Oregon NOL for Susan and Joe is ($24,800) computed as follows: [Formula not included. See ED. NOTE.]

Note: The U.S. government interest (prohibited amounts) is not used in computing Oregon NOL.

(4) Computation of an NOL for a Part-year Resident and a Nonresident

(a) A nonresident is allowed an Oregon NOL for any loss year when the NOL is attributable to Oregon sources. A taxpayer is not allowed an NOL or carryover on the Oregon return if the loss was incurred while the taxpayer was a nonresident and the loss was not attributable to Oregon. The computation of the allowable net operating loss for Oregon purposes begins with Oregon adjusted gross income as defined in this rule. Any modifications provided in IRC Section 172(d) apply to all items of income and deduction as they apply to modified Oregon taxable income with the exception of prohibited amounts.

(b) The IRC Section 172(d) modifications attributable to Oregon sources are the following:

(A) Oregon NOL deduction from prior years included in Oregon income after adjustments.

(B) Net Oregon capital loss deduction.

(C) Federal personal exemption amount.

(D) Excess of nonbusiness deductions over nonbusiness income included in modified Oregon taxable income.

Example 3. Herb and Sallie are married nonresidents and file a joint 2009 return. On their federal return, they have itemized deductions of $14,000 (all nonbusiness) and claimed exemptions of $10,950. They also had a business loss of $25,000 from Oregon sources and $1,000 non-Oregon source corporate bond interest. On their Oregon nonresident return, the Oregon percentage is zero (0). They compute their Oregon NOL as follows: [Formula not included. See ED. NOTE.]

Note: The Schedule A itemized deductions are -0- for Oregon purposes because their Oregon percentage is zero.

(5) Application of an NOL.

(a) General rule. An Oregon net operating loss for any loss years is applied in the same manner as the federal net operating loss as provided in IRC Section 172(b). If the loss was not attributable to Oregon sources and was incurred while the taxpayer was a nonresident, there is no Oregon NOL to carry over even if the taxpayer later becomes an Oregon resident. In such cases, the amount of the NOL carryover that is not attributable to Oregon sources is added back on the Oregon resident tax return. If a taxpayer carries back a federal NOL, the taxpayer is treated as carrying the loss back for Oregon purposes as well. If a taxpayer makes an election to carry over the federal NOL, the taxpayer is treated as making the same irrevocable election for Oregon purposes as well.

(b) Exceptions.

(A) If a taxpayer has an Oregon NOL but does not have a federal NOL, the taxpayer may elect to carry the Oregon NOL over to the next succeeding year, if the taxpayer makes an irrevocable election on the timely filed Oregon loss year return (including extensions). If no such election is made, then the taxpayer may only carry the Oregon loss back in the same manner as provided in IRC Section 172(b).

(B) If a taxpayer is not required to file an Oregon return for all years to which the federal NOL deduction (NOLD) is applied, the Oregon NOL is carried back to the year in which the loss may be first applied.

(C) The total number of years to which an NOL may be carried back or forward is the same for Oregon and federal, and is generally determined as follows:

(i) For net operating losses incurred in tax years beginning on or after January 1, 2003, the carry back period is two years with a twenty year carryover period. Oregon follows any exceptions allowed under federal law for these tax years.

(ii) For net operating losses incurred in tax years beginning on or after January 1, 2001 and before January 1, 2003, the carryback period is five years with a twenty year carryover period.

(iii) For net operating losses incurred in tax years beginning on or after August 5, 1997 and before January 1, 2001, the carryback period is two years with a twenty year carry over period.

(iv) For net operating losses incurred in tax years beginning prior to August 6, 1997, the carryback period is three years with a fifteen year carryover period. See IRC 172 and the related regulations for exceptions to the general carryback periods for net operating losses attributable to certain casualty losses, disaster areas and farming losses.

Example 4. Joe has a net operating loss for federal and Oregon for tax year 2009. For federal purposes, Joe carried his federal NOL back to 2007. Since he carried back his loss for federal purposes, he must carry back the loss for Oregon purposes to his 2007 Oregon tax return. If he is not required to file an Oregon tax return for 2007, he may carry his Oregon NOL to his 2008 Oregon tax return.

Example 5. Assume the same facts as in Example 4. However, Joe was not required to file an Oregon tax return prior to tax year 2009. Joe may carry his Oregon NOL over to his 2010 Oregon tax return even if the loss was carried back for federal purposes.

Example 6. As the result of a stimulus bill passed by Congress in 2009, Kerry, an Oregon resident and small business owner, is eligible to carry back her loss up to five years (instead of the normal two years). Kerry chose to carry her loss back five years on her federal return, so she must use the same five year carry back for purposes of her Oregon return.

Example 7. Devin, a Washington resident, incurs a $25,000 NOL in 2009 from his Washington area business and elects to carry the loss forward. Devin moves to Oregon on January 1, 2010. Since the loss was incurred while Devin was a nonresident of Oregon and the loss is not from an Oregon source, there is no Oregon NOL and Devin must make an addition on his 2010 Oregon return to add back the $25,000 NOL included in federal adjusted gross income.

(6) A Net Operating Loss Deduction, Carryback and Carryover Amount.

(a) A taxpayer's net operating loss deduction (NOLD), carryback and carryover amount is computed in the same manner as for federal purposes. The method to compute the carryback and carryover amount is not modified for Oregon purposes.

(b) For a full-year resident, generally an NOLD, carryback and carryover amount is the same as for federal purposes except that prohibited amounts as defined in section (2)(a) of this rule are not taken into consideration.

Example 8. John and Joyce incurred losses in 2009 from partnerships and S corporations. They compute an NOL of $12,000 and elect to carry the loss back. The 2007 return shows negative taxable income, so the 2009 NOL is first applied to 2008 where the loss is completely absorbed. John and Joyce have a federal AGI in 2008 of $50,000. The fully absorbed 2009 NOL is applied as follows: [Formula not included. See ED. NOTE.]

Example 9. Assume the same facts in Example 8, except that John and Joyce elect to carry forward the 2009 NOL for federal and Oregon purposes. In 2010, John and Joyce have federal AGI of $15,000 and have reported additions of $8,000 and subtractions of $3,000. John and Joyce will apply the NOL to 2010 and compute the amount carried over to 2011 as follows: [Formula not included. See ED. NOTE.]

(c) A part-year resident and a nonresident use the federal method without modifications, except that prohibited amounts are not taken into consideration, and the NOLD, carryback and carryover are based only upon amounts attributable to Oregon sources.

Example 10. In 2008, while residents of California, Ron and Valerie incurred losses from an Oregon partnership creating an Oregon only NOL in the amount of $85,000. Prior to 2008, neither Ron nor Valerie needed to file Oregon returns. In 2009, Ron and Valerie moved to Oregon and filed a part-year Oregon return. They reported federal income after adjustments of $385,000, Oregon income after adjustments of $235,000, and itemized deductions of $10,000. Ron and Valerie calculate their 2009 Oregon taxable income as follows: [Formula not included. See ED. NOTE.]

Example 11. Scott and Jill live in Vancouver, Washington and Scott operates a business in Oregon. In 2008, Scott and Jill filed a nonresident Oregon return reporting an Oregon only NOL of $6,000. Scott and Jill elected to carry the NOL forward. In 2009, Scott and Jill reported Oregon income after adjustments of $1,600, federal income after adjustments of $32,000, and federal itemized deductions of $9,200. Their Oregon itemized deductions are $460 [($1,600/$32,000) x $9,200]. Scott and Jill calculate their net operating loss deduction for 2009 and the carryover to 2010 as follows: [Formula not included. See ED. NOTE.]

(7) Net Operating Loss Carrybacks to Amnesty Years A net operating loss deduction (NOLD) carried back to an amnesty return (as that term is defined in OAR 150-305.100-(C)) may not result in a refund of any tax reported and paid pursuant to the amnesty program. However, if a NOLD is carried back to a year in which a taxpayer participated in amnesty, a refund that is otherwise allowed may be granted to the extent that the taxpayer has adequate income reported outside the amnesty program to absorb the loss (or portion thereof). A NOLD resulting in a denied refund due to participation in the amnesty program does not change the net operating loss deduction calculation or the amount that can be carried to another tax year.

Example 12. Ed, an Oregon resident, qualified for amnesty in November 2009 and received penalty and interest relief for tax year 2005 under the program. Ed's original 2005 return (which was filed timely on April 17, 2006) showed a tax liability of $20,000, which Ed paid when he filed his original 2005 return. The amended return for 2005 filed under amnesty increased his tax by an additional $15,000 for a total of $35,000 in Oregon tax liability. In tax year 2009 his business experienced a loss that created a net operating loss for tax year 2009. Ed elects to carry the loss back to tax year 2005 and amends his 2005 federal return. On June 1, 2010, he amends his 2005 Oregon return to claim the net operating loss deduction (NOLD). After applying the NOLD, Ed claims an Oregon refund of $30,000 for 2005. (Ed's 2005 net tax liability has been decreased to $5,000.) The department agrees with Ed's calculations but only allows a refund of $20,000 because that is the amount of tax Ed paid for 2005 before the amnesty program. The refund is limited because the law prohibits refunds of tax paid under amnesty. Ed's carryover of the NOLD is not changed because of the amnesty refund denial. Even though the refund was partially denied, the NOLD has been absorbed and there is no carryforward to tax year 2006.

[ED. NOTE: Formulas referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.028

Hist.: RD 4-1986(Temp), f. & cert. ef. 7-29-86; RD 7-1986, f. & cert. ef. 12-31-86; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; Renumbered from 150-316.014 by REV 4-2012, f. 7-20-12, cert. ef. 8-1-12; Renumbered from 150-316.014, REV 6-2013, f. & cert. ef. 12-26-13

150-316.032(2)

Administrative and Judicial Interpretations

As used in ORS 316.032(2) "administrative and judicial interpretations of the federal income tax law" include interpretive regulations promulgated by the Secretary of the Treasury, Revenue Rulings and Revenue Procedures issued by the Commissioner of Internal Revenue, and decisions of the federal courts interpreting those provisions of the Internal Revenue Code that are incorporated into Oregon law under ORS 316.007, regardless of the date of promulgation or issuance of the regulation, ruling, procedure or decision.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.032

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-316.037

Taxable Income of Nonresidents and Part-year Residents

(1) The taxable income of a nonresident is the taxpayer's federal taxable income from Oregon sources as defined in ORS 316.127, with the modifications provided in ORS Chapter 316 and other Oregon laws as they relate to nonresidents. In computing taxable income, nonresident taxpayers are allowed a proportionate share of all deductions, with required modifications. This includes the accrued federal tax deduction, and itemized deductions or the optional standard deduction. The fraction to be used in making the proration of deductions is provided in OAR 150-316.117-(A).

(2) The taxable income of a part-year resident is the taxpayer's federal taxable income, as defined in the laws of the United States, modified and adjusted by ORS Chapter 316 and other Oregon laws. The tax on the entire taxable income of part-year residents is multiplied by the fraction provided in OAR 150-316.117-(A) to determine the tax on income derived from Oregon sources.

(3) For purposes of determining the proration of tax under ORS 316.117, a part-year Oregon resident includes in Oregon source income the sum of:

(a) All guaranteed payments and taxable cash distributions from a partnership or S corporation received while the partner or shareholder was an Oregon resident, plus

(b) Payments or distributions received from an entity that has business activity in Oregon while the taxpayer was not an Oregon resident. The payments or distributions are subject to the allocation and apportionment provisions of ORS 314.605 to 314.675.

Example: Joe was a California resident all of 2000 and a partner in a California partnership. The partnership has no property, payroll, or sales in Oregon. Joe moved to Oregon March 1, 2001. He files calendar year returns. He receives $1,000 each month as a guaranteed payment. The payments received through February, 2001 are not Oregon source income because they were received prior to the date Joe became an Oregon resident from an entity with no business activity in Oregon.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.037
Hist.: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-316.037(1)(b); REV 7-2001(Temp), f. & cert. ef. 12-31-01 thru 6-28-02; REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2008, f. 8-29-08, cert. ef. 8-31-08

150-316.045
Farm Capital Gain

(1) Definitions. For purposes of ORS 316.045 and this rule:

(a) "Substantially complete termination" means the taxpayer is:

(A) No longer involved, directly or indirectly, in a trade or business engaged in farming, or

(B) No longer owns, directly or indirectly, property used in the trade or business of farming.

(b) "A trade or business engaged in farming" means a distinct farming operation separately run from the taxpayer's other businesses. Businesses that share employees, equipment, buildings, or land are not separate businesses. Businesses that share records, accounts, registration, identification numbers, or a business name are also not separate businesses.

(2) A taxpayer's net long-term capital gain qualifies for the reduced tax rate if all four of the following tests are met:

(a) Asset Test. The gain is derived from either IRC section 1231 assets or an ownership interest of at least 10 percent in an entity.

(b) Use Test. The property that was sold consisted of:

(A) An ownership interest in an entity engaged in the trade or business of farming; or

(B) Property that was predominantly used in the trade or business of farming.

(c) Relationship Test. The assets are not sold to a related taxpayer as defined under IRC section 267.

(d) Termination Test. The sale is a substantially complete termination of all of the taxpayer's ownership interests in:

(A) A trade or business engaged in farming; or

(B) Property that is predominantly used in the trade or business of farming.

(3) Asset Test. The part of the taxpayer's net long-term capital gain that is eligible for the reduced rate must be from capital assets under IRC section 1231 or a 10 percent or more ownership interest in an entity engaged in the trade or business of farming (see section (13) for related examples).

Example 1: Sofie owns 50 acres of land. Of the 50 acres, she used 10 acres for her hobby of showing horses. She had a small arena and stables on the land for her horses. Sofie sold the entire 50 acres to her neighbor. The gain from the sale does not qualify for the reduced tax rate because the asset does not meet the asset test. The land was not used in a trade or business, thus the asset was not an IRC section 1231 asset. If Sofie had been in the trade or business of showing horses, the land used would have been a qualifying asset and Sofie would then be required to look at the other three tests to determine whether she qualifies for the reduced tax rate.

Example 2: Forty years ago, Wayne and Patty purchased an orchard next to their home. They did not regularly harvest the fruit, care for the trees, or file farm schedules with any of their tax returns. They mostly used the property for themselves and the horses they owned for personal use and usually gave extra fruit away to family and friends. Every two or three years they held U-Pick sales at the orchard, and claimed the not-for-profit income as required. Last year, the urban growth boundary moved to include their parcel. Wayne and Patty wanted to sell the property to developers so they had all the trees removed and sold the property. The sale of the orchard does not qualify for the reduced rate because it was not held as a trade or business thus it was not an IRC section 1231 asset. It was land held for investment and personal use.

(4) Use Test. The asset that was sold must be predominantly used in the trade or business of farming. Any other use of the asset must be incidental to, and not interfere with, the primary purpose of being engaged in the trade or business of farming.

(a) Property used 80 percent or more in a farming trade or business. Property used 80 percent or more in the trade or business of farming is considered and presumed to be predominant use. Accepted farming practices common to the type of farming activity and region, such as land lying fallow for one year, are included in the trade or business of farming.

(b) Property used more than 50 percent but less than 80 percent in a farming trade or business. Upon review of the facts and circumstances of each case, property used more than 50 percent but less than 80 percent in the trade or business of farming qualifies as predominant if the difference between the actual percentage use in a farming trade or business and 80 percent use in a farming trade or business is incidental. Incidental use does not include holding property as an investment, using property for personal (non-business) use, or using property for another business. Incidental use includes, but is not limited to:

(A) Farmland that is bordered by or contains a waterway;

(B) Land that consists of terrain that cannot be farmed (i.e. marshland, desert);

(C) Land that contains a utility easement which makes farming impracticable or impossible; or

(D) The period of the time when the farm property or business was "actively for sale" immediately prior to the sale. A property was "actively for sale" if the property was listed and advertised for sale for a price comparable to similar properties and the seller did not reject any reasonable offers.

(c) Property used for personal or business activities that take place on the land concurrently and do not interfere with the primary farming trade or business use are considered incidental use.

(d) Allocation. Property that is used less than 80 percent in a farm trade or business may be allocated between the actual portion that is predominantly used in the business of farming and the portion not predominantly used in the business of farming.

Example 3: Cinda raised corn and beans on 500 acres the entire time she owned the acreage. She used the cornfields as a corn maze after she harvested all the corn. She sold the 500 acres of corn and bean fields to the cannery and recognized a capital gain. Assuming the gain from the sale meets the other three tests, the gain from the sale of Cinda's farm qualifies for the reduced tax rate because Cinda used the property predominantly (80 percent or more) in the trade or business of farming even though Cinda used the farmland for an incidental purpose after the harvest.

Example 4: Hilda and Steve owned and operated a 30 acre farm. Their farm had a waterway and riparian land that was not farmed which took up 10 acres of the farm. Assuming they meet the other three tests, Hilda and Steve qualify for the reduced tax rate because their property was predominantly used in the business of farming. The farm use qualifies as predominant for the entire 30 acres because their farm use was more than 50 percent, but less than 80 percent and the 33 percent (10 acres/30 acres) not used for farming was incidental.

Example 5: Deborah sold 20 acres of land. While she owned the land, she leased out 15 acres to a farmer who grew crops. She used the remaining 5 acres as a motor cross training area where she ran a business giving riding lessons and charging people to use it for practice. Assuming Deborah meets the other three tests, the 15 acres used for farming qualifies for the reduced tax rate. If Deborah had used the 5 acres for personal use instead of a separate business, she still would qualify for the reduced tax rate on the 15 acres used for farming.

Example 6: Lois inherited some land 20 years ago. At that time, a farmer was leasing the land and continued to farm the land until he retired 5 years later. For the last 15 years, Lois held the land for investment and did not use the land in the trade or business of farming. Lois does not qualify for the reduced tax rate because she only used the property in the business of farming for 25 percent of the time she owned it (5/20 years = .25 or 25%).

(5) Relationship test. The gain from the sale of an asset does not qualify for the reduced tax rate if the asset is sold to a related taxpayer under IRC section 267 even if all of the other three tests are met.

Example 7: Claudia and Janie are cousins who own a farm together as a partnership. They decide to sell the business to Darren, Claudia's brother (and Janie's cousin). Assume the sale meets the other three tests. Janie's qualifying capital gain is eligible for the reduced tax rate. Claudia's capital gain is not eligible because Darren is a related party according to IRC section 267.

(6) Termination Test. If a taxpayer sold the taxpayer's interest in a trade or business that is engaged in farming, the taxpayer may not be directly or indirectly engaged in that farming trade or business. The sale of the taxpayer's interests through an installment sale

constitutes a substantially complete termination for purposes of ORS 316.045 and this rule. A taxpayer has substantially terminated his interests in the trade or business of farming even though the taxpayer retained a portion of the farm for personal use.

Example 8: Rich and Darcy own 20 acres. They grow corn and squash on 15 acres, and have a five-acre apple orchard. They operate their orchard and crops as one business. They sell the five-acre apple orchard for a gain of $50,000 and retain the other 15 acres. The gain from the sale of the apple orchard does not qualify for the reduced rate because they did not substantially terminate all of their interests in a trade or business engaged in farming. If Rich and Darcy had sold the entire business including all of their property used in the trade or business of farming and the other three tests were met, the gain from the sale would qualify for the reduced tax rate.

Example 9: Bill and Sharon owned a dairy operation and a hops farm. The two businesses were completely separate. They had separate employees, equipment, and records. The two businesses also had different names, records, and federal identification numbers. Bill and Sharon sold the dairy farm. After selling all of their dairy equipment and dairy cows (Holstein), they realized a capital gain of $350,000. They decided not to sell the hops farm. Their gain on the sale of the dairy operation qualifies for the reduced tax rate. Even though Bill and Sharon still own the hops farm, they have sold their entire dairy business.

Example 10: Shawn sold 18 of his 20 acres in which he farmed Christmas Trees. The 2 acres Shawn still owns are for personal use and he does not sell the trees produced on his personal farm. Assuming the other three tests are met, Shawn is no longer in the business of farming and he qualifies for the reduced tax rate on the capital gain from the sale.

(7) A sale that includes the farm dwelling or homesite. The sale of a homesite and the land and structures consistently and routinely used in conjunction with the home at the same time as the sale of a farming activity requires allocation of the gain between the homesite and the other assets. The proceeds from the sale of the homesite is not property employed in the trade or business of farming and do not qualify for the reduced tax rate.

Example 11: Homer and Ruth raised various crops on 80 acres of farmland they owned. Homer and Ruth lived close to town so they rented the farm home that was located on a parcel next to the acreage. Homer and Ruth retired from the farming business and sold the farmland and the rental for a gain of $1 million ($400,000 attributed to the farmland and $600,000 attributed to the homesite and structures and land associated with the homesite). Because the sale of the 80 acres met each of the four tests, the $400,000 capital gain from the sale of the farmland qualifies for the reduced tax rate. The proceeds from the sale of the rental do not qualify for the reduced rate because rental real estate is not employed in the trade or business of farming.

Example 12: Assume the same facts as Example 11 except that when Homer and Ruth sold the farm, they had lived in the home that was adjacent to the farmland for the entire twenty-five years. The gain from the sale that is attributable to the farmland, or $400,000, qualifies for the reduced rate. The gain of $600,000 on the sale of the residence does not qualify for the reduced rate; however, a portion of it may qualify for the principal residence exclusion under IRC section 121.

(8) Depreciation Recapture. IRC section 1231 gain may be treated as ordinary income under IRC sections 1245 and 1250 recapture rules. If the capital asset is subject to depreciation recapture under IRC sections 1245 or 1250, the portion of the gain that is treated as ordinary income does not qualify for the reduced tax rate.

Example 13: Frank sold his farm, which included three silos, and all four tests were met. The silos are capital assets subject to IRC section 1245 recapture. The part of the gain from the sale of the silos that is treated as ordinary income is not eligible for the reduced tax rate. However, the part of the gain from the sale of the silos that is treated as long-term capital gain on the federal return is eligible for the reduced tax rate on the Oregon return.

(9) Capital loss. If all four tests are met and the taxpayer is reporting a capital loss, it could affect the capital gain eligible for the reduced tax rate. Compute the net capital gain or loss from all other property sales or exchanges for the year that are taxable to Oregon. If this is a net capital loss, the amount eligible for the reduced tax rate is the qualifying farm capital gain minus the net capital loss from other property sales or exchanges taxable to Oregon.

Example 14: Ron sold his farming business for a net long-term capital gain of $800,000. During the year, he also sold other property for a net capital loss of $150,000. Assuming his sale of a farm business meets all four tests, he is only eligible for the reduced tax rate on $650,000 (net farm long-term capital gain minus other net capital loss) of his taxable income.

(10) Installment Method under IRC §453. Installment sales are eligible for the reduced tax rate if the sale meets all four tests as explained in section (2) of this rule. The amount of capital gain eligible for the reduced tax rate must be determined each year. The percentage of gain eligible for the reduced tax rate is equal to the qualifying farm long-term capital gain from the sale divided by all capital gain from the sale. Apply this percentage to the capital gain from the sale reported each year to determine the amount that qualifies for the reduced tax rate. If there is capital loss from the sale of other property as described in section (9) of this rule, during a tax year that the installment sale is reported, this may reduce the gain eligible for the reduced tax rate.

Example 15: Larry sells his farm in 2007 and meets all four tests to receive the reduced tax rate. He elects to recognize the income from the sale using the installment method under IRC §453. Larry will receive half of the sale price in 2007 and one-fourth of the sale price each in 2008 and 2009 plus interest. Of the capital gain from the sale, $300,000 qualifies for the reduced tax rate and $100,000 does not. Larry's percentage eligible for the reduced tax rate is $300,000 of eligible capital gain divided by $400,000 of total capital gain, or 75 percent. The buyer also paid interest to Larry, but it is claimed separately on the return. In 2007, Larry will claim his capital gain from the sale of $200,000. Of that amount, 75 percent or $150,000 is eligible for the reduced tax rate. In 2008 and 2009, Larry will claim the farm capital gain rate for $75,000 ($100,000 x 75 percent) of capital gain from the sale reported each year.

Example 16: Assume the same facts as example 15 except that Larry has a net capital loss of $40,000 in 2008 from the sale of other property. In 2008, the amount eligible for the reduced tax rate is $35,000 (qualifying net long-term capital gain minus other capital loss) of his capital gain.

(11) Like-kind Exchanges. Like-kind exchanges may be eligible for the reduced tax rate when the gain is recognized assuming all four tests are met. The taxpayer must keep detailed records to show that the property would have qualified for the reduced tax rate if it had been a sale instead of an exchange.

Example 17: Morgan had farmland and decided to exchange it for land that he wants to hold for investment. The exchange meets all four tests. If Morgan had sold the property, he would have had capital gain of $400,000 that would have qualified for the reduced tax rate. Later Morgan sells the investment property and claims capital gain of $700,000. Of this amount, $400,000 is eligible for the reduced tax rate for farm capital gain, because it would have been eligible if he had not deferred it.

(12) Sale of property by pass-through entities. Trust, partnership, or S corporation sale of farm property may be eligible for the reduced tax rate. To qualify, each individual beneficiary, partner, or shareholder (as the case may be) must meet all four tests as described in section (2) of this rule.

Example 18: Becky, Martha, and Jessica are equal owners of a partnership. The partnership sold its only farm property to Jessica's father for a gain of $600,000. The sale was to a related party of Jessica, so Jessica does not meet all four tests even though her father was not a related party to the partnership. Becky and Martha are eligible for the reduced tax rate for their share of the gain. If the partnership still owned other farm property that was part of the same farm business as the property that was sold, none of the owners would be eligible for the reduced tax rate.

Example 19: Kendra owns 5 percent of an S-corporation that owns a cattle ranch and a crop operation. The cattle ranch and crop operation are completely separate businesses. The S-corporation sold the cattle ranch to a party unrelated to Kendra. The 1231 gain from the sale of a farming business flows through to Kendra and she is eligible for the reduced tax rate.

(13) Sale of interest in pass-through entity. Sale of interest in a pass-through entity (partnership or S-corporation) that is in the business of farming, may qualify for the reduced tax rate. All four tests must be met and the taxpayer must be a 10 percent owner of the pass-through entity to qualify. Assuming all four tests are met, the amount of gain eligible for the reduced tax rate is the amount of farming business of the entity divided by all business of the entity. The amount of capital gain eligible for the reduced tax rate can be determined using the "income method." The taxpayer may use a different method if the department determines it reasonably reflects the entity's income and expenses.

(a) Income method is the entity's farm income divided by the entity's total income as shown on the partnership or S-corporation return the year the interest is sold. Multiply this percentage by the capital gain reported from the sale of interest in the entity.

Example 20: Ian sold his entire partnership interest of 25 percent to an unrelated party during the year. The partnership had various businesses, most were farming activities, but some were not. That year, the partnership reported farming income of $600,000 and total income of $800,000. Ian will report his share of the partnership income before the sale and the long-term capital gain from the sale of his interest in the partnership. Of the long-term capital gain from the sale, 75 percent ($600,000 divided by $800,000) qualifies for the reduced tax rate.

Example 21: Darlene owned shares in an S-corporation that were 10 percent of the total shares. The S-corporation sold a partnership that grew crops. The S-corporation owned 50 percent of the partnership and sold all of its interests. The partnership interest was sold to someone unrelated to Darlene and Darlene has no other interests in the partnership. The gain from Darlene's ownership interest in the partnership does not qualify for the reduced tax rate. Darlene was only a 5 percent owner of the partnership (10% x 50% = 5%). If the S-corporation had owned the business, Darlene would have been eligible for the reduced rate on her portion of the 1231 gain.

(14) Sale in more than one tax year. Prior-year sales of farm property or a farming business sold over more than one year may be eligible for the reduced tax rate. It can take more than one year to sell a farming business or all of a taxpayer's property used in farming because the property is sold to more than one buyer. To qualify for the reduced tax rate, all farm property (or all property from a farming business) must be actively for sale from the year of the first sale until the year of the final sale. Each sale is separately considered to see if it meets the requirements to qualify for the reduced tax rate, but all farm property or property from a farming business must be sold within a reasonable amount of time (usually no more than three tax years from the first sale to the final sale of qualifying farm property) for any of the prior year sales to qualify. The reduced tax rate on the prior year sales cannot be claimed until the taxpayer has sold all farm property or all property from a farming business. A property is "actively for sale" if the property was listed and advertised for sale for a price comparable to similar properties and the seller did not reject reasonable offers.

Example 22: Deanna wants to retire from farming. She owns 100 acres of farmland in four different locations all run as one business and all property is actively for sale. She sells 20 acres to an unrelated neighbor in 2006. She files her 2006 tax return and cannot claim the reduced tax rate on the gain because she is not out of the business of farming. In 2007, she gave one farm to her daughter and sold one farm to an unrelated party. She files her 2007 tax return and again cannot claim the reduced tax rate because she is still in the business of farming. Finally, in September 2008 Deanna sells the remaining farmland and equipment and is out of the business of farming. The long-term capital gain from three of the sales qualifies for the reduced tax rate because the property was actively for sale the entire time. The gift to a related party does not stop the other sales from qualifying for the reduced tax rate. Deanna may now amend her tax returns for 2006 and 2007 and claim the reduced tax rate on the qualifying capital gain from the earlier sales that qualify.

Example 23: Gary owned two farms and operated them as one business. He sold one of his farms in March 2006 to the farmer who had been leasing the property. In 2007, his health worsened and he decided to retire from farming and put his remaining farm up for sale. In 2008, he finds a buyer and sells the remaining farm and equipment. The sale in 2006 does not qualify for the reduced tax rate because Gary did not have his remaining farm property actively for sale and he had not sold all of the property from his farming business. The sale in 2008 does qualify for the reduced tax rate because Gary is now out of the business of farming.

(15) Sold farm property and then bought another. If a taxpayer sells farm property and then buys other farm property, they may qualify for the reduced tax rate. The taxpayer must meet all four tests as described in section (2) of this rule with the sale of farm property before purchasing other farm property to qualify for the reduced tax rate.

Example 24: Jeanine sold her farm and equipment so she could start a retail business. After difficulty getting started, she decided to go back to farming and purchased another farm. Jeanine qualifies for the reduced tax rate because she had completely terminated her interest in property used in farming at the time of the sale and met the other tests.

Example 25: Frances put her farm up for sale, but before it sold, her father died and she inherited some of his farming property. She decided not to sell the inherited property, but to continue to farm it as a separate business after her original farm was sold. Frances qualifies for the reduced tax rate because she sold a farming business.

Stat. Auth.: ORS 305.100, 316.045
Stats. Implemented: ORS 316.045
Hist.: REV 6-2008, f. 8-29-08, cert. ef. 8-31-08

150-316.047-(A)
Transitional Provision to Prevent Doubling Income or Deductions

(1) This section allows and requires adjustments to the taxpayer's net income to alleviate inconsistent treatment of income and deductions resulting from the transition from the Personal Income Tax Act of 1953 to the Internal Revenue Code.

(2) The section allows and requires adjustments to prevent income items from being doubly taxed and deduction items from being deducted twice. In addition adjustments are allowed or required to prevent income from escaping taxation or the loss of a deduction due to the inconsistent treatment.

(3) This section will not apply unless it can be shown that failure to allow or require an adjustment will result in the taxation of income or allowance of a deduction that had already entered into the computation of Oregon income in years beginning prior to January 1, 1969, or, failure to allow or require an adjustment will result in income escaping taxation or loss of a deduction that had already entered into the computation of federal income in years beginning prior to January 1, 1969 and would have been taxed or deducted on an Oregon return if it were not for the change in the Oregon Law. This section does not allow or require adjustments to account for items that are not solely transitional, viz., it does not allow or require adjustments for items of income or deductions not otherwise taxable or deductible under the Internal Revenue Code in years beginning prior to January 1, 1969 or beginning on and after January 1, 1969.

Example 1: Federal taxes on telephone and telegraph tolls were deductible in years beginning prior to January 1, 1969 for Oregon purposes under the Personal Income Tax Act of 1953. They are not deductible under the Internal Revenue Code and, therefore, not deductible for Oregon purposes for tax years beginning on or after January 1, 1969.

No adjustment is allowed under ORS 316.047 to deduct these taxes for Oregon purposes. The item is not transitional. They were not deductible under the Internal Revenue Code for tax years beginning before January 1, 1969 nor for tax years beginning on or after January 1, 1969.

Example 2: A net operating loss as defined in section 172, Internal Revenue Code, was realized in 1968 for both state and federal purposes. The loss was carried back three years and deducted for federal purposes with none to be carried forward to subsequent years. Oregon law for tax years beginning prior to January 1, 1969 allowed a five year carry-forward and no carry-back. An adjustment is allowed under this section to carry the net operating loss forward for five years. The amount of the net operating loss and the amount deductible in each year shall be determined under section 172, Internal Revenue Code, without regard to the carry-back provisions. This is a deduction that had entered into the computation of federal net income in years beginning prior to January 1, 1969 and would have been deducted on an Oregon return if it were not for the change in the Oregon law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.047
Hist.: 1-69; 11-73; 12-19-75

Computation of Taxable Income (Generally)

150-316.048
Taxable Income of Resident

(1) *Definition*. The taxable income of a resident of this state is taxable income as defined in the laws of the United States, modified and adjusted by ORS Chapter 316 and other laws of this state applicable to personal income taxation. Such laws have the general effect of incorporating all the provisions of the federal Internal Revenue Code with regard to the measurement of personal taxable income except as otherwise specifically provided by Oregon law. For example, the Oregon standard deduction is not deductible in the same amount as the federal standard deduction amount.

(2) *Oregon Adjusted Gross Income Defined*.

(a) For tax years beginning prior to January 1, 1985, Oregon adjusted gross income is federal adjusted gross income as defined under IRC Section 62 as of the dates specified in ORS 316.012. Oregon adjusted gross income incorporates any differences between the federal definition of adjusted gross income and the Oregon definition of adjusted gross income for any given year.

(b) For tax years beginning after December 31, 1984, Oregon adjusted gross income is federal adjusted gross income without any of the modifications, additions, or subtractions required under ORS Chapter 316.

(3) *Transfers of property between spouses or incident to divorce*. The transfer of property from one spouse to another incident to a divorce property settlement is considered a nontaxable event for Oregon purposes. The basis of the property transferred in the hands of the transferor shall carry over and become the basis of the property in the hands of the transferee.

(4) *Community property income*. An Oregon resident whose spouse resides in a community property state is taxable upon the share of the spouse's community property income that is considered earned by the Oregon resident according to the laws of the community property state. Credit for taxes paid to another state under ORS 316.082 is allowed to Oregon residents whose share of community property income is taxed by Oregon and another state. See ORS 316.082 and the rules thereunder for computation of the credit.

Example 1: Van and Lisa are married. Lisa lives and works in Salem, Oregon. Van lives and works in Seattle, Washington. Van and Lisa each deposit their separate paychecks into a joint Oregon checking account that is used to pay living expenses for both of them. They visit each other frequently. They are not permanently separated by a legal decree and have no intention of filing for divorce. Under Washington law, all property acquired after marriage by either husband or wife or both, other than by gift, bequest or inheritance, is community property. Because Van's wages are community property under Washington law, and Van and Lisa are not permanently separated, Lisa must include one-half of Van's Washington earnings in Oregon income. Lisa may not claim a credit for taxes paid to another state because there is no state income tax imposed on the earnings by both Oregon and Washington.

Example 2: Juan and Maria are married. Juan receives a promotion and moves to Boise, Idaho, to live and work until retirement. Maria stays in Medford, Oregon, and continues her job until she can retire in five years. They are not permanently separated by a legal decree and have no intention of filing for divorce. Under Idaho law, earnings of spouses domiciled in Idaho are community property absent a written agreement that provides otherwise. Since Juan and Maria are not permanently separated and have not agreed to treat their earnings as separate income, Maria must include one-half of Juan's Idaho wages in her Oregon income. Maria would be entitled to claim credit for taxes paid to another state based on the income that is taxed by both Oregon and Idaho.

(5) *Distribution of a trust's income accumulation*. See ORS 316.737 and OAR 150-316.737 for the treatment of trust income accumulation distributions.

(6) *Retirement benefit plans*.

(a) Resident taxpayers must include in Oregon taxable income all amounts received from retirement benefit plans. For tax years beginning on or after January 1, 1996, and before January 1, 2000, nonresidents are not taxed by Oregon on retirement income. For tax years beginning after December 31, 1999, nonresidents who retain their Oregon domicile are taxable on Oregon source retirement income. See ORS 316.127(a).

(b) Conversion of a traditional IRA to a Roth IRA under IRC Section 408A is deemed a distribution for federal tax purposes. The amount included in federal taxable income is taxable to an Oregon resident. A taxpayer who is an Oregon resident for a part of tax year 1998 and who elects to recognize the conversion amount over four years, must include a prorated amount in Oregon income. If the election to recognize income over four years is not made, the converted amount must be included in income if the taxpayer is an Oregon resident at the date of conversion.

Example 1: Sam was a resident of Nevada at the time he converted his traditional IRA to a Roth IRA in 1998. The total amount of the 1998 distribution was $2,000. Sam will recognize the IRA distribution over the four-year period beginning with 1998. In Oct. 1, 1999, Sam established permanent residency in Oregon. The 1998 IRA distribution will be recognized in taxable income as follows: [Table not included. See ED. NOTE.]

(c) Conversion of traditional IRAs to Roth IRAs after 1998. For tax years after 1998, converted amounts must be included in Oregon taxable income if, at the time the conversion is made, the taxpayer is an Oregon resident.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.048
Hist.: 1-69; 12-70; 11-73; 12-19-75; 1-1-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-316.062; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01

150-316.054
Social Security and Railroad Retirement Benefits Eligible for Subtraction

A subtraction from federal taxable income is allowed for social security and tier I railroad retirement benefits as defined under Internal Revenue Code Section 86. Other benefits paid by the Railroad Retirement Board (tier II, windfall, vested dual, supplemental annuities, unemployment, and sickness) are also allowed as a subtraction from federal taxable income. In all cases, the subtraction is allowed only to the extent that such benefits are included in federal taxable income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.054
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; REV 4-2003, f. & cert. ef. 12-31-03

Credits

150-316.078
Oregon Child Care Credit

(1) For tax years beginning on or after December 31, 1988, the credit allowed under ORS 316.078 shall be based on a percentage of the qualifying employment related expenses allowed by Section 21 of the Internal Revenue Code. The percentage is determined by federal taxable income, as shown in the table under ORS 316.078. When calculating the Oregon child care credit, taxpayers must use the same employment related expenses used for calculating the federal credit, subject to the same limitations and eligibility requirements outlined in the IRC Section 21. However, it is not necessary to claim the federal child care credit in order to claim the credit for Oregon. Any credit allowable under ORS 316.078 that is not used may be carried forward for up to five years.

Example 1: Bill and Martha are married and file a joint return. They have federal taxable income of $12,000 in 1989. Using IRC Section 21 guidelines, they determine they have $1,500 qualifying employment related expenses. Using the table in ORS 316.078, Bill and Martha compute an allowable Oregon child care credit in the amount of $120 (8 percent of $1,500). Bill and Martha have a 1989 tax liability of $105. Since their Oregon child care credit exceeds their tax liability, they may carryforward the $15 excess to 1990. They must use the carryforward credit by tax year 1994.

(2) For tax years beginning after December 31, 1986, and before January 1, 1989, the Oregon credit is equal to 40 percent of the "allowable federal credit." The allowable federal credit is the credit computed under Section 21 of the Internal Revenue Code, not the amount actually used to reduce the federal tax liability. The allowable federal credit may be greater than the amount actually claimed on the federal return.

(3) For tax years beginning after December 31, 1984, and before January 1, 1987, the Oregon credit is limited to 40 percent of the "allowed federal credit." The allowed federal credit is the amount actually claimed on the federal return which reduces the federal tax liability (but not below zero). The allowed federal credit may be less than the allowable federal credit. "Federal tax liability" has the same meaning as under Section 26 of the Internal Revenue Code.

(4) For tax years beginning after December 31, 1984 and before January 1, 1987, if the taxpayer would be allowed to claim a credit under ORS 316.078 and 316.087, the taxpayer may choose whichever of the amounts allowable pursuant to these statutes is to be applied against the Oregon tax liability.

Example 2: Joan and Jerry are married and file a joint income tax return. They have a federal tax liability (before any federal credits) of $200 for their 1985 tax year. In addition, they compute that they are allowed a federal credit for the elderly of $175 and a federal child care credit of $250. Joan and Jerry would figure the maximum credit allowable of $80 to apply against their Oregon tax liability as follows. [Example not included. See ED. NOTE.]

[ED. NOTE: Examples and Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.078
Hist.: Repealed by TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-316.079
Credit for Loss of Use of Limb(s); Substantiation

For tax years beginning on or after January 1, 1994. A Disability Certification form shall be obtained from the county public health officer the first year the credit is claimed. This form should not be attached to the tax return, but shall be kept with the taxpayer's records. Upon audit or examination, the information shall be made available to the department to verify any credit claimed under this section

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.079
Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-316.082(1)-(A)
Credit for Income Taxes Paid to Another State

(1) *General*: A taxpayer may claim a credit against income tax imposed under Chapter 316 when:

(a) Another state has jurisdiction to impose an income tax; and

(b) The other state imposes an income tax on an item of income that is also subject to Oregon tax.

(2) The credit may only be used to reduce tax and cannot be claimed as an offset against interest or penalty charges imposed by Oregon.

(3) The credit is limited to taxes imposed upon income, but may be claimed with respect to gross income taxes as well as net income taxes.

(4) *Definitions*. For purposes of ORS 316.082 and ORS 316.131:

(a) "Income tax" means either a gross income tax, a net income tax, or an excise tax or franchise tax that is measured by income of an S corporation.

(b) "Gross income tax" means a tax imposed on gross income.

(c) "Gross income" generally means gross receipts less cost of goods sold, and is further defined in U.S. Treasury Regulation Section 1.61-3.

(d) "State" includes the Commonwealth of Puerto Rico, and a territory or possession of the United States.

(5) Payments for which a credit is not allowed include, but are not limited to:

(a) Taxes imposed on gross receipts, gross revenue, or gross sales (e.g. Washington Business and Occupation Tax);

(b) Property, transactions, sales or consumption taxes;

(c) Amounts paid for the privilege of doing business unless imposed upon income or measured by an S corporation's income;

(d) Interest or penalties paid in connection with a law imposing an income tax;

(e) Amounts paid as a minimum tax unless imposed upon or measured by income. Idaho's Permanent Building Fund tax is an example of a minimum tax that is not imposed upon or measured by income.

Example 1: An Oregon S corporation with net income of $5,000 paid California franchise tax of $800, the minimum tax amount for a corporation doing business in California. If the California franchise tax rate were 9.3%, $465 ($5,000 x .093) would qualify as other state income tax for purposes of this credit. The balance of $335 ($800-445) is not an income tax paid to another state, because it is a minimum tax that is imposed without regard to income of the corporation.

(f) The Texas franchise tax to the extent the tax is based on net taxable capital. Credit may be allowed on the portion of the total franchise tax that is considered imposed on net taxable earned surplus.

Example 2: Ivan is a shareholder in Ronco, an Oregon S Corporation. Ronco pays a Texas franchise tax of $3,600. The franchise tax is composed of a tax on net taxable capital of $500 ($200,000 of net taxable capital times 0.25 percent) and a tax on net taxable earned surplus of $3,100 ($80,000 of net taxable earned surplus times 4.5 percent, less the amount of the tax on net taxable capital). Only the $3,100 qualifies as a tax based on income for purposes of figuring the credit for taxes paid to another state.

(6) A minimum tax is not considered imposed on or measured by income solely because income must rise to a certain level for the tax to apply.

Example 3: Assume State X allows a deduction for capital gains equal to 50% of such gains. If a taxpayer's adjusted gross income exceeds $250,000, then State X imposes a minimum tax equal to 3% of the deduction. State X's minimum tax is not considered a tax imposed on or measured by income for purposes of ORS 316.082.

(7) The burden of proving that credit is due must be assumed by the taxpayer.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.082
Hist.: 12-31-93; REV 5-2000, f. & cert. ef. 8-3-00

150-316.082(1)-(B)
Credit for Taxes Paid to Another State When Paid by a Pass-Through Entity

(1) An individual who owns an interest in a pass-through entity may claim a credit for tax paid to another state by the entity if:

(a) The individual is an Oregon resident;

(b) The portion of the tax for which credit is claimed is computed upon the proportionate share of the entity's income which is taxable to the individual under ORS 316.048; and

(c) An addition is made on the individual's Oregon return for the individual's share of any tax paid or accrued, that relates to the credit taken, and that is deducted on the entity's or individual's federal income tax return in determining federal taxable income.

(2) The individual must attach a statement to the Oregon return on which the credit is claimed showing:

(a) The amount(s) of mutually taxed income, tax paid, and credit claimed for each state; and

(b) The tax year(s) the taxes were due and the date(s) the entity paid the taxes for those states.

(3) The individual must compute the amount of the credit under the provisions of OAR 150-316.082(2).

(4) "Pass-through entity" means a corporation, partnership, or limited liability company that is characterized for Oregon excise and income tax purposes as an S corporation or as a partnership.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.082
Hist.: 10-5-87, 12-31-87, Renumbered from 150-316.082(1); 12-31-93; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 5-2000, f. & cert. ef. 8-3-00; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

150-316.082(2)
Credit for Income Taxes Paid to Another State — Computation

(1) *General*: This rule explains the computation of the credit for taxes paid to another state on mutually taxed income.

(a) *Residents*: An Oregon resident is allowed a credit for taxes paid to another state on mutually taxed income if the other state does not allow the credit. See section (3) of this rule for information on calculating the credit for an Oregon resident.

Example 1: Bob, an Oregon resident, receives partnership income derived from Virginia sources and joins in a multiple nonresident filing with that state. If Virginia does not allow a credit for taxes paid to Oregon on the multiple nonresident tax return, then Bob may claim a credit on the Oregon resident return.

Example 2: Elizabeth, an Oregon resident, receives income from California property. Because California allows Oregon residents to claim a credit for mutually taxed income on the California nonresident return, Elizabeth is not allowed to claim the credit on the Oregon resident return.

(b) *Nonresidents*: Under ORS 316.131, an Oregon nonresident is allowed the credit if the state of residence allows Oregon residents to claim a credit for mutually taxed income on the nonresident return filed with that state. See section (4) of this rule for information on calculating the credit for an Oregon nonresident.

(c) *Part-year residents*: A person who is a resident for a part of the taxable year and a nonresident for the rest of the year figures the credit under section (3) of this rule for the portion of the year the individual was a resident and under section (4) of this rule for the nonresident portion of the year.

(2) *Definitions*. For purposes of this rule, the following definitions apply:

(a) "Adjusted gross income" means federal adjusted gross income as defined in the Internal Revenue Code section 62 and the corresponding regulations.

(b) "Modified adjusted gross income" means adjusted gross income as modified under ORS Chapter 316, but only as to items related to federal adjusted gross income.

(c) "Items related to federal adjusted gross income" means items of income, gain, loss, exclusion or deduction that are used to arrive at federal adjusted gross income. It does not include items that are unrelated to determining federal adjusted gross income, such as the federal income tax subtraction under ORS 316.695 or the additional medical expense deduction provided by ORS 316.695(1)(d)(B).

Example 3: Jon, an Oregon resident, has $40,000 of adjusted gross income, including $10,000 of rental income taxed both by Oregon and another state. Jon also receives a lump-sum distribution of $8,000 from a private pension plan. Because Jon chooses to use the 5-year averaging method to compute federal tax on the distribution, the $8,000 is not included in his adjusted gross income of $40,000. Jon computes modified adjusted gross income as follows:

$40,000 — Adjusted Gross Income
(5,000) — Less - U.S. Bond Interest
(2,000) — Less - Civil Service Retirement (pre 10/1/1991 service)
17,000 — Add - California Municipal Bond Interest
8,000 — Add - Pension distribution
$58,000 — Modified Adjusted Gross Income

(d) "Mutually taxed income" means that portion of modified adjusted gross income that is both reported to and taxed by Oregon and another state.

Example 4: Matt, an Oregon resident, reports adjusted gross income of $21,000, including gain on the sale of Hawaii property of $5,000. For Hawaii tax purposes, the $5,000 gain is increased by a basis adjustment of $250. For Oregon tax purposes, the gain is reduced by a basis adjustment of $1,000. Matt's modified adjusted gross income is $20,000, ($21,000 of adjusted gross income less the $1,000 Oregon basis adjustment.) The mutually taxed income is $4,000 ($5,000 gain on sale of Hawaii property less the $1,000 Oregon basis adjustment), which is the amount of modified adjusted gross income that is taxed by both Hawaii and Oregon.

Example 5: Assume the same facts as Example 4, except that both Hawaii and Oregon require a basis adjustment that increases the gain by $1,000. In this case, the mutually taxed income is $6,000 ($5,000 gain on sale of Hawaii property plus the $1,000 basis adjustment for both Oregon and Hawaii.)

Example 6: Verne, an Oregon resident, sold property that he owned in Colorado for a gain of $128,000. On Verne's Oregon resident return, Oregon allowed $100,000 of losses against the $128,000 of income. Colorado did not allow the losses to be offset or deducted because the losses were not Colorado-sourced losses. Thus, Colorado taxed the entire $128,000 gain. The amount of mutually taxed income is $28,000 because that is the amount of gain upon which tax is actually calculated by both states.

(e) "Total income on the return of the other state" means the other state's taxable income plus any amounts subtracted for itemized deductions, a standard deduction, or exemptions.

(f) "Net tax" means state income tax liability (whether Oregon or the other state) after all credits except the credit for taxes paid to another state.

(g) "Oregon tax based on mutually taxed income" means that portion of Oregon net tax that is attributable to mutually taxed income. It is figured using this formula:

(A ÷ B) x C = D, where
A = mutually taxed income
B = modified adjusted gross income
C = Oregon net tax
D = Oregon tax based on mutually taxed income.

(h) "Other state's tax based on mutually taxed income" means that portion of net tax of the other state that is attributable to mutually taxed income. It is figured using this formula:

(A ÷ E) x F = G, where
A = mutually taxed income
E = total income on the return of the other state
F = other state's net tax
G = other state's tax based on mutually taxed income.

(3) *Computing the credit for an Oregon resident*. An Oregon resident figures the credit as the lesser of:

(a) The Oregon tax based on mutually taxed income; or

(b) The tax actually paid to the other state.

Example 7: Jim's modified adjusted gross income of $40,000 includes rental income taxed to Idaho and Oregon of $4,000. His Oregon net tax is $2,000 and his Idaho net tax (not including the Idaho Building Fund tax) is $100. Jim figures his allowable credit as follows:
(Mutually taxed income ÷ modified adjusted gross income) x net Oregon tax = Oregon tax based on mutually taxed income.
($4,000 ÷ 40,000) x $2,000 = $200
Jim's allowable credit is $100, which is the lesser of the Oregon tax based on mutually taxed income or the income tax actually paid to Idaho of $100.

(4) *Computing the credit for a nonresident*. The credit allowed to a nonresident is the lesser of the following amounts:

(a) Oregon tax based on mutually taxed income (as defined under (2)(g));

(b) The other state's tax based on mutually taxed income (as defined under (2)(h));

(c) The tax actually paid to the other state; or

(d) Oregon net tax.

Example 8: Dieter is a California resident with total income of $50,000 sourced to Oregon and Idaho. He files an Oregon nonresident return reporting $20,000 of income and $1,800 of tax; an Idaho nonresident return reporting $30,000 of income and $2,700 of tax; and a California resident return reporting $50,000 of income and $4,000 of tax. Dieter figures his allowable credit as follows:
(a) Oregon tax based on mutually taxed income equals $1,800 [($20,000 ÷ 20,000) x 1,800 = $1,800].
(b) California tax based on mutually taxed income equals $1,600 [($20,000 ÷ 50,000) x 4,000 = $1,600].
(c) Tax actually paid to California equals $4,000.
(d) Oregon net tax equals $1,800.
Dieter's credit on the Oregon nonresident return is $1,600, which is the lesser of these amounts.

(5) *Special Filing Status*. Filing status may affect the computation of the credit allowed by ORS 316.082. If a husband and wife file separate returns for Oregon and also file separate returns for another state, the credit is limited. Each spouse may claim only his or her portion of the actual taxes he or she paid to the other state (subject to all other limitations provided under this rule) in computing the allowable credit.

(6) If one spouse is a resident of Oregon and the other is a resident of a community property state and files a separate return in that state, the Oregon resident may be entitled to a credit for taxes paid to the other state on mutually taxed income. For purposes of this rule, the mutually taxed income is that which is earned and reported to the other state by the nonresident but included in the income of the Oregon resident by virtue of the laws of the community property state. The amount of the other state's tax paid on mutually taxed income is determined using the following ratio:

(Separate spouse's mutually taxed income ÷ total income on other state's return) x other state's net tax.

Example 9: Bruce is an Oregon resident; his wife, Sue, is an Idaho resident. Each files a separate state tax return for Oregon. If Idaho, as a community property state, finds that each spouse has a one-half interest in the earnings of the other spouse, then Bruce is considered to have earned one-half of Sue's earnings. Under Oregon law, Bruce is taxable by Oregon on all of his individual earnings, plus his one-half interest in Sue's earnings. Because Bruce is being taxed by Idaho and Oregon on the same item of income, he is entitled to claim a credit on the Oregon tax return based on the mutually taxed income.

(7) If a husband and wife file a joint return for Oregon, the entire amount of taxes either or both spouse paid to the other state (subject to all other limitations provided under this rule) may be claimed for purposes of computing the credit allowed under this statute. It does not matter which filing status the taxpayers use for the other state.

(8) If a husband and wife file separate returns for Oregon but file a joint return for another state, the allowable credit is limited as follows. Each spouse may claim a credit for taxes paid to another state (subject to all other limitations provided under this rule) based on the following ratio:

(Separate spouse's mutually taxed income ÷ total income on other state's return) x other state's net tax.

Example 10: Mark and Beth are part-year residents who elect to file separate Oregon returns and a joint Idaho return. Mark has $2,000 income taxed by both Oregon and Idaho and Beth has $8,000 income taxed by both Oregon and Idaho. The total income taxed by Idaho is $40,000 and the total Idaho income tax liability is $2,400. The amount of Idaho taxes Mark may use in computing his credit is $120 ($2,000 ÷ $40,000 x $2,400). The amount of Idaho taxes Beth may use in computing her credit is $480 ($8,000 ÷ $40,000 x $2,400).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.082
Hist.: 12-31-93; REV 5-2000, f. & cert. ef. 8-3-00; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 3-2006, f. & cert. ef. 7-31-06

150-316.082(3)
Credit for Income Taxes Paid to Other States — Proof Required and Procedure for Obtaining the Credit

(1) The taxpayer must attach the following items to the Oregon return on which the credit is claimed:

(a) A complete copy of the other state's income tax return; and

(b) Proof of payment of the tax, such as:

(A) A copy of the check written to pay the tax at the time the other state's return is filed;

(B) Copies of W-2 statements verifying withholding paid to the other state;

(C) A copy of a cashier's check or other negotiable instrument;

(D) A copy of a canceled check showing payment of tax or estimated tax payments; or

(E) A receipt of tax payment.

(2) If the taxpayer is required to amend per subsection (5) of this rule, in lieu of the complete copy of the other state's return as prescribed in subsection (1) of this rule, the taxpayer must attach a copy of the other state's amended return or audit report, whichever is applicable.

(3) The credit may be claimed either at the time of filing the original Oregon return or subsequently. The timeliness of a claim for refund is determined by ORS 314.380 and 314.415.

Example 1: Ben, an Oregon resident, files his 1999 tax return and reports a loss from rental property he owns in Idaho. After an audit by Idaho, certain expenses related to the rental are disallowed resulting in taxable income from the rental. Ben files the amended Oregon return more than three years from the date he filed his 1999 tax return. Notwithstanding the limitations of ORS 314.415, Ben will receive the credit if the amended return is received by the department within two years after the date Idaho issues the audit report that disallowed the expenses.

(4) A taxpayer is allowed a credit for taxes paid to another state when the other state's taxes have been paid. If the other state's taxes have not been paid before the credit is claimed on the Oregon tax return, no credit shall be allowed. When the other state's taxes are paid, the taxpayer must file a refund claim in order to receive such credit. Any refund of the credit is subject to the limitations provided by ORS 314.415.

(5) If a subsequent change or correction is made to the taxpayer's liability that also changes the credit allowed under ORS 316.082 or 316.131, the taxpayer must amend the Oregon return for which such credit was originally allowed.

Example 2: In 1999, Gary and Joanne file their 1998 joint income tax return and claim a credit for taxes paid to Montana in 1998 of $500. In 2000, after Montana audits their tax return, they receive a refund of the entire $500 (the amount of credit they originally claimed). Gary and Joanne must amend their 1998 Oregon tax return to show that no credit is available for taxes paid to Montana in 1998.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.082

Hist.: 1-69; 12-70; 12-31-81; 12-31-84, Renumbered from 150-316.082; RD 10-1986, f. & cert. ef. 12-31-86; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 5-2000, f. & cert. ef. 8-3-00

150-316.082(4)
Addition of Taxes Paid to Another State Claimed as an Itemized Deduction

(1) If a taxpayer claims a credit for taxes paid to another state and the tax is also included as an itemized deduction, the taxpayer must restore to Oregon income the lesser of:

(a) The amount of the other state's net tax liability for the year in which the Oregon credit is claimed; or

(b) The amount of the other state's tax for that year that is included in itemized deductions.

Example 1: On his Oregon tax return, Joe claims a credit for taxes paid to Idaho of $100. His tax liability to Idaho for the same year is $150. He also claims an itemized deduction of $200 for taxes that Idaho withheld from his wages. Joe must add $150 to Oregon income, which is the lesser of his Idaho tax liability or the amount claimed as an itemized deduction for that year.

(2) If the credit for taxes paid to another state is based on a tax liability that is paid in two different tax years, the taxpayer may be required to restore the deduction to Oregon income in two different tax years.

Example 2: Jim claims a credit of $250 on his Oregon tax return. His net tax liability to Idaho is $250. Jim deducts $200 tax withheld by Idaho as an itemized deduction on his Oregon return. He must add $200 to Oregon income, which is the lesser of his Idaho liability or the amount claimed as an itemized deduction that year. If Jim claims the $50 balance owing to Idaho as an itemized deduction for Oregon in the year he pays it, he must add that amount to Oregon income in that same year.

Example 3: Lois makes her fourth quarter estimated tax payment of $400 for 1999 to Montana on January 18, 2000. Her 1999 Montana tax liability is $350 and she claims a credit of $350 on her 1999 Oregon return. In 2000, Lois made $700 of estimated payments to Montana for tax year 2000. Her 2000 Montana tax liability is $950 and she claims a credit of $950 on her 2000 Oregon return. For tax year 2000, Lois claims $1,100 in Montana tax as an itemized deduction ($400 plus $700). Lois's addition on the 2000 Oregon return is $1,050: $350 tax liability for 1999 plus $700 of estimated payments for 2000.

Example 4: Same facts as in Example 3, with the following additional facts: Lois makes her 2000 fourth quarter estimated tax payment of $250 on January 16, 2001. During 2001, Lois pays $1,500 in estimated tax. She claims $1,750 as an itemized deduction ($250 plus 1,500). Her 2001 Montana tax liability is $1,400 and she claims a credit of $1,400 on the 2001 Oregon return. Lois's addition to income for 2001 is $1,650: $250 from tax year 2000 and $1,400 from tax year 2001.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.082

Hist.: 12-5-78, 12-31-78; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 5-2000, f. & cert. ef. 8-3-00

150-316.082(6)
Credit for Duplicative State Taxation Relating to Different Years

(1) If Oregon and another state impose a tax on the same income in different years or the other state's tax is due in a year subsequent to the year or years to which it was originally related, the taxpayer may ask the department to allow a credit that provides relief from taxation of the same income by Oregon and the other state.

(2) The request for a credit under this subsection must be in writing. It must include:

(a) A complete copy of the other state's income tax return(s); and

(b) Proof of payment of the tax, such as:

(A) A copy of the canceled check written to pay the tax at the time the other state's return is filed;

(B) Copies of the W-2 statements verifying the withholding paid to the other state;

(C) A copy of a cashier's check or other negotiable instrument;

(D) A copy of a canceled check showing payment of tax or estimated tax payments; or

(E) A receipt of tax payment.

(c) An explanation of the reason for the duplicative taxation. The following are some examples of explanations:

(A) Idaho law required recapture in 1995 of credits that previously reduced the Oregon credit in 1991 through 1994.

(B) Current federal adjusted gross income includes installment gain that was taxed in full by Maryland in 1998.

(3) The request may be filed:

(a) With the department before the Oregon return for the year of the duplicative taxation is filed; or

(b) With the Oregon return that reports the income that was previously taxed by another state; or

(c) Within the time period to amend the Oregon return designated in (a) or (b) that reports income that was previously taxed by another state.

(4) The department will consider all requests for a credit under this subsection and will allow a credit when necessary to avoid double taxation of income legitimately taxed in another state. The following are some situations where the department may provide a credit under this section.

(a) The other state's tax due is in the current year but was originally related to prior years.

Example 1: Max, an Oregon resident, owns a business in Idaho. For each of four years he claimed the Idaho investment tax credit. For each of these years he also claimed an Oregon credit under ORS 316.082 that was calculated based upon the tax, net of credits, that he paid to Idaho. In the fifth year he sold an asset and was required by Idaho law to recapture, on that year's Idaho return, some of the investment tax credit he had claimed in each of the previous four years.

(b) Oregon and the other state tax the same income in different years.

Example 2: Matt sold rental property in Maryland while he was a resident there for a gain of $100,000 and reported it as an installment sale for federal. He paid Maryland tax on the entire gain. Matt became an Oregon resident in the third year of the installment sale contract. The installment payments are part of his federal income, so will be taxed by Oregon.

(5) The department will make a determination and notify the taxpayer of the amount of the credit and show the calculation of the credit if necessary.

(6) If the taxpayer disagrees with the department's determination, the taxpayer may request a conference or file a written objection within 30 days of the date of the department's letter of deter-

mination. The request for conference or filing of a written objection must be filed with the department in the manner prescribed under OAR 150-305.265(5).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.082
Hist.: REV 8-2001, f. & cert. ef. 12-31-01

150-316.087
Oregon Credit for the Elderly

(1) For tax years beginning on or after January 1, 1987, the Oregon credit is equal to 40 percent of the "allowable federal credit" as determined under Section 22 of the Internal Revenue Code. The "allowable federal credit" is the total credit computed on federal Schedule R or RP which is available to reduce the federal tax liability.

(2) For tax years beginning on or after January 1, 1985, but before January 1, 1987, the Oregon credit is equal to 15 percent of the "allowed federal credit" pursuant to Section 22 of the Internal Revenue Code. The "allowed federal credit" is the amount claimed on the federal return which actually reduces the federal tax liability (but not below zero). The allowed federal credit may be less than the allowable federal credit.

(3) For tax years beginning before January 1, 1985, the Oregon credit is equal to 15 percent of the "allowed federal credit" pursuant to Section 37 of the Internal Revenue Code as amended on December 31, 1984.

(4) For the purpose of subsection (1) and (2) of this rule, "federal tax liability" has the same meaning as defined in Section 26 of the Internal Revenue Code. For the purpose of subsection (3) of this rule, the "federal tax liability" has the same meaning as defined in Chapter 1 of Subtitle A of the Internal Revenue Code as amended on December 31, 1984.

(5) For application of the Oregon credit for the elderly allowed under ORS 316.087 used in conjunction with the Oregon child care credit allowed under ORS 316.078, see OAR 150-316.078.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.087
Hist.: Repealed by TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-316.095
Sewer Connection Credit

(1) The sewer connection credit can be claimed by taxpayers in eligible jurisdictions if the connection was made or the costs were incurred on or after January 1, 1985.

(2) For tax years beginning on or after January 1, 1992, the allowable credit is equal to the lesser of the costs paid or incurred to connect to the sewage treatment works or $800. The credit claimed in any taxable year shall not exceed one-fifth of the total amount of the credit per qualifying residence or the tax liability of the taxpayer. The balance of the allowable credit not used to reduce the tax liability of the taxpayer can be carried forward for a period not to exceed eight successive years.

(3) "Costs incurred" includes county assessments and other charges necessary to connect to the sewage treatment works. It does not include interest on indebtedness, fines, or penalties. It does not include costs to connect business property, even when located on the same tax lot as the principal residence.

(4) Costs relating to the rental portion of an owner-occupied multiple-family dwelling, or a home business, must be separated out from the total costs. The taxpayer may only claim costs incurred to connect the principal residence. Any charges for separate lines not serving the principal residence are not eligible for the credit. Additional charges relating to business property must be capitalized. The expenses shall be amortized over the life of the property. "Multiple-family dwelling" includes duplexes, triplexes, and apartment homes.

(5) The credit must be claimed for the year in which the connection is made or the cost incurred, and is only allowed to the taxpayer who expended the funds for that purpose. The residence connected must be the principal residence of the taxpayer. If the taxpayer incurs the cost of connecting a principal residence to the sewer treatment works and then sells or converts the principal residence before the entire credit is claimed, the taxpayer may continue to claim the balance of the credit. If the taxpayer then purchases a new principal residence and incurs the cost of connecting the newly acquired residence to a treatment works, a new sewer connection credit may be claimed.

Example: The taxpayer connects a principal residence to a qualifying sewer treatment works and is entitled to a credit. The taxpayer will claim one-fifth of the total credit. After two years the taxpayer converts the residence to a rental. The taxpayer may continue to claim the three years of tax credits still available. If the taxpayer then buys a principal residence and incurs the cost of connecting a principal residence to a sewer treatment works, the taxpayer may claim a new sewer connection credit. It is possible that the taxpayer could be claiming a credit for a prior principal residence and a credit for a current residence in the same tax year.
The taxpayer's property basis must be reduced by any credit previously received when the principal residence is converted to business property.

(6) For tax years beginning on or after January 1, 1994. The receipt of payment required by this section should not be attached to the tax return, but shall be kept with the taxpayer's records. Upon audit or examination, the information shall be made available to the department to verify any credit claimed under this section.

(7) Retroactive eligibility.

(a) For tax years that begin on or after January 1, 1985, but before January 1, 1991, a taxpayer who is eligible for the credit as a result of the amendments to ORS 316.095 by Oregon Laws 1991, Chapter 781, Section 1 (SB 828), shall file an application for refund(s) on or before April 15, 1993. Taxpayers may either file amended returns for prior years to claim the credits or may claim the credits on the 1991 or 1992 tax returns.

(b) Oregon Laws 1991, Chapter 781, Section 1 (SB 828), amended ORS 316.095 to allow a resident individual a sewer connection credit if the order from the Assistant Director for Health is issued after January 1, 1988, and before July 1, 1995. If the costs are incurred or the connection is made in tax years beginning before January 1, 1992, then the taxpayer is entitled to a $750 sewer credit. If the costs are incurred or the connection is made in tax years beginning on or after January 1, 1992, then the taxpayer is entitled to an $800 sewer credit.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.095
Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-316.095(6)
Sewer Connection Credit: Substantiation for Bancroft Bonding

(1) General. To qualify for the credit, the connection to the sewer treatment works must be made or the costs must be incurred on or after January 1, 1985.

(2) Bancroft Bonding.

(a) If a taxpayer is incurring the costs of connecting to a sewage treatment works by securing a Bancroft bond instalment agreement and the connection will not be made in the taxable year, the effective date of the agreement will be considered the date the costs are incurred to satisfy the requirements of Section (2)(a) of ORS 316.095. The effective date of the agreement must be on or after January 1, 1985, to qualify for the credit.

(b) The bond agreement will not meet the qualifications for a "receipt of payment" as required in ORS 316.095(6). The receipt must be issued from the installing or constructing entity and be in the form of a letter, notice, or other substantiation but must indicate the constructing entity incurred an obligation to make a sewer connection to the taxpayer's residence. A copy of the receipt shall be attached to the Oregon return on which the credit is claimed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.095
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-316.099
Disabled Child Exemption Credit

(1) For tax years beginning on or after January 1, 2005, an additional personal exemption credit is allowed for dependent children who are disabled on the last day of the tax year.

(2) For tax years beginning before January 1, 2005, an additional personal exemption credit is allowed for dependent children who are age 17 or younger and are disabled on the last day of the tax year.

(3) For all years, the child with a disability must be certified annually by a state department of education to be eligible for early intervention services or an individualized education program (IEP) under the federal program for Individuals with Disabilities Education Act (IDEA).

(4) Upon request of the department, the taxpayer claiming the personal exemption credit for a disabled child must provide the first sheet of the applicable year's IEP or Individualized Family Service plan showing the child's name, disability, and education eligibility for each year the credit is claimed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.099
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-316.102
Credit for Political Contributions

(1) In General: To qualify for the political contribution credit, the contribution must be a voluntary contribution of money made to one of the following:

(a) A major political party or its political committees, or a minor political party or its political committees;

(b) A candidate for federal, state or local office; or

(c) A political committee. Each of these categories is discussed in more detail in the following sections.

(2) Contributions to political parties. For purposes of this rule, a major political party is defined in ORS 248.006. A minor political party is defined in ORS 248.008. Contributions to any of these parties, or their political committees, qualify for the credit.

Example 1: In 2012, Jim contributes $50 to the Republican National Party, $50 to the Republican Committee to Re-elect U.S. Senators, $50 to the Democratic National Party Committee to Re-elect Senator Jones of California and $50 to the Libertarian Party. All contributions qualify for the political contribution credit. Jim will be able to claim a credit of $50 on his 2012 income tax return. If he files a joint return with his wife, they may claim a $100 credit.

(3) Contributions to candidates. Qualifying contributions are those made directly to the candidate or the principal campaign committee of the candidate.

(a) A principal campaign committee (PCC) means a candidate's political committee. The PCC must have met the filing requirements contained in ORS Chapter 260.

(b) Candidates do not have to appear on a ballot in this state in the same year the contribution is made for the credit to be claimed. However, if the candidate is not on a ballot, at least one of the following must have occurred in the same year the contribution is made:

(A) A prospective petition is filed;

(B) A declaration of candidacy is filed;

(C) A certificate of nomination is filed; or

(D) A designation of a principal campaign committee is filed.

Example 2: Amanda filed a declaration of candidacy in November 2011 and appeared on the ballot for the 2012 primary election as a candidate for Oregon state senator. Contributions made in 2011 or 2012 to Amanda, or her principal campaign committee, will qualify for the credit.

(4) Contributions to political committees. Contributions made to a political committee will qualify only if the committee has certified the name of its treasurer to the appropriate filing officerin the manner provided in ORS Chapter 260. As used in this rule, "filing officer" means:

(a) For a political committee whose purpose is to support or oppose a candidate or measure in an election concerning an irrigation district formed under ORS chapter 545, the county clerk or secretary of the irrigation district as provided under ORS 260.005(9)(b).

(b) For all other purposes, the Secretary of State as provided under ORS 260.005(9)(a).

(c) Contributions may qualify under this provision even though:

(A) No measure appears on the ballot in the same year the contribution is made;

(B) The contribution is made to reduce a deficit from a prior year; or

(C) The political committee is formed by a national committee.

Example 3: Royal is a member of the Association of Certified Engineers of America. The association forms a Political Action Committee (PAC) in Oregon, certifies the name of its treasurer to the Secretary of State, and solicits voluntary donations from individual members. The PAC states in its material that it is organized and operated to support or oppose any political candidates or measures the directors of the association determine will impact its members. Contributions made to the PAC will qualify for the credit.

Example 4: Debra belongs to a trade union that engages in political activities. The union informs Debra that a certain percentage of her monthly dues is used for political purposes. No part of her dues payment will qualify for the credit because it is not a voluntary payment of money to a candidate or a political committee.

Example 5: Same facts as Example 4, but the union also solicits voluntary political contributions from its members. These funds are placed directly into a separate PAC, which is not subsidized in any way by the union, and are used for political activities. In January 1999, Debra signs up for a payroll deduction of $5 to be taken from her monthly checks. She may claim a credit of up to $50 on her tax return, or a credit of $60 (12 months x $5) if she files jointly with her husband.

(5) The amount of the contribution must be reduced by the fair market value of any items or services received in exchange for the contributions.

Example 6: A political committee solicits donations and offers T-shirts in return for contributions of $50 or more. Douglas contributes $50 and receives a T-shirt valued at $10. He may claim a political contribution credit of $40.

Example 7: Same facts as Example 6, except that Douglas contributes $100. He is entitled to a credit of $50 on a single return, or $90 on a joint return.

(6) A partnership or S corporation may make political contributions on behalf of its partners or shareholders. The credit may be claimed on the individual tax return, subject to all of the limitations in ORS 316.102 and this rule.

(7) Proof of the credit, such as a canceled check or receipt, should not be attached to the tax return but should be kept with the taxpayer's records. Upon audit or examination, the taxpayer must provide documentation to verify the credit.

Stat. Auth.: ORS 305.100 & 316.102
Stats. Implemented: ORS 316.102
Hist.: 1-69; 12-70; 11-73; 12-19-75; 12-19-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 6-1983(Temp), f. 12-20-83, cert. ef. 12-31-83; RD 2-1984, f. & cert. ef. 2-21-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.109
Credit for the Gain on the Sale of a Residence Taxed by Another State

A credit will be allowed if the gain on the sale of a taxpayer's personal residence is taxed by both Oregon and another state or country. The credit is the lesser of:

(1) Mutually taxed gain; [Formula not included. See ED. NOTE.]; or

(2) 8 percent of the gain taxed by the other state.

NOTE: Mutually taxed gain is the total gain reduced by any allowable deductions or exclusions (i.e., capital gains deduction, differences in allowable depreciation due to business use of home, etc.).

Total income on other state's return is the other state's taxable income before subtractions for itemized deductions (or standard deduction) and exemptions.

To claim the credit, the taxpayer must send a copy of the other state or country's return and proof of payment.

A taxpayer may not claim both this credit and a credit under ORS 316.082 or ORS 316.131 for taxes paid on the same gain.

[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.109
Hist.: 12-31-79; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; REV 8-2001, f. & cert. ef. 12-31-01

150-316.116
Credit for Installation of Alternative Energy Devices

(1) As provided by ORS 469B.103, the Oregon Department of Energy administers provisions related to the eligibility, verification

and certification of an alternative energy device for purposes of the tax credit under ORS 316.116. Refer to ORS 469B.100 through 469B.118 and Oregon Administrative Rules 330-070-0010 through 330-070-0097 or contact the Department of Energy for additional information.

(2) Each taxpayer that qualifies for the credit may apply the allowable credit to the current year's tax liability. Any unused credit balance may be applied to the following year's tax liability for up to five successive years. If *two or more* taxpayers qualify for the credit, *they must apportion the allowable credit between them* based on their investment in the device or ownership in the property.

(3) No adjustment to the basis of property is required as a result of claiming a credit for an alternative energy device.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.116
Hist.: 12-31-77; TC 6-1979(Temp), f. & cert. ef. 3-5-79; TC 12-1979, f. & cert. ef. 5-18-79; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00

Taxation of Nonresidents

150-316.117-(A)
Proration of Income and Deductions for Nonresidents and Part-Year Residents

(1) For tax years beginning on or after January 1, 1983, the numerator of the fraction is the taxpayer's federal adjusted gross income from Oregon sources, with the Oregon modifications to that income, which relate to adjusted gross income.

(2) The denominator of the fraction is the taxpayer's federal adjusted gross income, from all sources, with the Oregon modifications to that income, which relate to adjusted gross income.

(3) For the fiduciary returns of estates and trusts, the numerator of the fraction is the federal taxable income of the fiduciary from Oregon sources, with the Oregon modifications to that income. The denominator of the fraction is the federal taxable income of the fiduciary, from all sources, with Oregon modifications to that income.

(4) Use the following list to help determine which Oregon modifications relate to adjusted gross income. [List not included. See ED. NOTE.]

(5) Under no circumstances may the percentage exceed 100 percent.

(6) If the taxpayer has positive modified Oregon income and negative or zero modified federal adjusted gross income, the allowable percentage is 100 percent. If the taxpayer's modified federal adjusted gross income from Oregon sources and modified federal adjusted gross income are both losses, the allowable percentage will be computed as follows:

(a) If the Oregon loss is smaller than the federal loss, 100 percent.

(b) If the Oregon loss is greater than the federal loss, divide the federal loss by the Oregon loss.

Example 1: A taxpayer has modified federal adjusted gross income from Oregon sources of ($100) and modified federal adjusted gross income of ($1,000). Since the Oregon loss is less than the federal loss, the percentage is 100 percent.

Example 2: A taxpayer has federal adjusted gross income from Oregon sources of ($1,000) and federal adjusted gross income of ($100). The percentage is 10 percent.

(7) If the taxpayer has negative or zero modified Oregon income and positive modified federal adjusted gross income, the allowable percentage is zero.

(8) Nonresident taxpayers shall prorate the following deductions and modifications not relating to adjusted gross income using the fraction provided in this rule:

(a) The greater of:

(A) Net Oregon itemized; or

(B) The standard deduction.

(b) Federal tax liability.

(c) Additional federal tax paid from a prior year.

(d) Gambling losses (itemized).

(e) Federal income tax refunds from amended or audited returns.

(9) Nonresident taxpayers shall not prorate the following deductions and modifications not relating to adjusted gross income.

(a) Art object donation deduction; and

(b) Fiduciary adjustment.

(10) Under no circumstances may the percentage used in computing the allowable portion of the deductions exceed 100 percent.

(11) For part-year residents Oregon source income is:

(a) For the portion of the year the taxpayer is a resident see OAR 150-316.048.

(b) For the portion of the year the taxpayer is a nonresident see ORS 316.127 and the rules pertaining thereto.

[ED. NOTE: Lists referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.117
Hist.: 12-70; 11-73; 12-19-75; 12-31-78; 12-31-83; 12-31-84; 12-31-85; 12-31-86, Renumbered from 150-316.117; 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.117-(B)
Taxable Income of Nonresidents: Deductibility of Alimony Payments

(1) Full-year nonresidents shall follow the rules under ORS 316.130(2)(c) in determining deductibility of alimony payments.

(2) In determining income from Oregon sources, part-year residents shall not deduct any alimony or separate maintenance payments, as defined in IRC 215(b) and 71(b), made to residents during the portion of the year the part-year resident was a nonresident.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.117
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87

150-316.119
Proration for Pass-through Entity Income of Part Year Oregon Residents

A part-year Oregon resident with an ownership interest in a partnership or S corporation includes in Oregon adjusted gross income the sum of:

(1) All income derived from the ownership interest while the taxpayer was an Oregon resident. The amount included in Oregon income must be determined consistently with Internal Revenue Code sections 1366, 1377, 702, 704 and the corresponding Treasury Regulations and must reasonably reflect the taxpayer's share of income derived from the taxpayer's ownership interest, plus

(2) That portion of income derived from the ownership interest as a nonresident from an entity with business activity in Oregon. The taxpayer's share of the income is subject to the allocation and apportionment provisions of ORS 314.605 to 314.675 during the time that the taxpayer was not an Oregon resident.

Example 1: Ralph was an Oregon resident who moved to Nevada on August 16. During the same year, Ralph was a shareholder of an Idaho S corporation with no business activity in Oregon. From January 1 to March 31, he owned 250 of 500 total issued shares. Additional shares were issued on April 1, giving Ralph 300 of 800 total shares. On July 1, more shares were issued and traded, giving him 450 of 1000 total shares. The S corporation's federal income is $365,000; Ralph's share of federal income is $161,925. Ralph determines his Oregon income of $99,825 as follows:
Step 1. S corporation income assigned to each day:
$365,000 / 365 days = $1,000
Step 2. Figure per share, per day amount (per day amount / outstanding shares):
Jan 1–Mar 31 — $1,000 per day/500 shares = $2.00 per share, per day
Apr 1–Jun 30 — $1,000 per day/800 shares = $1.25 per share, per day
Jul 1–Dec 31 — $1,000 per day/1000 shares = $1.00 per share, per day
Step 3. Figure shareholder income (per share, per day):
Jan 1–Mar 31 — 90 days x 250 shares x $2.00 = $45,000
Apr 1–Jun 30 — 91 days x 300 shares x $1.25 = $34,125
Jul 1–Aug 15 — 46 days x 450 shares x $1.00 = $20,700
Aug 16–Dec 31 — Nonresident, no Oregon activity — $0
Oregon income: $99,825

Example 2: Assume the same facts as in Example 1, except that the S corporation also did business in Oregon and computed an Oregon apportionment percentage of 40 percent. Ralph's proportional share of this income reported to Oregon for the entire year is calculated as follows:
Jan 1–Mar 31 — 90 days x 250 shares x $2.00 = $45,000
Apr 1–Jun 30 — 91 days x 300 shares x $1.25 = $34,125
Jul 1–Aug 15 — 46 days x 450 shares x $1.00 = $20,700
Aug 16–Dec 31 — 138 days x 450 shares x $1.00 x 40% = $24,840
Oregon income: $124,665

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.119
Hist.: REV 6-2008, f. 8-29-08, cert. ef. 8-31-08

150-316.122
Separate or Joint Federal Returns for Husband and Wife

(1) For tax years beginning on or after January 1, 1987, ORS 316.122 contains exceptions to the general rule that the filing status of the federal return, whether joint or separate, determines the filing status on the Oregon return. If a joint federal income tax return is filed and one or both of the spouses is not a full-year resident, each spouse must file a separate state return unless they elect to file a joint state return.

(2) The income to be included by the spouses in computing their joint Oregon taxable income is determined as follows:

(a) A full-year resident spouse shall include all income received during the year as determined in OAR 150-316.048.

(b) A part-year resident spouse shall include:

(A) For the portion of the year the spouse is a resident all income as determined under OAR 150-316.048.

(B) For the portion of the year the spouse is a nonresident the Oregon source income as determined under ORS 316.127 and the rules thereunder.

(c) A nonresident spouse shall include all Oregon source income as determined under ORS 316.127 and the rules thereunder.

(d) The Oregon source net operating loss of a part-year resident included in the filing of a joint return is determined as follows:

(A) For the portion of the year the spouse is a resident any loss determined under OAR 150-316.028.

(B) For the portion of the year the spouse is a nonresident any loss determined under OAR 150-316.028 as it relates to nonresidents.

(3) This election to file a joint state return may not be revoked after the due date of the return for the tax year. An amended return filed prior to the due date is considered an original return and may contain a change from a joint return to separate returns.

(4) Spouses may change from separate state returns to a joint state return within the time prescribed by law for filing amended returns. The change to a joint return shall not be made if the change would not be allowable under Internal Revenue Code Section 6013(b).

(5) In the event the election to file a joint return for Oregon tax purposes is not made, then each spouse with income subject to Oregon tax must compute an "as if" federal return on the basis of the separate federal adjusted gross income of the taxpayer.

(6) If the taxpayers can clearly segregate their itemized deductions, each taxpayer may claim his or her own deductions instead of apportioning them by income. The burden of proof for substantiating the segregation rests with the taxpayer. See OAR 150-316.695(1) for treatment of itemized deductions on separate returns when one spouse is not required to file in Oregon.

(7) If a joint federal return has been filed, the federal tax deducted in arriving at Oregon taxable income on the separate state return shall be computed by apportioning the total accrued federal tax liability of both spouses. Apportionment shall be made on the basis of the separate federal adjusted gross incomes of both spouses. The result is subject to the $1,500 limitation of the federal tax deduction for each spouse for tax years beginning on or after January 1, 1987. See OAR 150-316.685(1).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.122
Hist.: 12-70; 11-73; 12-19-75; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 150-316.122(3)?; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-316.124(2)
Nonresident Partners: Guaranteed Payments

(1) Guaranteed payments paid to nonresident partners of a partnership that has business activity in the state of Oregon are treated as a distributive share of partnership income for Oregon tax purposes. In order to determine the income attributable to Oregon sources, each nonresident partner's entire distributive share, including the guaranteed payments, is then subject to the allocation and apportionment provisions of ORS 314.605 to 314.675.

Example 1: Frank is a 25 percent partner in the law firm DC & H, Associates, a calendar year partnership. DC & H's main office is in Washington, but it also has a branch office in Oregon. Frank lives in Seattle and works in the Washington branch of the firm.

For tax year 1992, Frank received $100,000 in guaranteed payments from the partnership. Frank's 25 percent share of partnership profits after the deduction of guaranteed payments was $50,000. DC & H calculated an Oregon apportionment percentage of 20 percent. Frank's 1992 Oregon source income attributable to the law firm is calculated as follows: [Example not included. See ED. NOTE.]

(2) The inclusion of guaranteed payments into a nonresident partner's share of apportionable income is irrespective of that partner's percentage interest in the profit or loss of the partnership.

Example 2: Assume the same facts as in Example 1, except that Frank does not share in the profits or loss of the partnership. Frank's 1992 Oregon source income attributable to the law firm is calculated as follows: [Example not included. See ED. NOTE.]

(3) See ORS 314.610 and the Administrative Rules thereunder for a definition of Oregon business activity.

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.124
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-316.124(4)
Nonresident Partners: Other Methods of Allocation and Apportionment

(1) ORS 314.605 to 314.670 are designed to allocate and apportion to Oregon, in a fair and equitable manner, a nonresident partner's items of partnership income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without the state of Oregon. If the methods provided under those sections do not so allocate and apportion these items, the department may permit a nonresident partner to allocate and apportion those items under an alternative method as proposed by the partner. An alternative method will be allowed only in limited and specific cases. ORS 316.124(4) may be invoked only in unusual fact situations (which ordinarily will be unique and nonrecurring). These are situations which will generally violate a nonresident partner's rights under the constitution of Oregon or of the United States.

(2) An application to use an alternative method of allocation and apportionment must be made in writing. The request must a) specify why the standard method does not fairly represent the extent of the partnership's Oregon business activity; b) specify how the standard method of allocation and apportionment violates the nonresident partner's constitutional rights; and c) must include a detailed description of the alternative method.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.124
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-316.127-(A)
Gross Income of Nonresidents; Personal Services

(1) Personal service.

(a) Except as provided in section (2) of this rule, the gross income of a nonresident (who is not engaged in the conduct of the nonresident's own trade or business, but receives compensation for services as an employee) includes compensation for personal services only to the extent that the services were performed in this state.

(b) Compensation for personal services performed by a nonresident employee wholly outside this state and in no way connected with the management or conduct of a business in this state is excluded from gross income. This compensation is excluded even if payment is made from a point within this state or the employer is a resident individual, partnership, or corporation.

(c) Compensation for personal services performed by a nonresident wholly within this state is included in gross income although payment is received at a point outside this state or from a nonresident individual, partnership, or corporation.

(2) Exception: Various federal laws affecting certain nonresidents are explained separately. See OAR 150-316.127-(E) or 150-316.127(10).

(3) Allocation of personal services.

(a) Where compensation is received for personal services that are performed partly within and partly without this state, that part of the income allocable to this state is included in gross income. In general, income is allocable to this state to the extent the employee is physically present in this state at the time the service is performed. Physical presence is determined by the actual physical location of the employee performing the services and not by the location of the employer or the location where compensation is paid. Employees who work in Oregon and at an alternate work site located outside of Oregon may allocate their compensation under the provisions of this rule.

Example 1: Dick, a nonresident, works as a medical transcriptionist for an Oregon employer. During the year, Dick spends about 80 percent of his time working from his home in Washington. Dick spends the remainder of his work time in the Portland office. Only the time Dick spends at the Portland office is considered time worked in Oregon.

(A) The gross income from commissions earned by a nonresident for services performed or sales made, (whose compensation is a specified commission on each sale made or services performed), includes the specific commissions earned on sales made or services performed in this state. Allowable deductions must be computed on the same basis.

(B) If nonresident employees work within and without this state, the portion of total compensation for personal services allocable to Oregon is the total number of actual working days employed within the state divided by the total number of working days both within and without the state.

(C) If nonresident employees work part of a day in Oregon and part of a day outside Oregon, the portion of total compensation for personal services allocable to Oregon is the number of hours worked in Oregon divided by the total number of hours worked within and without the state.

Example 2: Rod is a nonresident of Oregon. He works for ACE Cell Tower, Inc and is paid to work 40 hours each week. Some days he works both in Oregon and Idaho. Rod earned $64,000 in 2012. Rod's employer requires him to keep a detailed log of his travel. At the end of 2012 he had worked a total of 1,850 hours and his log and information from his employer shows that 962 of those hours were worked in Oregon. His compensation taxable to Oregon is computed as follows:
Hours worked in Oregon -- divided by -- Total hours worked x Total compensation = Oregon compensation
0.520 (962 hours divided by 1,850 hours) x $64,000 = $33,280
Rod's compensation subject to Oregon tax is $33,280.

(D) If the employees are paid on a mileage basis, the gross income from sources within this state includes that portion of the total compensation for personal services which the number of miles traveled in Oregon bears to the total number of miles traveled within and without the state.

(E) If the employees are paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Oregon that portion of the total compensation which is reasonably attributable to personal services performed in this state.

(b) The gross income of all other nonresident employees, including corporate officers, includes that portion of the total compensation for services which the total number of actual working days employed within this state bears to the total number of actual working days employed both within and without this state during the taxable period.

Example 3: Jan is a nonresident of Oregon. She works for A Corp. Jan manages offices in Oregon and Washington. A Corp. pays her a salary of $30,000 for the management of both offices. She worked in Oregon 132 days. She would figure her compensation subject to Oregon tax as follows:
Days worked in Oregon — divided by — Total days worked x Total compensation = Oregon compensation
0.600 (132 days divided by 220 days) x $30,000 = $18,000
Jan's compensation subject to Oregon tax is $18,000.
An exception to this general rule is made when the compensation is received for performance of services that, by their nature, have an objective or an effect that takes place within this state. In the case of corporate officers and executives who spend only a portion of their time within this state, but whose compensation paid by a corporation operating in Oregon is exclusively for managerial services performed by such officers and executives, the entire amount of compensation so earned is taxable without apportionment.

Example 4: Cade is a nonresident of Oregon. He works for Best Engineering. Cade manages Best Engineering's only office, which is located in Oregon. Best Engineering pays him a salary exclusively for managerial services in the total amount of $58,000. Even though Cade may perform some administrative duties from his home, the compensation he receives is for managing the Oregon office. The entire $58,000 is taxable to Oregon.

(c) Total compensation for personal services includes sick leave pay, holiday pay, and vacation pay. Sick leave days, holidays, and vacation days are not considered actual working days either in or out of this state and are to be excluded from the calculation of the portion of total compensation for personal services taxable to this state.

Example 5: Joan is a nonresident of Oregon. She actually worked a total of 220 days during the year and was paid for 40 non-working days (holidays, sick days and vacation days). She worked 110 days in Oregon. Her compensation (including compensation for holidays, sick leave and vacations) was $26,000. She would figure her compensation subject to Oregon tax as follows:
Days worked in Oregon — divided by — Total days worked x Total compensation = Oregon compensation
0.500 (110 days divided by 220 days) x $26,000 = $13,000
Joan's compensation subject to Oregon tax is $13,000.

(d) Payment in forms other than money. Total compensation for personal services includes amounts paid in a form other than money. To the extent the payments are recognized as compensation income for federal income tax purposes, the payments will be recognized as compensation income for Oregon tax purposes and must be apportioned as provided in section (3) of this rule. Examples include but are not limited to, non-statutory stock options, taxable fringe benefits such as personal use of a business asset, and employer-paid membership fees.

(A) Non-statutory stock options with a readily ascertainable fair market value. Compensation income will be allocated to Oregon in the year an option is required to be reported on the federal return if a nonresident taxpayer performed services in connection with the grant of such option in Oregon during the year in which the option was granted and:

(i) Is required to report under IRC section 83(a) as compensation income the value of a non-statutory stock option granted in connection with the performance of services that has a "readily ascertainable fair market value," as described in Treasury Regulation 1.83-7(b), as of the date the option was granted; or

(ii) Elects under IRC 83(b) to report the value of such an option as of the date the option was granted. If a nonresident taxpayer performed personal services partly within and partly without Oregon in the year in which the option was granted, the taxpayer must use the allocation applied to the taxpayer's other compensation under section (3) of this rule for the tax year in which the option was granted and apply that ratio to the compensation income required to be reported on the federal return. For example, if the taxpayer allocates his income under subsection (3)(a) of this rule and worked 25 percent of his time in Oregon during the year the option was granted, he must include in Oregon income 25 percent of the compensation income related to the option included in federal taxable income. Generally, Oregon will not tax the subsequent gain or loss on the sale of the stock unless the stock has acquired a business situs in Oregon. See OAR 150-316.127-(D).

(B) Non-statutory stock options without a readily ascertainable fair market value that are taxable at exercise, or in a pre-exercise disposition. If a non-statutory stock option granted in connection with performance of services that does not have a readily ascertainable fair market value at the date of the grant is recognized as compensation income for federal tax purposes and the taxpayer worked in Oregon during the year the option was granted, the taxpayer must allocate the compensation related to the option to Oregon in the same year it is taxable for federal purposes. The income that is recognized for federal purposes must be allocated to Oregon if the taxpayer worked in Oregon during the tax year the option was granted. Compute the amount of compensation includable in Oregon source income using the following formula:

Total days worked in Oregon from date of grant to date of federal recognition — divided by — Total days worked everywhere from date of grant to date of federal recognition x Compensation related to option exercise = Amount taxable by Oregon
Any further appreciation or depreciation in the value of the stock after the date of exercise represents investment income or loss and is not includable in the Oregon source income of a nonresident unless the stock acquired a business situs in Oregon (see OAR 150-316.127(D)).

(C) Treatment of taxable fringe benefits. Income recognized for federal purposes must be allocated to Oregon if the nonresident worked in Oregon during the tax year the benefit was received. The nonresident must use the same allocation rules applicable to the taxpayer's other compensation under section (3) of this rule to the taxable fringe benefits. For example, if the taxpayer allocates his income under subsection (3)(a) of this rule and worked 55 percent of his time in Oregon, 55 percent of the amount of the taxable fringe benefit that is included in federal taxable income is included in Oregon taxable income.

(e) Unemployment compensation. Total compensation includes unemployment compensation benefits to the extent the benefits pertain to the individual's employment in Oregon. If unemployment compensation benefits are received by a nonresident for employment in Oregon and in one or more other states, the unemployment compensation benefits must be apportioned to Oregon using any method that reasonably reflects the services performed in Oregon.

Example 6: Gary, a nonresident, worked in Oregon and Washington for the last 5 years. On January 1, 2014, he was laid off by his employer and received unemployment compensation of $2,000. Gary may use the Oregon wages as a percentage of total wages reported on his nonresident tax return for the prior year (2013) to determine the percentage of unemployment benefits to be included in Oregon income for 2014. In 2013, Gary earned a total of $40,000 of which $26,000 was earned in Oregon. The unemployment compensation taxable to Oregon is $1,300, computed as follows:

Oregon prior year wages — divided by — Total prior year wages x Total current year unemployment compensation = Oregon unemployment compensation 0.650 ($26,000 divided by $40,000) x $2,000 = $1,300. Oregon will tax $1,300 of Gary's unemployment compensation even though he received it in a tax year when he did not work in Oregon because the unemployment compensation is based on Oregon employment. He may not allocate the unemployment based on time worked in Oregon in 2014 because it does not reasonably reflect services performed in Oregon.

(f) Severance pay. Compensation includes severance pay to the extent the pay is attributable to services performed in Oregon. For purposes of this rule, "severance pay" means compensation payable on voluntary termination or involuntary termination of employment based on length of service, a percentage of final salary, a contract between the employer and the employee, a lump sum payment based on accumulated paid leave, or some other method but does not include "retirement income" as defined in ORS 316.127(9). If severance pay is received for employment within and without Oregon, the severance pay is allocated to Oregon using any method that reasonably reflects the services performed in Oregon. For lump sum payments based on accumulated leave, leave allocated to Oregon will be calculated using a first-in-first-out (FIFO) method, unless documentation establishes that another method of allocation more reasonably reflects the services performed in Oregon. Severance pay and other similar distributions are taxable to Oregon even though a taxpayer received it in a tax year when the taxpayer did not work in Oregon if the severance pay is based on Oregon employment.

Example 7: JT, a nonresident, worked for Plumbing Inc. for twenty years: eight years in Idaho and twelve years in Oregon. At the end of his 20th year, Plumbing Inc. reorganized and eliminated JT's position. Because of JT's loyalty to the company for his twenty years of service, the company gave JT a lump-sum payment of $36,000. This lump-sum was based on 3 percent of his final annual salary ($60,000 x 3% = $1,800) multiplied by his number of years of service (20). The lump-sum payment was made because of prior services, thus it is allocable to Oregon to the extent the services were performed in Oregon. JT will include $36,000 in federal taxable income and $21,600 in Oregon taxable income, computed as follows:

Years worked in Oregon for company — divided by — Total years worked for company x Total compensation = Oregon compensation 0.600 (12 years divided by 20 years) x $36,000 = $21,600

Example 8: Shawn, a nonresident, worked in Oregon for XYZ Foods, Inc. for six years before resigning from the company. XYZ Foods, Inc. and Shawn entered into a termination agreement that provided $25,000 for Shawn to release a specific claim he may have against the company for wrongful termination or other potential claims. The termination agreement also provided $10,000 to require that Shawn not work for any other food chain within a 100 mile radius of XYZ Foods, Inc. for a period of 36 months. No employment agreement, benefit plan, or any facts or circumstances indicate that Shawn is entitled to a payment for services he performed prior to resigning from the company. The payment that Shawn receives pursuant to the termination agreement is in exchange for the release of the wrongful termination claim and the covenant not to compete and is not allocable to Oregon because it is not based on services performed in Oregon.

Example 9: Assume the same facts in Example 8 except that the termination agreement also provided for a lump-sum payment of one month's salary per year worked ($30,000) in addition to a $25,000 payment for release of a wrongful termination claim and $10,000 payment for the covenant not to compete. No employment agreement, benefit plan, or other agreement indicates that Shawn is entitled to a payment for services he performed prior to resigning from the company. The $25,000 payment for the release of the wrongful termination claim and the $10,000 payment for the covenant not to compete are not allocable to Oregon because neither is based on services performed in Oregon. The $30,000 lump-sum cash payment based on Shawn's salary and years of service associates the payment with the employer-employee relationship. It is 100 percent allocable to Oregon because Shawn worked in Oregon and the facts and circumstances indicate that it is paid because of prior performance of services and no other reason.

Example 10: Natalie, a nonresident, worked for Chocolate Inc. for 14 years: 12 years and 8 months in Idaho and in Oregon for the last 16 months of her employment with the company. Upon her resignation, her hourly wage was $20 and she had 400 hours of paid vacation leave available. Natalie received 8 hours of paid vacation leave per month, her 400 hours of leave represents 50 months of work (400/8=50). Chocolate Inc paid a lump sum payment for her accumulated and accrued vacation leave balance of 400 hours- totaling $8,000. Using the first-in-first-out method of allocation, the 400 hours in her leave balance when she terminated will be treated as having been earned in her most recent 50 months of employment; 34 months in Idaho (68%) and 16 months in Oregon (32%). Natalie will include in the Oregon column of her Oregon nonresident return all of her wages from Chocolate Inc for the year and $2,560 ($8,000 x 32%) of the lump sum payment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.127

Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87, Renumbered from 150-316.127 to 150-316.127-(A); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 1-2006, f. & cert. ef. 1-20-06; REV 4-2009, f. & cert. ef. 7-31-09; REV 1-2014, f. & cert. ef. 7-31-14

150-316.127-(B)
Gross Income of Nonresidents; Pensions and Retirement Income Received by Oregon Domiciliaries

The provisions of this rule apply to pension and retirement income received after December 31, 1999, by persons who are domiciled in Oregon but who are taxed as nonresidents under Oregon law.

(1) *Definitions*.

(a) *Qualified Employer Retirement Benefit Plan*. "Qualified employer retirement benefit plan" means any employer-related plan that is defined and administered pursuant to part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code. This includes, but is not limited to, the following employer administered plans: qualifying pension and profit sharing plans, annuity plans, cash or deferred compensation arrangements, or tax-shelter annuity plans.

(b) *Qualified Employee Retirement Benefit Plan*. "Qualified employee retirement benefit plan" means any plan established and maintained solely by an employee or on the employee's behalf that is defined and administered pursuant to part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code. This includes, but is not limited to, the following employee-related plans: individual retirement accounts, individual retirement annuities, simplified employee pension plans, or self-employed retirement plans.

(2)(a) *General provisions*. In general, Oregon nonresident taxpayers who have not given up their Oregon domicile must include in Oregon taxable income distributions received from qualified employer and employee retirement benefit plans that are derived from or connected with services performed in Oregon. Only contributions made to a retirement plan while the employee was performing services in Oregon are considered Oregon source income when received by the nonresident taxpayer. Resident taxpayers include in Oregon taxable income the same amount of the distribution as included for federal purposes regardless of where the services were performed or when the contributions were made to the plan.

Example 1: Joanne lived in Oregon and worked in Washington during her employment years. Upon her retirement, she moved her domicile to Florida. Her retirement income is not Oregon source income and is not subject to Oregon tax, because the job services were not performed in Oregon. Any retirement income actually or constructively received while an Oregon resident is subject to Oregon tax under ORS 316.048.

Example 2: Doug always lived and worked in Colorado. Subsequent to his retirement, he moved to Oregon and became an Oregon resident. While he remains an Oregon resident, all of his retirement distributions are subject to Oregon tax under ORS 316.048. If he later moves out of Oregon, none of the distributions received after his change of residence are subject to Oregon tax.

(b) Exception. If the compensation is not taxable by Oregon due to federal Public Law (P.L.) 101-322, then the related retirement benefits are not taxable. See OAR 150-316.127-(E) regarding P.L. 101-322.

(3) *Qualified Employer Retirement Benefit Plans.*

(a) *General.* Contributions or compensation paid by an employer pursuant to any qualified employer's retirement benefit plan must be included in Oregon taxable income when received by a nonresident taxpayer who is domiciled in Oregon if such contribution or compensation is derived from or attributable to Oregon sources. For purposes of this subsection, "taxpayer" means the employee or any other beneficiary of the employee's interest in the plan. This income is from Oregon sources if it relates to services performed in Oregon.

(b) If the employee is receiving a single-life annuity, the employee must first compute the expected return using the tables set forth in Treas. Reg. Section 1.72-9, and then make the applicable allocations set forth below to determine the Oregon source amount. Once the Oregon source amount is determined, use Example 4 under subsection (3)(d) of this rule to determine the amount of income to be reported to Oregon each year. If the retirement account also contained employee contributions, the employee must compute and apply the Oregon exclusion ratio defined in subsection (3)(d)(B) of this rule.

(c) The next two examples are intended to help define Oregon source income and are based on the assumption that the employee is receiving distributions from a profit sharing account that contains only the employer's contributions, plus interest earnings. Because profit sharing distributions may be irregular in both the timing and amount of the distribution, at the employee's election, expected return cannot be computed for these accounts.

Example 3: Sam lived and worked in Oregon until retirement in January 2000. At retirement he kept his Oregon domicile and moved to Arizona on a temporary basis, intending to return to Oregon in a few years. Sam is taxed as a nonresident under the provisions of ORS 316.027. His retirement account balance at retirement was $100,000. This included $30,000 in employer contributions and $70,000 in earnings. Of this amount, $30,000 is Oregon source income and is subject to Oregon tax as long as he remains domiciled in Oregon. Earnings on the account are not subject to Oregon tax if they were not actually or constructively received until after he left Oregon. Sam files an Oregon nonresident return and reports 30 percent of each distribution each year until $30,000 has been reported to Oregon.

(d) If an employee, while performing services within Oregon, makes contributions to a qualified employer retirement benefit plan, those contributions are considered part of the taxpayer's basis to the extent the employee has received no tax benefit with respect to such contributions. For purposes of the following examples, the following phrases are defined.

(A) *Employee contributions.* "Employee contributions" means those contributions made to a qualified employer retirement benefit plan by an employee while the employee was performing services in Oregon.

(B) *Oregon exclusion ratio.* "Oregon exclusion ratio" means the ratio of the total employee contributions plus total earnings to the total expected return. Total expected return is to be calculated using the tables set forth in Treas. Reg. Section 1.72-9.

(C) *Oregon annual exclusion amount.* "Oregon annual exclusion amount" means the product of the total distributions received during a taxable period and the Oregon exclusion ratio.

(D) *Oregon receipts.* "Oregon receipts" mean the excess of the total distributions received during a taxable period over the Oregon annual exclusion amount.

(E) *Oregon taxable percentage.* "Oregon taxable percentage" means the ratio of the total Oregon source distributions to the total expected return net of the employee's contributions. The total Oregon source distributions means the amount subject to Oregon tax. This includes the employer contributions or compensation amounts relating to services performed within Oregon.

(F) *Amount currently taxable for Oregon purposes.* "Amount currently taxable for Oregon purposes" means the product of the Oregon receipts and the Oregon taxable percentage.

Example 4: Assume the same facts as in Example 3, except that Sam receives his benefits in the form of a single-life annuity to be paid at $1,200 per month for the rest of his life. His expected return using the annuity tables pursuant to Treas. Reg. Section 1.72-9 is $216,000 ($1,200/mo. x 12 months x 15.0 (from Table I)). The amount of income he reports to Oregon for each payment is $167 ($1,200/mo. x ($30,000 ÷ $216,000)) or $2,000 annually until the entire $30,000 has been reported to Oregon.

(4) Qualified Employee Retirement Benefit Plans. Distributions from qualified employee retirement benefit plans must be included in Oregon taxable income to the extent a tax benefit was received for Oregon purposes with respect to the contributions made by the taxpayer. Interest or other income earned on such contributions is taxable by Oregon only to the extent distributed while the taxpayer was an Oregon resident. Oregon taxable income includes all distributions until the taxpayer has recovered the total amount of distribution subject to Oregon tax.

Example 5: Assume the same facts as Example 3, except that Sam also invested in an individual retirement arrangement (IRA) while living and working in Oregon His balance in the IRA at retirement is $63,000 ($20,000 of his tax deductible contributions and $43,000 of earnings). Any IRA distribution included in federal taxable income will also be taxable to Oregon until Sam has reported a total of $20,000 to Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 5-2000, f. & cert. ef. 8-3-00

150-316.127-(C)
Gross Income of Nonresidents; Business Income

(1)(a) General. The gross income of a nonresident (other than one who is employed by another, as distinguished from doing business on the nonresident's own account) from a business, trade, profession or occupation (including independent contractor) is determined in the same manner as is the gross income of a resident from a similar activity, but includes only income from the business, trade, profession or occupation carried on in this state. Net income from Oregon sources shall be determined by apportionment in a manner consistent with ORS 314.605 through 314.667 and the rules adopted thereunder.

(b) Exception: Various federal laws affect the application of Oregon tax laws to income received by nonresidents from rail, motor, air and water carriers. See OAR 150-316.127-(E).

(2) Rents. The gross income of a nonresident from rents includes all rents received from property, whether real or personal, located within this state.

(3) S Corporations. The taxable income of an S corporation that elects to be taxed under the provisions of IRC Section 1362 which is derived from or connected with sources from this state is taxable income to nonresident shareholders for tax years beginning after December 31, 1972. Net operating losses of an S corporation derived from or connected with sources from this state are deductible by nonresident shareholders. Net operating losses shall be determined under IRC Section 1366. If an S corporation of Oregon commercial domicile is liquidated any gain or loss from liquidation is Oregon source income. Nonresident shareholders shall report their proportionate share of the gain or loss on their individual Oregon income tax returns as income from Oregon sources.

(4) Fiduciary fees. Oregon source income of a nonresident includes compensation received for services performed as a fiduciary of an Oregon estate or trust.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98

150-316.127-(D)
Gross Income of Nonresidents; Other Income and Sale of Property

(1) *Income from intangible personal property.*

(a) *Business situs.* Intangible personal property, including money or credits, of a nonresident has a situs for taxation in Oregon when used in the conduct of the taxpayer's business, trade, or profession in Oregon. Income from the use of such property, including dividends, interest, royalties, and other income from money or credits, constitutes a part of the income from a business, trade, or profession carried on in Oregon when such property is acquired or used in the course of such business, trade, or profession as a capital or current asset and is held in that capacity at the time the income arises.

(b) If a nonresident pledges stocks, bonds, or other intangible personal property in Oregon as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this state, the property has a business situs here. Thus, if a nonresident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this state, the bank account has a business situs here. If intangible personal property of a nonresident has acquired a business situs here, the entire income from the property, including gains from the sales of the property, regardless of where the sale is consummated, is income from sources within this state and is taxable to the nonresident.

(2) *Sales of property.*

(a) *Tangible property.* The gain from any sale, exchange, or other disposition by a nonresident of real or tangible personal property located in Oregon is taxable, even though it is not connected with a business carried on in this state. The loss from such a transaction is deductible if it is a business loss or a transaction entered into for profit. The gain or loss from the sale, exchange, or other disposition of real property or tangible personal property located in Oregon is determined in the same manner and recognized to the same extent as the gain or loss from a similar transaction by a resident.

(b) *Intangible property.* The gain from the sale, exchange, or other disposition of intangible personal property, including stocks, bonds, and other securities is not taxable unless the intangible personal property has acquired a business situs in Oregon. See section (1) of this rule. Likewise, losses from the sale, exchange, or other disposition of such property are not deductible, unless they are losses incurred in a business carried on within Oregon by the nonresident taxpayer.

(c) *S corporation stock.* In general, a nonresident's gain or loss from the sale, exchange, or disposition of S corporation stock is not attributable to a business carried on in this state and is not Oregon source income. The gain or loss from the S corporation stock may not be used in the determination of Oregon taxable income unless the stock has acquired a business situs in this state. See section (1) of this rule.

(d) *General Partnership Interests.* A nonresident's gain or loss from the sale, exchange, or disposition of a general partnership interest in an Oregon partnership is attributable to a business carried on in Oregon and is Oregon source income. The gain or loss is allocated as provided in ORS 314.635.

(e) *Limited Partnership Interests.* In general, a nonresident's gain or loss from the sale, exchange, or disposition of a limited partnership interest is not attributable to a business carried on in Oregon and is not Oregon source income. The gain or loss from the sale of the interest will not be used in the determination of Oregon taxable income unless the limited partnership interest has acquired a business situs in this state (see section (1) of this rule.).

(f) *Limited Liability Company Interests.* The taxation of a nonresident's gain or loss from the sale, exchange, or disposition of an interest in a limited liability company (LLC) operating in Oregon is Oregon source income and is taxed in the same manner as:

(A) The sale of a general partnership interest under subsection (2)(d) of this rule if the selling member is a member-manager of the LLC; or

(B) The sale of a limited partnership interest under subsection (2)(e) of this rule if the selling member is not a member-manager of the LLC.

(C) For purposes of this rule, a person is a "member-manager" of an LLC if that member has the right to participate in the management and conduct of the LLC's business. For an LLC that is designated as a member-managed LLC in its articles of organization, all members of the LLC will be member-managers. For an LLC that is designated as a manager-managed LLC in its articles of organization, only those persons who are both members of the LLC and are designated as a manager in the LLC's operating agreement (or elected as managers by the LLC members pursuant to the operating agreement) will be member-managers.

(g) *Limited Liability Partnership Interests.* A nonresident's gain or loss from the sale, exchange, or disposition of an interest in a limited liability partnership is taxed in the same manner as if it were a general partnership interest under subsection (2)(d) of this rule.

(3) *Interest income received on contract sale of property.* Interest income received by a nonresident from the sale of Oregon property is not Oregon source income. The source of the income is not from the sale of the property but rather from the use of the money permitted the buyer in an installment contract.

(4) *Distribution of a trust's income accumulation to a nonresident.* See ORS 316.737 and OAR 150-316.737 for the treatment of trust income accumulation distributions.

(5) *Net operating losses.* See OAR 150-316.007 and 150-316.028 for the treatment of net operating losses.

(6) *Passive activity losses.* See OAR 150-314.300 for the treatment of passive activity losses.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; REV 4-2003, f. & cert. ef. 12-31-03; REV 1-2006, f. & cert. ef. 1-20-06

150-316.127-(E)
Gross Income of Nonresidents; Federal Laws Affecting Nonresident Employees of Motor, Rail, Air and Water Carriers

(1) General: Various federal laws affect the application of Oregon tax laws to nonresident employees of motor carriers, rail carriers, and air carriers. Specific requirements for motor carriers, rail carriers, and air carriers are discussed separately below. For purposes of this rule the following definitions apply to motor carriers, rail carriers, and air carriers:

(a) "Person" means a corporation, company, association, firm, partnership, or individual.

(b) "Common carrier" means:

(A) Any person who transports persons or property for hire or who publicly purports to be willing to transport persons or property for hire; or

(B) Any person who leases, rents or otherwise provides a motor vehicle to the public and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.

(c) "Regularly assigned duties in more than one state" means duties that are performed on a regular basis in more than one state, e.g., daily, weekly, or monthly assignment. Duties that are performed on an "on-call" or "as-needed" basis, or duties that are performed on a sporadic or intermittent basis during the year, are not considered to be "regularly assigned duties."

(d) "Property" means the cargo or load being transported.

(e) "Exempt" means that the Amtrak Act prohibits the imposition of Oregon income tax.

(2) Motor carrier employees. Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, and Public Law 104-88, the ICC Termination Act of 1995, provide that no part of the compensation paid by a motor carrier or a motor private carrier to a nonresident employee who performs regularly assigned duties in more than one state is subject to Oregon tax (49 USC §14503). For purposes of this subsection, the following definitions apply:

(a) “Employee” means an individual who:

(A) Directly affects commercial motor vehicle safety in the course of employment; and

(B) Is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, State, or political subdivision of a State; and

(C) Is subject to the jurisdiction of the U.S. Secretary of Transportation; and

(D) Is not covered under the overtime requirements of the Fair Labor Standards Act (if the employee is properly listed as “non-exempt” in personnel and payroll records. This means that the employee is covered under the rules of the Fair Labor Standards Act and thus is not subject to the jurisdiction of the Secretary of Transportation); and

(E) Is one of the following:

(i) An operator of a commercial motor vehicle (including an independent contractor) who, if working for a motor carrier, transports property or passengers, and if working for a motor private carrier, transports property; or

(ii) A mechanic; or

(iii) A freight handler; or

(iv) An individual not an employer.

(b) “Employer” means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it.

(c) “Motor carrier” means a person providing motor vehicle transportation of passengers or property for another for compensation. Motor carriers are required to be licensed as such with the Secretary of Transportation.

(d) “Motor private carrier” means a person, other than a motor carrier, transporting property by commercial motor vehicle when:

(A) The transportation is between two states;

(B) The person is the owner, lessee, or bailee of the property being transported; and

(C) The property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise, and

(D) The person is required to be licensed as such with the Secretary of Transportation.

(e) “Commercial motor vehicle” means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property if the vehicle:

(A) Has a gross vehicle weight rating of 10,001 or more pounds;

(B) Is designed or used to transport passengers for compensation, but excluding vehicles providing taxicab service that:

(i) Have a capacity of not more than 8 passengers; and

(ii) Are not operated on a regular route or between specified places;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used in transporting material found to be hazardous under Title 49 USC 5103 in a quantity requiring placarding under regulations prescribed under Title 49 USC 5103.

(f) “Directly affects” means that the employee is required by his or her regularly assigned routine and duties to work directly with a commercial motor vehicle or its contents. The duties must be of a direct, hands-on nature that requires the employee to physically move, touch or affect the vehicle or its contents. Supervisory, managerial, consulting, or other duties, which indirectly affect the safety of a motor vehicle, do not meet the definition of “directly affects.”

(g) “Driver leasing company” means an employer that employs drivers and leases them to motor carriers or motor private carriers. A driver leasing company is not an employer subject to the jurisdiction of the Secretary of Transportation.

(3) The following examples illustrate the application of sections (1) and (2) of this rule.

Example 1 Subsection 1(c), Regularly Assigned Duties: Adam, a nonresident, works for an Oregon based interstate trucking carrier as a driver. He has a regular route from Idaho to Oregon and picks up or delivers products in Oregon. Adam’s compensation is exempt from Oregon taxation.

Example 2 Subsection 1(c), Regularly Assigned Duties: Brenda, a nonresident, works for an interstate trucking carrier as a driver. She has a regular route from Portland to Vancouver, Washington. It is a daily or weekly route. However, the Portland-Vancouver route only takes about 2 to 3 hours. Brenda has a regular route from Portland to Salem for the remaining time. Brenda is considered to be performing “regularly assigned duties in more than one state” since the Portland-Vancouver assignment is on a regular basis. Therefore, her compensation is exempt from Oregon taxation.

Example 3 Subsection 1(c), Regularly Assigned Duties: Carl, a nonresident, works for an Oregon based interstate trucking carrier as a driver. The company’s customers are mostly lumber mills located in Oregon and Washington. Carl picks up his truck every morning in Washington and receives delivery assignments for the day. Depending on where the lumber needs to be delivered, Carl may not have to come to Oregon on a daily basis. He may pick up and deliver lumber products all within Washington or may do so all within Oregon. However, Carl does drive to Oregon at least once a month due to the company’s customer base. Due to the nature of the business, the company may not be able to assign regular duties to Carl. The company itself does not even know what the delivery route will be until the customers notify the trucking company. Although Carl may not have a regular route in Washington and Oregon, he does drive to Oregon at least once a month. Carl is considered to have “regularly assigned duties in more than one state” as long as all the routes (including interstate routes) are assigned indiscriminately among all drivers on a regular basis. Carl’s compensation is exempt from Oregon taxation.

Example 4 Subsection 1(c), Regularly Assigned Duties: Dave, a nonresident, works for an interstate trucking carrier as a driver. All of his routes are within Oregon, mainly from Portland to Pendleton. However, the company requires that Dave drive to Washington before reaching the destination in Oregon (Pendleton in this case). The company has no business reason for this requirement. There is no product waiting for pick-up or delivery in Washington. Dave’s compensation is taxable by Oregon. He does not have “regularly assigned duties in more than one state.” Dave may drive to Washington every day, but there is no business reason to drive to Washington.

Example 5 Subsection 1(c), Regularly Assigned Duties: Frieda, a nonresident, works for an Oregon retail store as a freight handler. Her regularly assigned duties are to load and unload freight. Occasionally, Frieda is asked to fill in as a driver and, over the course of a year, may drive several routes in and out of Oregon. Frieda does not have “regularly assigned duties in more than one state” and her Oregon-sourced compensation is taxable by Oregon.

Example 6 Subsection 1(c), Regularly Assigned Duties: George, a nonresident, works as a mechanic for an interstate trucking firm. He is assigned to the Portland terminal and performs the majority of his work there. His job duties require that he be available to perform minor repair work away from the terminal on an “as-needed” basis. Several times during a given year, he may be required to travel to Washington to repair a flat tire, do minor engine work, etc. George does not have “regularly assigned duties in more than one state” and his Oregon-sourced compensation is taxable by Oregon.

Example 7 Subsection 2(a), Driver, Mechanic, Freight Handler: Edward, a nonresident, works for an Oregon trucking carrier as a clerk. The company has one terminal in Oregon and one terminal in Washington. Edward regularly works in both terminals, i.e. works in two states. Edward is not considered an employee for purposes of P.L. 101-322. He is not a driver, a mechanic, or a freight handler. His duties do not directly affect the safety of the vehicle. Therefore, the Oregon source income is taxable by Oregon.

Example 8 Subsections 2(a) and 2(b), Employer: Mary Lou, a nonresident, is a supervisor who regularly assigns drivers as an interstate trucking firm’s Portland and Vancouver terminals. She tracks the hours each driver works to ensure compliance with the Secretary of Transportation’s safety regulations regarding maximum hours worked. Though Mary Lou works in two different states and does have an impact on safety, she is considered an employer, not an employee, and must pay Oregon tax on that portion of work performed at the Portland terminal.

Example 9 Subsections 2(a)(A) and 2(f), Directly Affects Safety: Harold, a nonresident, is employed by an interstate trucking firm. Harold’s duties include: authorizing and ordering drug testing for employees; road testing a driver’s abilities; investigating accidents involving company vehicles; ordering repairs to motor vehicles; removing vehicles from service; and approving and implementing safety programs and policies. While Harold may be responsible for vehicles, and his work may have a significant impact upon safety, that impact is not direct, but is implemented through others. He does not meet the requirement that he “directly affect” the safety of a commercial motor vehicle and his Oregon-sourced compensation is taxable by Oregon.

Example 10 Subsections 2(a)(A) and 2(f), Directly Affects Safety: Garrett, a nonresident, works as a freight handler in the Portland terminal of a trucking company. His duties also require him to attend daylong staff meetings at the company’s headquarters in Vancouver, Washington each month. Although Garrett has “regularly assigned duties in more than one state,” only the duties he performs at the Portland terminal directly affect the safety of a commercial motor vehicle. Garrett does not have "regularly assigned duties in more than one state" that "directly affect" the safety of a commercial motor vehicle. His compensation related to services performed in Oregon is taxable by Oregon.

Example 11 Subsections 1(d) and 2(d), Property and Motor Private Carrier: Roberto, a nonresident, works for a small furniture manufacturing company located in Oregon. Roberto drives a commercial motor vehicle, and his employer is licensed with the Secretary of Transportation. His job requires him to drive to various states to buy hardwood for use in building the furniture. Roberto is exempt from Oregon taxation on his wages because he transports a product between states to further a commercial business, and his employer meets the other requirements of a motor private carrier.

Example 12: Subsections 1(d) and 2(d), Property and Motor Private Carrier: Barbara, a nonresident, works as a refrigeration mechanic for a dairy. She drives a large repair vehicle to service her employer's refrigerators at all company locations, including those out of state. Even though Barbara drives outside Oregon to repair equipment, she does not transport property to further a commercial business, and is therefore not exempt from Oregon taxation.

Example 13 Subsection 2(e), Commercial Motor Vehicle: Ken, a nonresident, works as a line repairman for a utility company. He uses a company truck with a gross vehicle weight rating in excess of 10,000 pounds when making service calls in both Oregon and Washington. Ken is not exempt from Oregon taxation because he does not drive a "commercial motor vehicle" (i.e., a motor vehicle used to transport passengers or property).

Example 14 Subsection (2)(e), Commercial Motor Vehicle: Julie, a nonresident, works as a truck driver for a furniture store. She drives a truck with a gross vehicle weight rating in excess of 10,000 pounds to deliver furniture on a regular basis to residents and nonresident customers who make purchases at her employer's stores. Julie is exempt from Oregon taxation because she directly affects the safety of a commercial motor vehicle and works for a motor private carrier transporting property in interstate commerce.

Example 15 Subsections 2(a)(C) and 2(a)(D), Subject to Jurisdiction of the Secretary of Transportation: Connie Sue, a nonresident, works for an interstate motor carrier on a regular basis at her company's Oregon and Washington yards. She has a variety of duties, including helping with the loading of trucks. Her employer pays her overtime because she is properly listed as "non-exempt" (covered) under the provisions of the Fair Labor Standards Act and thus subject to its requirements. Because she is covered under the Fair Labor Standards Act rather than being subject to the jurisdiction of the Secretary of Transportation, Connie Sue does not meet the requirements for the Amtrak exclusion.

Example 16 Subsection 2(g), Driver Leasing Companies: Larry, a nonresident, is employed by JobProviders, a temporary employment agency. Larry has a commercial driver's license, drives a commercial motor vehicle between states on a regular basis, and is leased by his company exclusively to WeMoveU, a motor carrier properly licensed with the Secretary of Transportation. Larry is under the direction and control of WeMoveU at all times, though he receives his paycheck from JobProviders. Larry is exempt from Oregon taxation. Though he may be considered an employee of JobProviders for other federal tax purposes, he is considered an employee of WeMoveU, a motor carrier, for Amtrak Act purposes.

Example 17 Subsection 2(g), Driver Leasing Companies: Randy, a nonresident, is employed by MechanicalGenius, an Oregon employer, as a truck mechanic. MechanicalGenius leases his services exclusively to OnTheRoad, an interstate motor carrier. Twice per month, Randy must travel to Washington to perform inspections and repairs of OnTheRoad's trucks. Randy is under the direction and control of his supervisor at MechanicalGenius. Even though Randy travels on a regular basis between two states, only repairs on OnTheRoad's trucks, and has a direct effect on the safety of OnTheRoad's commercial motor vehicles, he is subject to Oregon taxation. Randy is considered an employee of MechanicalGenius, which is not a motor carrier, motor private carrier, or other employer subject to the jurisdiction of the Secretary of Transportation.

(4) Changes in exempt status. The determination of whether an employee is exempt under these provisions is generally made for each portion of the year an employee performs a given set of specific job duties.

(a) If an employee does not change job duties during the year and meets the requirements of this section for the taxable year, the individual's compensation is exempt from Oregon taxation for the entire tax year.

(b) If an employee changes job duties during the taxable year, each change in job duties must be considered separately to determine whether the compensation received for that particular set of job duties is exempt from Oregon taxation.

Example 18: Rob, a nonresident, worked through June 30, as a mechanic for an Oregon trucking firm. All of his job duties were performed at the company's Portland terminal. On July 1, Rob began a new job for the same company as a commercial interstate truck driver. Rob's compensation as a mechanic is not exempt from Oregon taxation, because he did not have regularly assigned duties in two states. For that portion of the year when Rob's duties were performed as a commercial interstate truck driver, his compensation as a truck driver is exempt from Oregon taxation if he meets all other requirements.

Example 19: Ivan, a nonresident, works as a driver for an interstate trucking company. From January 1 through June 30, his regular route is entirely within Oregon. On July 1, Ivan is assigned to a route from Seattle to Spokane that will last for two years. Neither his job duties during the first part of the year nor the last part of the year required him to drive between states. Because Ivan drove only intra-state during each portion of the year, his compensation earned on the Oregon route is not exempt from Oregon taxation. His compensation earned on the Washington route is not taxable by Oregon because it was earned by a nonresident employee for services provided outside Oregon.

(5) Rail carrier employees. Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, and Public Law 104-88, the ICC Termination Act of 1995, provide that no part of the compensation paid by a rail carrier to a nonresident who performs regularly assigned duties on a railroad in more than one state is subject to Oregon income tax (see 49 USC §11502). For purposes of this subsection, the following definitions apply:

(a) "Rail carrier" means a person providing a common carrier railroad transportation for compensation.

(b) "Railroad" includes:

(A) A bridge, car float, lighter, and ferry used by or in connection with a railroad;

(B) The road used by a rail carrier and owned by it or operated under an agreement; and

(C) A switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.

(6) Air carrier employees: Federal law provides that the pay of a nonresident employee of an air carrier having regularly assigned duties on aircraft in more than one state is subject to Oregon income tax only if the employee earns more than 50 percent of that pay in Oregon (see 49 USC §40116). The employee is deemed to earn 50 percent or more of the pay in Oregon if, for the calendar year, the employee's scheduled flight time in Oregon is more than 50 percent of the employee's total scheduled flight time. For purposes of this subsection, the following definitions apply:

(a) "Air carrier" means a citizen of the United States, as defined in 49 USC §40102, undertaking by any means, directly or indirectly, to provide air transportation.

(b) "Air transportation" means the interstate or foreign transportation of passengers or property by aircraft as a common carrier for compensation, or the interstate or foreign transportation of mail by aircraft.

Example 20: Jean, a nonresident, works as a pilot for an Oregon-based corporation. Jean transports the corporation's executives to various job locations in the United States. Jean is not exempt from Oregon tax, as she is not employed by an "air carrier" that provides "air transportation." Her wages are subject to Oregon tax to the extent services are performed in Oregon.

Example 21: James, a nonresident, is employed by an air carrier as an office manager. Each calendar year, he works as a substitute pilot outside of Oregon in order to log the minimum amount of flight time required to retain his license. James does not qualify as exempt from Oregon income tax because his "regularly assigned duties" are not on an aircraft, but as a manager in an office.

(7) Substantiation. To claim exemption from income under Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, or Public Law 104-88, the ICC Termination Act of 1995, (49 USC §14503), a taxpayer must maintain records that adequately establish that the taxpayer qualifies for the income exemption.

Example 22: Jason, a nonresident, works for a motor carrier as a Vice President. His typical duties are to travel behind the company's truck drivers to ensure that the drivers follow Department of Transportation (DOT) laws, federal and state safety laws, and company policy. He does random checks of the trucks as the drivers take breaks to ensure the trucks are safe and the drivers are following all applicable federal and state laws. Occasionally, he is required to deliver a truckload himself when the company is short of drivers. He claims the Amtrak deduction on his Oregon nonresident return. He kept no record of his duties that show he has regularly assigned duties in more than one state or that his duties directly affect the safety of a motor vehicle. Because he cannot provide any documentation that he qualifies for the income exemption, his deduction is not allowed.

Example 23: Assume the same facts as in Example 22 except that Jason provides a copy of his Commercial Driver's license, his Department of Transportation (DOT) log books, and verification from the destination that he is in more than one state performing duties. He provides his job description that shows he is required to spot-check whether trucks are safely on the road. He also provides copies of reports that show he has written up employees for failure to comply with safety standards. He has adequately established that he directly affects the safety of commercial motor vehicles. Thus, the exemption from income is allowed.

Example 24: Peter, a nonresident, works for a motor private carrier as a long-haul truck driver. He claims the Amtrak deduction on his Oregon nonresident return. He does not provide any driving logs or documentation to establish that he drives a commercial vehicle in more than one state. Because he does not provide any documentation to establish that he qualifies for the Amtrak deduction, the deduction he claimed is not allowed.

Example 25: Same facts as Example 24 except that Peter provides copies of his Department of Transportation log books, a copy of his bid shift from his employer, as well as receipts that show he is in more than one state at various truck stops while he is on the road. Peter provides enough information to establish he qualifies for income exemption, thus the exemption from income is allowed.

Stat. Auth.: ORS 305.100, 314.815

Stats. Implemented: ORS 316.127

Hist.: 12-31-93; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 5-2000, f. & cert. ef. 8-3-00; REV 8-2001, f. & cert. ef. 12-31-01; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-316.127-(F)

Gross Income of Nonresidents; Compensation Received by Nonresident Professional Athletes

(1)(a) General. Oregon source income of a nonresident individual who is a member of a professional athletic team includes that portion of such individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within Oregon rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without Oregon during the taxable year.

(b) Special rule. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in Oregon. However, such travel days shall be considered duty days spent within and without Oregon.

(2) Definitions. For purposes of this rule:

(a) The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team.

(b) The term "member of a professional athletic team" shall include those employees who are active players, players on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes but is not limited to coaches, managers and trainers.

(c)(A) The term "duty days" shall mean all days during the taxable year from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete.

(B) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, the "Pro Bowl" or promotional "caravans"). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(C) Included within duty days, shall be game days, practice days, days spent at team meetings, promotional caravans and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete.

(D) Duty days for any person who joins a team during the season shall begin on the day such person joins the team, and for any person who leaves a team shall end on the day such person leaves the team. Where a person switches teams during the taxable year, a separate duty day calculation shall be made for the period such person was with each team.

(E) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

(F) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be included in total duty days spent within and without the state.

(G) The provisions of this paragraph can be illustrated by the following examples:

Example 1: Kelly, a member of a professional athletic team, is a nonresident of Oregon. Kelly's contract for such team requires Kelly to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Kelly has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Kelly's contract provides that he will receive $500,000 for the year 1/year 2 season and $600,000 for the year 2/year 3 season. Assuming Kelly receives $550,000 from such contract during taxable year 2 ($250,000 for one-half the year 1/year 2 season and $300,000 for one-half the year 2/year 3 season), the portion of such compensation received by Kelly for taxable year 2, attributable to Oregon, is determined by multiplying the compensation Kelly receives during the taxable year ($550,000) by a fraction. The numerator of such fraction is the total number of duty days Kelly spends rendering services for the team in Oregon during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season). The denominator of such fraction is the total number of Kelly's duty days spent both within and without Oregon for the entire taxable year.

Example 2: Sam, a member of a professional athletic team, is a nonresident of Oregon. During the season, Sam is injured and is unable to render services for Sam's team. While Sam is undergoing medical treatment at a clinic in Oregon, Sam's team travels to Oregon for a game. The number of days Sam's team spends in Oregon for practice, games, meetings, etc. while Sam is present at such clinic in Oregon shall not be considered duty days spent in Oregon for Sam for that tax year for purposes of this section, but such days are considered to be included within total duty days spent within and without Oregon.

Example 3: Jean, a member of a professional athletic team, is a nonresident of Oregon. During the season, Jean is injured and is unable to render services for Jean's team. Jean performs rehabilitation exercises at the facilities of Jean's team in Oregon as well as at personal facilities in Oregon. Days Jean performs rehabilitation exercises in the facilities of Jean's team are considered duty days spent in Oregon for Jean for that tax year for purposes of this section. However, days Jean spends in private facilities in Oregon shall not be considered duty days spent in Oregon for Jean for that tax year for purposes of this section, but such days are considered to be included within total duty days spent within and without Oregon.

Example 4: Terry, a member of a professional athletic team, is a nonresident of Oregon. During the season, Terry travels to Oregon to participate in the annual all-star game as a representative of Terry's team. The number of days Terry spends in Oregon for practice, the game, meetings, etc., shall be considered duty days spent in Oregon for Terry for that tax year for purposes of this section, as well as included within total duty days spent within and without Oregon.

Example 5: Assume the same facts as given in example 4, except that Terry is not participating in the all-star game and is not rendering services for Terry's team in any manner. Terry is traveling to and attending such game solely as a spectator. The number of days Terry spends in Oregon for such game shall not be considered duty days spent in Oregon for purposes of this section.

(d)(A) The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered: (i) from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during that taxable year; and (ii) during the taxable year on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, the "Pro Bowl" or promotional "caravans"). Such compensation shall include, but is not limited to, salaries, wages, bonuses as described in subparagraph (B) of this paragraph and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation shall not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

(B) For purposes of this paragraph, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in subdivision (1)(a) of this section are:

(i) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff or "bowl" games played by a team, or for selection to all-star league or other honorary positions; and

(ii) Bonuses paid for signing a contract, unless all of the following conditions are met:

(I) The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(II) The signing bonus is payable separately from the salary and any other compensation; and

(III) The signing bonus is nonrefundable.

(iii) This section is designed to apportion to Oregon, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the foregoing provisions of this section will result in a fair and equitable apportionment of such compensation. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion such compensation, the Department of Revenue may require such member of a professional athletic team to apportion such compensation under such method as the department prescribes, as long as the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion such compensation, where they demonstrate that the method provided under this section does not fairly and equitably apportion such compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-316.127(1)(a)
Alimony Deduction for Tax Years Before 1987

(1) A full-year nonresident shall be allowed a deduction for the amount of any alimony or separate maintenance paid in the proportion provided in ORS 316.117. In determining the proportion in ORS 316.117, the taxpayer's adjusted gross income will not include a deduction for alimony. "Alimony or separate maintenance payments" has the same meaning given the phrase in section 215 of the Internal Revenue Code.

(2) Taxpayers may claim the deduction by amending their Oregon returns as provided by ORS 305.270 to claim the alimony deduction. This rule is applicable for all years open to examination for tax years beginning before January 1, 1987.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; Repealed by RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-316.127(1)(a)-(A)
Student Loan Interest Deduction — for Part-Year and Nonresidents

Individuals who are allowed a deduction for student loan interest for federal purposes shall be allowed a deduction for Oregon purposes. The allowable Oregon deduction is limited to a percentage of the federal deduction (not to exceed 100 percent). The qualifying interest paid while a nonresident of Oregon must be prorated based on the ratio of total Oregon source income while a nonresident to total income while a nonresident, determined without deduction for student loan interest. The qualifying interest paid while a resident is deductible in full. See the example for the alimony adjustment under OAR150-316.130(2)(c)(A). The total Oregon deduction cannot exceed the amount allowed under federal law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99

150-316.127(3)(a)
Moving Expense Deduction — for Part-year and Nonresidents

To be deductible from the Oregon portion of federal adjusted gross income, moving expenses must be connected with employment within Oregon. Thus, for a part-year or nonresident taxpayer, the moving expenses incurred are deductible only if the taxpayer's new principal place of work is within Oregon. Moving expenses incurred by a part-year or nonresident taxpayer for the purpose of beginning work at a new principal place of employment outside of Oregon are not deductible.

Example 1: Matt moves from Oregon to California to begin work there. The moving expenses are not deductible.

Example 2: Paul moves from Utah to Oregon to begin work in Oregon. The moving expenses are deductible.

Example 3: Sally moves from Oregon to Washington to begin work in Oregon. The moving expenses are deductible.

Example 4: Greg moves from Nevada to Washington to begin work in Oregon. The moving expenses are deductible.

Example 5: Anne moves from Montana to Oregon to begin work in Washington, lives in Oregon temporarily and then settles in Washington. The moving expenses are not deductible.

Example 6: Sue moves from Florida to Oregon to begin work in Idaho. While the expenses are not related to Oregon employment, they are deductible if they were paid after Sue became a full year resident of Oregon. Reimbursement of moving expenses shall be included in the Oregon portion of federal adjusted gross income if the moving expenses are connected to Oregon employment.

Example 7: John moves from California to Oregon to begin work in Oregon. His employer reimburses him $10,000, which includes $4,000 of qualified moving expenses under IRC 132. John includes $6,000 of income in the Oregon portion of federal adjusted gross income. The reimbursement of $4,000 is not included in income and is not claimed as a deduction.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-316.127-(9)
Gross Income of Nonresidents; Retirement Income Derived from Oregon Sources

(1) Federal law (PL 104-95) prohibits states from taxing retirement income received after December 31, 1995, by individuals who are not residents of this state or who are not domiciled in this state.

(a) Individuals who have Oregon as their domicile are taxed on all their retirement income, unless they meet the requirements to be taxed as nonresidents, as provided in ORS 316.027(1)(a)(A).

(b) Under Oregon law, Oregon source retirement income received after December 31, 1995, and before January 1, 2000, is exempt from tax if the person receiving the income is taxed as a nonresident under ORS 316.027(1)(a)(A), regardless of where the person's domicile is located.

(c) Beginning January 1, 2000, Oregon source retirement income is taxable if received by a person who is taxed as a nonresident but who is domiciled in Oregon. See OAR 150-316.127-(B) for information on calculating the amount of the Oregon source retirement income that is subject to tax.

Example 1: Sam lived and worked in Oregon until his retirement in 1997. At retirement he gave up his Oregon domicile and moved to Arizona. Following Sam's change of domicile to Arizona, none of Sam's pension income is taxable by Oregon.

Example 2: Douglas has lived and worked in Oregon all his life. On January 1, 1999, he retired, sold his personal residence, and took a temporary job working in Alaska. He plans to work for several years and then return to Oregon to live. He has not established a new domicile outside of Oregon, nor does he intend to give up his Oregon domicile. Douglas meets the requirements to be taxed as a nonresident under ORS 316.027(1)(a)(A). However, beginning January 1, 2000, his Oregon source pension will be taxable by Oregon because he has retained Oregon as his domicile. Douglas will follow the provisions of OAR 150-316.127-(B) to determine the amount taxable to Oregon.

(2) Definitions.

(a) "Domicile" means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile. It continues as the domicile until the person demonstrates an intent to abandon it, to acquire a new domicile, and actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections.

(b) "Retirement income" has the same meaning as in 4 USC 114 and means income from:

(A) Qualifying employer pension and profit sharing plans exempt from tax under Internal Revenue Code (IRC) Section 401(a), such as corporate retirement plans and "Keogh" plans;

(B) Annuity plans (IRC 403(a) and IRC 403(b));

(C) Cash or deferred compensation arrangements (IRC 401(k) plans and 457 plans);

(D) Simplified employee pension plans ("SEPs") under IRC 408(k);

(E) Individual retirement arrangements ("IRAs") and Roth IRAs under IRC 408(a), 408(b), and 408A;

(F) Plans established and maintained by federal, state or local government for the benefit of employees (IRC 414(d));

(G) Any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of Title 10 of the United States Code;

(H) Trusts, as described in IRC 501(c)(18), that were created before June 25, 1959, that meet the specific requirements of that IRC section;

(I) Simple retirement account under IRC 408(p);

(J) Payments received from nonqualified deferred compensation plans (as described in IRC 3121(v)(2)(C)) if the payments:

(i) Are part of a series of substantially equal periodic payments that are made for the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or for a period of at least 10 years; or

(ii) Are received after termination of employment and are paid under a plan, program, or arrangement maintained solely for the purpose of providing retirement benefits that exceed the amounts allowed under the qualified retirement plans described in paragraph 1 of this rule.

(c) Retirement income does not include income received from stock options, restructured stock plans, severance plans, or unemployment benefits.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: REV 5-2000, f. & cert. ef. 8-3-00; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09

150-316.127(10)
Gross Income of Nonresidents: Waterway Workers

(1) General Policy. The State of Oregon imposes taxes on Oregon source income of nonresidents to the extent allowed under Oregon and federal law and exempts Oregon source income of nonresidents to the extent provided under federal law: 46 USCA 11108. Under both federal and state law, compensation of a nonresident waterway worker is exempt from Oregon taxation to the extent the compensation is paid to an individual engaged on a vessel and performing assigned duties as a licensed pilot in more than one State or to an individual performing regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters in two or more states.

(2) For purposes of ORS 316.127(10) and this rule:

(a) "Master" is the commander of a merchant vessel, who is in charge of the vessel, its crew, its passengers, and the care and control of the vessel and cargo.

(b) "Member of a crew" or "crew member" is an individual carried on board a vessel who is not required to obtain a license (though they may be required to obtain certification) who provides services such as navigation and maintenance of the vessel, its machinery, systems, or services essential for propulsion and safe navigation or to provide services for passengers on board.

(c) "Navigable waters" are waters that are subject to the ebb and flow of the tide and waters that are presently used, or were used in the past, to transport interstate or foreign commerce.

(d) "Officer" is an individual carried on board the vessel who must obtain a specialized license and who provides navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation.

(e) "Passenger" is a person on board a vessel other than:

(A) The master, a member of the crew, or other person employed or engaged in any capacity in the business of the vessel; or

(B) A child under one year of age.

(f) "Regularly assigned duties" are those duties performed on a regular basis (i.e. daily, weekly, or monthly). Duties that are performed on sporadically or intermittently as occurs when serving on an "on-call" or "as-needed" basis are not "regularly assigned duties."

(g) "Vessel" is watercraft used, or capable of being used, as a means of transportation on navigable waters in 2 or more states for business purposes.

(h) "Waterway worker" is a nonresident who is:

(A) Engaged on a vessel to perform assigned duties in more than one State as a pilot licensed under section 7101 of Title 46 of the United States Code or licensed or authorized under the laws of a State, or

(B) An individual who performs regularly assigned duties while engaged as a master, officer, or member of a crew on a vessel operating on the navigable waters in two or more states.

Example 1: Ben, a resident of Washington, is a crew member and works on a dredging vessel on the Willamette River in Oregon and the Cowlitz River in Washington six months of the year. The other six months of the year Ben works in the company's office in Portland, Oregon. Only six months of compensation from his employer is exempt because it's for services Ben performed on the dredging vessel and is not taxable by Oregon. The remaining six months of compensation is taxable by Oregon.

Example 2: Kirk, a nonresident, works for a log mill located on the Oregon shore of the Columbia River. He spends 6 hours a day piloting a tugboat on the river carrying logs to the mill. For the remaining 2 hours of his shift, he works in the mill doing maintenance on mill equipment as well as other tasks. Kirk's compensation for his time working on the tugboat is not subject to Oregon tax. However, the time he spent working in the mill in Oregon is Oregon-source income and subject to Oregon tax. Kirk may exclude 75 percent (6 divided by 8) of his total compensation from this employer from Oregon taxation. He will only report 25 percent of his wages in the Oregon column of his nonresident return.

Example 3: Remy, a nonresident, is a crew member and works on a vessel plying the Columbia and Willamette rivers. Remy makes weekly trips from Hood River to Tualatin and back, hauling cargo on the vessel. Each trip entails three days on the Columbia River and two days on the Willamette River. All of Remy's income is exempt and is not taxable to Oregon.

Example 4: Jim, a nonresident, works in Oregon for a water transportation company that plies the waters of the Columbia River. On occasion, he is called upon to work as a member of a crew for a full day on one of the company's vessels when they are short-handed. His income is taxable by Oregon, even for the days he works on the vessel, because his work on the vessel is on an as-needed, sporadic, or intermittent basis.

Example 5: Ken, a Washington resident, works in Oregon as a manager for a water transportation company whose two vessels traverse the Columbia River. Once every quarter, Ken boards the company's vessels to check on the employees working on the vessel. Ken's income is taxable by Oregon, even for the days that he spends on board a vessel because he is not a pilot, master, officer, or crew member of the vessel.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: REV 11-2007, f. 12-28-07, cert. ef. 1-1-08; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.130(2)(c)-(A)
Alimony Deduction — for Part-Year and Nonresidents

A nonresidents alimony deduction must be prorated for the portion of the year that they are a nonresident of Oregon if they have income from other than Oregon sources. The alimony paid while a nonresident is to be prorated based on the ratio of their Oregon source income while a nonresident to their total income while a nonresident without deduction for alimony. Alimony paid is deductible in full once residency is established.

Example: Douglas lives in Washington. From January 1 to May 1 he earns $28,000 in Washington wages and pays $12,000 in alimony. From May 1 to June 1 he earns $7,000 in Oregon wages and pays $3,000 in alimony.

On June 1 Douglas moves to Oregon and establishes residency. Between June 1 and November 1 he earns $50,000 in Oregon wages and pays $15,000 in alimony.

In November, Douglas goes back to work for his former Washington-based employer but continues to live in Oregon. From November 1 through December 31 he earns $24,000 in Washington wages and pays $6,000 in alimony.

Summary: During the time he was a nonresident, and without regard to his alimony deductions, Douglas earned $7,000 in Oregon source income and $35,000 in total income.

Douglas made $15,000 in alimony payments while a nonresident and $21,000 in alimony payments after establishing Oregon residency.

Douglas' Oregon alimony deduction is $24,000, consisting of $3,000 for

the nonresident period and $21,000 for the resident period. The $3,000 is computed as follows: [Table not included. See ED. NOTE.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.130
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; Repealed by RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-316.130(3)
Nonresident Deduction for Contributions to IRA, Keogh, or Qualified Medical Savings Accounts

(1) Nonresident individuals who are allowed a deduction for contributions made to Keoghs, SEPs, individual retirement accounts (IRAs), and qualified savings accounts (MSA) for federal purposes shall also be allowed a deduction for Oregon purposes. The deduction for Oregon is limited to a percentage of the federal deduction (not to exceed 100 percent).

(2) For contributions made to a qualified Keogh or SEP plan under section 401 of the Internal Revenue Code, the deduction for Oregon is equal to the federal deduction times the ratio of Oregon earned income over earned income from all source. In general, "earned income" is the net earnings from self-employment in a trade, business, or profession in which the taxpayer performs personal service.

(3) For contributions made to an IRA account under section 219 of the Internal Revenue Code, the deduction for Oregon is equal to the federal deduction times the ratio of Oregon compensation over compensation from all sources. In general, "compensation" includes alimony, wages, professional fees, or other amounts derived from or received from personal services rendered and included in gross income for the tax year. It does not include pensions, annuities, or other forms of deferred compensation.

Example: Assume a nonresident taxpayer had a $2,000 IRA deduction for federal purposes. His federal and Oregon wages were $40,000 and $20,000, respectively. His Oregon deduction would be equal to $1,000 or ($2,000 x (20,000/40,000)).

(4) For contributions made to a MSA under section 220 of the Internal Revenue Code, the deduction for Oregon is equal to the federal deduction times the ratio of Oregon compensation over compensation from all sources.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.130
Hist.: 9-22-86, 12-31-86, Renumbered from 150-316.127(1)(a)-(C); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.131(1)
Credit for Taxes Paid to State of Residence

(1) General: An Oregon nonresident is allowed a credit for taxes paid to the state of residence if the taxpayer's state of residence allows residents of Oregon to claim a credit for mutually taxed income on the nonresident return filed with that state.

Example: Elizabeth, a California resident, receives income from Oregon property. Because California allows Oregon residents to claim a credit for mutually taxed income on the California nonresident return, Elizabeth is allowed to claim the credit on the Oregon nonresident return.

(2) Computation. OAR 150-316.082(2) subsection (4) shall be followed.

(3) Proof required and procedure for obtaining credit. OAR 150-316.082(3) and 150-316.082(1)-(A) shall be followed.

(4) Special filing status. OAR 150-316.082(2) subsections (5), (6), (7), and (8) shall be followed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.131
Hist.: 10-15-93, 12-31-93; REV 5-2000, f. & cert. ef. 8-3-00

Costs In Lieu of Nursing Home Care

150-316.148
Credit for Elderly Care

The eligible taxpayer either may make payments directly to the qualified individual or may provide that individual with food, medical care, clothing and transportation. Receipts or other substantiation of these expenses may be required upon audit of the return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.131
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-316.149
Evidence of Eligibility for Credit

Upon request of the department, the taxpayer must provide a "Credit for Home Care of an Elderly Person" certification form. Part I and II must be completed. Part I of the form must be certified by the Department of Human Resources for the year in which the credit is taken.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.149
Hist.: TC 8-1980, f. 11-28-80, cert. ef. 12-31-80; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-316.153
Credit for Involuntary Move of a Mobile Home

(1) Definitions. For purposes of this rule: "MH" means "mobile home," "manufactured home," or "manufactured dwelling."

(2) "Actual costs of moving and setting up a mobile home" are reasonable and prudent expenses incurred by a qualified individual that include, but are not limited to:

(a) Costs to disassemble the MH and prepare it for moving;

(b) Costs of removing and reinstalling foundations, tiedowns, stairs, decks, awnings, skirting, carports or garages, storage units;

(c) Costs for disconnecting and reconnecting utilities, including related fees;

(d) Municipal fees or charges such as trip permit fees, public inspection fees, system development charges at the new site, building inspection fees, or installation permit fees;

(e) Costs to transport the MH including any wheels needed to go beneath the MH to make it movable on the road;

(f) Costs of storing the MH while preparing a space for the relocation of the MH;

(g) Costs for MH improvements required to meet destination space standards such as the foundation, drains, driveways, decks, landscaping, carports or garages, stairways, or to existing siding or skirting;

(h) Costs to reassemble the MH at the destination space including repairing carpet, drywall or walls, ceilings, touch-up paint, floors and roofs, and sealing the sections; or

(i) Costs to clean up the old site as required by the closing landlord.

(3) "Actual costs of moving and setting up a mobile home" do not include:

(a) The purchase of land or the fees associated with the purchase of land;

(b) Costs for capital improvements to the property other than those listed in section (2) of this rule; or

(c) Amounts that are otherwise deductible under the Internal Revenue Code, such as interest expense, personal property taxes, or real property taxes.

(d) Costs for packing, transporting, storing, and unpacking contents of the mobile home and other personal belongings.

(e) Costs for temporary housing and meals.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.153
Hist.: REV 6-2006(Temp), f. & cert. ef. 9-29-06 thru 12-31-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

Retirement Income

150-316.157
Retirement Income Credit

(1) Definitions.

(a) Retirement Income. Retirement income includes distributions from any:

(A) U.S. Government pension;

(B) State public pension;

(C) Employee pension benefit plan;

(D) IRA or KEOGH;

(E) Deferred compensation plan;

(F) Employee annuity plan which is included in federal taxable income.

(b) Age. In order to claim the credit, the taxpayer must meet the following age requirement before the end of the tax year:

(A) The individual must be 58 years old for tax years beginning on or after January 1, 1991, and prior to January 1, 1993.

(B) The individual must be 59 years old for tax years beginning on or after January 1, 1993, and prior to January 1, 1995.

(C) The individual must be 60 years old for tax years beginning on or after January 1, 1995, and prior to January 1, 1997.

(D) The individual must be 61 years old for tax years beginning on or after January 1, 1997, and prior to January 1, 1999.

(E) The individual must be 62 years old for tax years beginning on or after January 1, 1999. If taxpayers are married filing a joint return, the spouse receiving the pension income must meet the age requirement in order to claim the tax credit.

(c) Base. The base is equal to $7,500 if the taxpayer files as single, head of household, qualifying widower, or married filing a separate return. The base is equal to $15,000 if the taxpayer is married filing a joint return.

(d) Social Security. Social security is the taxable and nontaxable benefits received by the individual who is receiving retirement income. In the case of a married filing joint return, social security is the taxable and nontaxable benefits received by both spouses. For purposes of this credit, household income is the total income of the taxpayer and the taxpayer's spouse, regardless of which spouse received the income or of the source. Household income does not include any taxable or nontaxable Social Security benefits received by either the taxpayer or the taxpayer's spouse.

(2) Credit. Eligible individuals receiving retirement pay are allowed a credit for tax years beginning on or after January 1, 1991. The credit is equal to 9 percent of the lesser of:

(a) Retirement income or;

(b) The base, reduced by any social security received and by the household income limitation.

(3) Household Income Limitation. If a taxpayer filing a joint return has more than $30,000 of household income (as defined by ORS 310.630), the base is reduced dollar for dollar by the amount that household income of the taxpayer exceeds $30,000. If a taxpayer files as single, head of household, qualifying widower, or married filing a separate return and has more than $15,000 in household income, the base will be reduced by household income in excess of the $15,000. For purposes of this credit, benefits received from Social Security or Railroad Retirement are not included in computing the household income limitation.

Example 1: John's retirement income totals $6,000. John's wife, Mary, has retirement income totaling $2,000. John and Mary file a joint return. John and Mary's total retirement income is $8,000 ($2,000 + 6,000) and is all taxable on their Oregon return. They receive social security benefits which total $4,000 for the year. Their household income equals $31,000 not including social security. The base of $15,000 is reduced by $4,000 (social security benefits) and by $1,000 (the excess household income over $30,000). This equals $10,000 (15,000 – 4,000 – 1,000). The credit is equal to 9 percent of the lesser of $10,000 or $8,000 (the total of their retirement income). John and Mary's retirement credit is $720 (.09 x $8,000).

(4) Part-year Resident. The credit is calculated in the same manner as the credit allowed a resident in section (2) but is based only on retirement income that is taxable by Oregon.

Example 2: Use the facts in Example 1 except assume that John and Mary are filing as part-year residents. Assume that of John's $6,000 of retirement income, $1,500 is retirement from services performed in California and is all received before they move to Oregon. Also assume that $2,000 is compensation sourced to Oregon but received before they move to Oregon. The balance, $2,500 ($6,000 – ($1,500 + 2,000)) is compensation received after they moved to Oregon. Mary's $2,000 of retirement income is all received after they move to Oregon and is all taxable by Oregon. The base of $15,000 is reduced by $4,000 (social security benefits) and by $1,000 (the excess household income over $30,000). The product of the formula is $10,000 ($15,000 – 4,000 – 1,000). The credit is equal to 9 percent of the lesser of $10,000 or $4,500 (retirement income taxable by Oregon). John and Mary's retirement credit is $405 (.09 x $4,500).

(5) Nonresident. Retirement income received after December 31, 1995 by a nonresident is not includible in Oregon taxable income and may not be used to claim the retirement income credit.

(6) In no event will a taxpayer be allowed the credit in excess of the taxpayer's tax liability or be allowed to carry any excess over to the following tax year.

(7) The taxpayer shall claim either this credit or the credit for the elderly and the permanently and totally disabled, but not both.

(8) The provisions of this rule apply to retirement income received after December 31, 1995. Prior to January 1, 1996, the retirement income credit was based on retirement income included in federal taxable income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.157
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.159
Subtraction for Previously Taxed Contributions

(1)(a) For tax years beginning on or after January 1, 1991, Oregon will allow resident taxpayers a subtraction for distributions from an individual retirement account, Keogh plan or Simplified Employee Pension plan for the contributions to the plan that have already been taxed by another state. The subtraction is allowed only if all of the following conditions are met:

(A) The distributions consist of contributions made during a period in which the taxpayer was a nonresident of Oregon;

(B) The distributions consist of contributions made during a period in which the taxpayer was a resident of a state that imposes an income tax;

(C) The distributions consist of contributions for which no deduction, exclusion or exemption for the contributions was allowed or allowable in the state in which the taxpayer was a resident prior to becoming an Oregon resident; and

(D) No deduction, exclusion, subtraction or other tax benefit has been allowed for the distributions by another state before the taxpayer becomes a resident of Oregon.

Example 1: In 1997 Sam was a resident of a state that imposes no income tax. He made a deductible IRA contribution in 1997. In 1998 Sam converted his regular IRA of $2,000 to a Roth IRA. The distribution will be reported over a 4-year period. Sam became a permanent Oregon resident on April 1, 1998. Sam is not entitled to a subtraction because the contributions were not previously taxed. Sam will be taxed on $375 (3/4 of $500 for the period April through December 1998) on his 1998 part year Oregon return. If Sam remains an Oregon resident he will be taxed on $500 in 1999, 2000 and 2001.

(b) If any portion of the distributions received by a resident of Oregon qualify for the subtraction, those distributions first received by the taxpayer are allowed to be subtracted. The subtraction continues until the distributions that qualify for the subtraction are recovered. Any distributions received after that are fully taxable to the Oregon resident.

(c) The following contributions do not qualify for the subtraction:

(A) Contributions made during a period when the taxpayer was a nonresident required to file an Oregon return to the extent that a deduction or exclusion was allowable for those contributions; or

(B) Contributions made during a period when the taxpayer was a resident of a state that does not impose an income tax; or

(C) Contributions for which the taxpayer was allowed a credit for taxes paid to another state.

Example 2: Taxpayer is a resident of California from 1980 to 1990 and qualifies to make contributions to an individual retirement account for both federal and California. Taxpayer contributes $1,500 in 1980 and 1981 and from 1982 to 1990 contributes $2,000 per year. Both California and federal allowed a maximum $1,500 deduction for 1980 and 1981. For 1982 through 1986, federal allowed a maximum $2,000 deduction while California only allowed a maximum deduction of $1,500. For 1987 through 1990, both federal and California allowed a maximum deduction of $2,000. Taxpayer made contributions of $2,500 ($500 ¥ 5 years) while a California resident for which no deduction was allowed on the California return. Taxpayer retires and moves to Oregon in June 1991 and begins to receive payments from the IRA account established in California. Oregon taxes all of the IRA distributions received after June 1991 but will allow the taxpayer a subtraction on the Oregon return for the $2,500 of contributions which were not deductible.

Taxpayer receives 7 payments of $350 in 1991 for a total of $2,450 ($350 ¥ 7). Taxpayer would claim a subtraction of $2,450 for 1991. In 1992, the taxpayer received 12 payments of $350 for a total of $4,200 ($350 ¥ 12). The taxpayer would be able to subtract the balance of $50 ($2,500 – $2,450). From that point on, no subtraction is allowed on the Oregon return for recovery of contributions.

(2) If the taxpayer has already received distributions from an IRA, Keogh or SEP that is a recovery of contributions that meet the provisions of Section (1), then the taxpayer will be allowed a sub-

traction in 1991 for those contributions. Taxpayer will then be allowed a subtraction each year until all qualifying contributions are recovered. From that point on, no subtraction is allowed on the Oregon return for recovery of contributions.

Example 3: Use the same facts as Example 2, except that the taxpayer retires and moves to Oregon in June 1989. Taxpayer made contributions while a California resident for which no deduction was allowed of $2,500 ($500 ¥ 5 years). The taxpayer has already received $2,450 ($350 ¥ 7 months) of IRA distributions in 1989 and $4,200 ($350 ¥ 12) of IRA distributions in 1990. For tax year 1991, taxpayer may claim a subtraction of $2,500, the full amount of contributions for which no deduction was allowed on the California return. The $2,500 subtraction consists of recovery of contributions of $2,450 in 1989 and $50 of recovery of contributions in 1990. After that, no subtraction is allowed on the Oregon return for recovery of contributions since the taxpayer has recovered all $2,500 of qualifying contributions.

Example 4: Use the same facts as Example 3. The taxpayer retires and moves to Oregon in June 1989 but instead of receiving periodic payments, the taxpayer withdraws the entire balance of the IRA from California as a lump-sum distribution. The lump-sum distribution is taxable by both Oregon and California. Taxpayer made contributions while a California resident for which no deduction was allowed of $2,500 ($500 ¥ 5 years). For tax year 1991, the taxpayer will claim a one time subtraction for all contributions for which no deduction was allowed on the California return. The subtraction is limited to federal adjusted gross income and cannot create a net operating loss. If the taxpayer does not claim a subtraction for all of the contributions for which no deduction was allowed due to the federal adjusted gross income limitation, no subtraction may be claimed in subsequent years for the balance of the contributions. Taxpayer has adjusted gross income of $18,000 so may claim the full subtraction of $2,500 in 1991.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.159
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98

Collection of Tax Source on Wages

150-316.162(2)-(A)
Withholding: Basis of Amount Withheld

(1) Remuneration includes merchandise, stocks, bonds, room, board, or other consideration passing to the employee in payment for services.

(2) The cash value must be based upon sound principles and the Department reserves the right to determine standard valuations for such items as meals, lodging, etc. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts or lodges, or if a room only, an apartment, a house or any other consideration is provided, the value, for withholding tax purposes, will be the actual value of this remuneration. (Living quarters or meals furnished to the employee for the convenience of the employer are excluded from income pursuant to section 119 of the IRC and the regulations pertaining thereto.)

(3) Amounts paid as reimbursable expenses to an employee are not subject to withholding; however, such payments must be identified either by making a separate payment or by specifically indicating the separate amount where both wages and reimbursement of expenses are made in a single payment. If an employee receives a definite weekly, monthly, or annual salary, withholding is required upon the entire amount even though the amount may be fixed by including an estimate of expenses which will necessarily be incurred by the employee on behalf of the employer. Only reimbursement based upon actual expenses is exempted from withholding. Sickness disability benefits and other disability pensions paid by an employer to an employee are emoluments unless they fall within exemptions of sections 104 to 106 of the IRC.

(4) Where an employer-employee relationship exists between a husband and wife, the employing spouse must withhold. Sums received by unemancipated minors which are not gifts, but compensation for bona fide personal services rendered to parents, require withholding.

(5) Withholding is required from distributions from a deferred compensation plan as defined in IRC 457 or a nonqualified plan under IRC 403 if the contributions to the plan or payments from the plan are wages.

(6) Wages due but not yet paid at the date an employee dies are not considered wages and are not subject to withholding.

(7) Withholding is required from accrued vacation pay, even though disbursed after termination of employment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.162
Hist.: 1-69; 11-71; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 6-1998, f. 11-13-98, cert. ef. 12-31-98

150-316.162(2)-(B)
Employees Exempt from Withholding

(1) *Active service in Armed Forces*. See OAR 150-316.680(1)(c)-(B).

(2) *Carrier employees*. Public Law 101-322 and ORS 316.162(2)(b) exempt from state withholding railroad and trucking employees unless they are Oregon residents. OAR 150-316.127-(E) contains definitions and examples of trucking employees. Public Law 91-569 and ORS 316.162(2)(b) exempt from state withholding nonresident air carrier employees unless they earn 50 percent or more of their compensation in Oregon. Employees whose scheduled flight time in Oregon is more than half of their total flight time for the year are considered to have earned more than half of their compensation in Oregon. The employees covered are those actually involved in transportation activities in more than one state.

(3) *Domestic service*. The exemption in ORS 316.162(2)(c) does not apply to wages paid to an employee who performs both domestic and business services, such as the chauffeur who also transports his employer's business clients, the domestic cook who also prepares meals for other employees or the paying public, etc.

(4) *Casual labor.* Withholding is not required from wages paid for casual labor not in the course of the employer's trade or business. Withholding is required from wages for substantial labor not in the regular course of the employer's trade or business, such as the construction of a private home where the owner is the employer. Labor which is both casual and not in the course of the business or trade of the employer is exempt from withholding requirements. "Business," as used in this section, is given a broader interpretation than "activity for profit" and includes governmental as well as proprietary functions of the state government or any of its political subdivisions.

(5) *Agricultural services*. Labor rendered solely in connection with the planting, cultivating, or harvesting of "seasonal agricultural crops" is exempt from withholding if the total annual wages paid the employee are less than $300. If at least $300 is received by the employee during the calendar year, the withholding and payments must have been timely made.

(a) A "seasonal agricultural crop" is a crop dependent upon an annual or less season for its fruition, and which is harvested at the termination of its season or shortly thereafter.

(b) Seasonal agricultural crops include:

(A) Field and forage crops.

(B) The seeds of grasses, cereal grains, vegetable crops and flowers.

(C) The bulbs and tubers of vegetable crops.

(D) Any vegetable or fruit used for food or feed.

(E) Holly cuttings harvested annually for Christmas sales.

(c) Labor performed in connection with the following are not exempt from withholding:

(A) Forest products.

(B) Landscaping.

(C) Nursery stock as defined in ORS 571.005(5) unless planted, cultivated, and harvested within an annual period.

(D) Raising, shearing, feeding, caring for, training or management of livestock, bees, poultry, fur-bearing animals or wildlife.

(d) Withholding is required as to the entire wages of "regular" farm employees even though, as a part of their duties, they engage in planting, cultivating, or harvesting. Withholding is required as to all wages paid in such seasonal activities as canning, or other food processing, logging, and sheep shearing, because they are not solely in connection with the planting, cultivating, or harvesting of seasonal agricultural crops. Withholding is required as to all wages paid in such agricultural activities as the care of poultry or livestock, and dairy farming, because they are not in connection with the planting, cultivating or harvesting of seasonal agricultural crops.

(6) Withholding is not required from wages paid to a duly ordained, commissioned, or licensed minister of a church when performing the duties of the minister's ministry, or from wages of a member of a religious order in performance of the religious duties required by the order, when the duties are not commercial in nature. Any amounts received from services performed outside of the order, and where a legal relationship of employer and employee exists between a member of a religious order or a minister and a third party, are considered income and are subject to withholding. For example, a member of a religious order has been hired by a school to teach a class for a fee. That member becomes an employee of the school and the wages are subject to withholding. Pursuant to IRS publication 525.

(7) Real Estate Salespeople. Withholding is not required from services provided to real estate brokers by real estate salespeople if there is a written contract providing the salesperson will not be treated as an employee by the real estate broker with respect to the services provided for Oregon tax purposes. Their income from commissions is not subject to state withholding taxes.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.162
Hist.: 1-69; 11-71; 11-73; 9-74; 12-19-75; 12-31-77; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1995, f. 12-29-95, cert. ef. 12-31-95; REV 6-1998, f. 11-13-98 cert. ef. 12-31-98; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99

150-316.162(2)-(C)
Withholding on Fringe Benefits

(1) A fringe benefit is not subject to withholding for Oregon purposes if it is not subject to Oregon income tax.

(2) When a fringe benefit is subject to withholding, the rate of withholding is determined by Oregon withholding tax tables considering total income for the payroll period.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.162
Hist.: RD 7-1988, f. 12-19-88, cert. ef. 12-31-88

150-316.162(2)(j)
Independent Contractor Definition

(1) As used in the various provisions of ORS Chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met. See OAR 150-670.600 for definitions related to independent contractors.

(2) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Department of Consumer and Business Services, and Department of Revenue of the State of Oregon, under the authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

Stat. Auth.: ORS 305.100, 670.605
Stats. Implemented: ORS 670.600
Hist.: RD 7-1992, f. & cert. ef. 12-29-92; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 6-2005, f. 12-30-05, cert. ef. 1-1-06; REV 1-2007, f. & cert. ef. 2-1-07

150-316.162(3)
Personal Liability of Responsible Officers, Members, or Employees for Taxes Withheld

(1) To be held personally liable for unpaid withholdings under ORS 316.162, a person must have been considered to have been an "employer." In addition, the person must have been in a position to pay the withholdings or direct the payment of the withholdings at the time the duty arose to withhold or pay over the taxes. Additionally, the person must have been aware, or have been in a position that should have been aware, that the withholdings were not paid to the department. An employer cannot avoid personal liability by delegating their responsibilities to another.

(2) "Employer" includes, but is not limited to an officer, member or employee of a corporation, partnership or other business entity, if, among other duties, that individual has:

(a) The power or authority to see that the withholding taxes are paid when due;

(b) Authority to prefer one creditor over another;

(c) Authority to hire and dismiss employees;

(d) Authority to set employees' working conditions and schedules;

(e) Authority to sign or co sign checks;

(f) Authority to compute and sign payroll tax reports;

(g) Authority to make fiscal decisions for the business;

(h) Authority to incur debt on behalf of the business; or

(i) Performed duties other than those outlined by the corporate bylaws or partnership agreement.

(3) The following factors do not preclude a finding that the individual is liable for the payment of taxes which were required to be withheld:

(a) Whether the failure to pay over the required withholding was willful;

(b) Whether the individual received remuneration;

(c) Maintenance of full-time employment elsewhere;

(d) The department considers another individual liable for the same withholding taxes;

(e) A corporate bylaw or partnership agreement position description to the contrary;

(f) Absence of signatory authority on a business bank account;

(g) Absence of bookkeeping or recordkeeping duties;

(h) Absence of authority to hire, fire, and to set working conditions and schedules; or

(i) Whether any functions indicating liability have been delegated to another.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.162
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 150-316.162(3); REV 1-2005, f. 6-27-05, cert. ef. 6-30-05, Renumbered from 150-316.162(4)

150-316.164
Bonding Requirements for Delinquent Withholding Employers

(1) As used in this section, a surety bond means a bond that guarantees payment of future withholding taxes of employers. In order for a surety bond to be acceptable, it must be issued by a company authorized to do business in Oregon by the Oregon Department of Insurance and Finance.

(2) As used in this section, an irrevocable letter of credit means an irrevocable letter of credit issued by a commercial bank. "Commercial bank" is defined as a bank, a savings bank, a stock savings bank, a national bank, a foreign institution or an extranational institution.

(3) The department may require an employer to post a bond or irrevocable letter of credit if the employer becomes delinquent for three calendar quarters and the tax amount exceeds $2,500.00. The amount of the bond or irrevocable letter of credit shall be at least equal to the amount that should have been withheld from wages for four calendar quarters.

(4) If an employer elects to pay over withholding taxes within three banking days of each payday, the employer shall not be required to post a bond or irrevocable letter of credit. Employers electing this option, shall continue making payments in this manner until all delinquent amounts are paid in full and they have had no further delinquent returns or payments for four consecutive calendar quarters.

(5) As used in ORS 316.164(4), "other methods of collection" means billing notices, collection letters, and telephone calls.

(6) All bonds or irrevocable letters of credit become the property of the department and shall be used solely to guarantee payment of withholding taxes. The department may, at any time, apply any part or all of the bond or irrevocable letter of credit to any delinquency accrued after the bond or irrevocable letter of credit was posted. However, the employer shall maintain the original amount of the bond or irrevocable letter of credit at all times.

(7) The bond or irrevocable letter of credit, or unused portion shall be returned to an employer when:

(a) The employer stops doing business as an employer and all delinquent amounts are paid in full; or

(b) The employer pays all delinquent amounts in full and has no further delinquent returns or payments for four consecutive calendar quarters.

(8) The department may proceed with action through the Oregon Tax Court to require compliance from any employer who fails to comply with this section.

(9) Any appeal by an employer shall not relieve an employer of posting a bond or irrevocable letter of credit or making accelerated payments, if required to do so by the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.164
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.167(1)
Withholding by Employers

(1) The term “employer” includes any person or organization for whom an individual performs any service as an employee. An employer may be an individual, corporation, partnership, estate, trust, association, joint venture, or other unincorporated organization. The term also includes religious, educational, charitable, and social organizations or societies even though such organizations are themselves exempted from payment of taxes. It includes governmental agencies, including federal, state, and local subdivisions, such as towns and counties. The federal government agencies withhold under an agreement sanctioned by the Act of Congress of July 17, 1952, and Executive Order 10407, dated December 6, 1952. It includes employers who engage only in interstate commerce.

(2) No statutory distinction is made as to the location of the employer. The withholding provision applies generally to any employer within the jurisdiction of the State of Oregon. Withholding is required of employers situated outside the state upon wages, commissions, or other emoluments paid to an employee or agent for services performed within the state, even though the employee or agent may be a nonresident and their Oregon employment may be of short duration. The department may, upon the written petition of an out-of-state employer, relieve such employer of the duty to withhold where it can be shown to the satisfaction of the department that the nonresident employee or agent temporarily serving within Oregon is not acting in the regular course of the employer’s business or their stay within Oregon will be extremely short and income resulting therefrom will not create a potential Oregon individual income tax liability as to the employee. Both in-state and out-of-state employers may be relieved of the duty to withhold where it can be shown to the satisfaction of the department that each individual employee serving within Oregon will receive $300 or less in wages from that employer within a calendar year.

(3) Withholding is required as to all wages paid by resident and nonresident employers doing business in Oregon for services performed by any employee within the state. For services performed by a resident partly or entirely outside of Oregon the Department of Revenue may authorize special withholding arrangements in hardship cases where it can be shown that withholding tax is being paid to another state on such employee. An employer who is located outside of the state and has no Oregon business activity cannot be required to withhold Oregon tax from the wages of an Oregon resident working outside the state. However, such employer may register and withhold as a convenience to the employee. All wages paid to nonresidents (persons domiciled outside Oregon) for services performed in Oregon are subject to withholding. If the nonresident earns wages both in and outside of Oregon, such as a salesperson, only that part of the wages earned in Oregon is subject to withholding.

(4) If the employer, in violation of the provisions of ORS 316.167, fails to deduct and withhold the tax, the employer nevertheless is liable to remit to the department the amount which should have been withheld. The employer shall be relieved of such liability if and when the employer can show by proper evidence and proof satisfactory to the department that the employee’s income tax against which such sum would have been credited has been paid without reduction through failure to withhold. Such waiver shall not operate to relieve the employer from liability for penalties, additions, or interest provided in the Act. The moneys withheld by employers from the wages of employees must be remitted promptly on the due date and no extension of time for such remittance is provided by statute or can be granted by the department. The funds involved are held by the employer in trust for the State of Oregon, and any use thereof by the employer amounts to an illegal conversion. The employer may not regard such funds as being in the same category as their own personal income tax indebtedness.

(5) An “employee” is any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance. Designation of an individual as an employee for purposes of industrial accident insurance, unemployment compensation, federal social security, or federal withholding will establish that individual as an employee for purposes of the Oregon withholding tax unless facts can be shown to the contrary.

(6) If the relationship of employer and employee actually exists, a different description of the relationship by the parties is immaterial; thus, it is of no consequence that the employee may be designated as a partner or independent contractor, contrary to fact. Family relationships or the fact that compensation may be based upon an agreed percentage of profits or other indeterminate measure, are of no consequence in determining the relationship of employer to employee. No distinction is made between classes or grades of employees; administrative and executive personnel and corporate officers are employees. Persons who are in business solely for themselves are not employees. However, professional people organized under Oregon’s Professional Corporation Act, ORS Chapter 58, will be treated as employees of the corporation. By incorporating and rendering services, the professional person generally creates an employment relationship with the corporation.

(7) As used in this rule, the definition of worker leasing company is identical to the definition found in ORS Chapter 656. The relationship of employer to employee exists between worker leasing companies and the workers for which they act as lessor. The relationship of employer to employee does not exist between leased workers and the lessee if the following conditions are met:

(a) The worker leasing company has a valid license under ORS Chapter 656 and;

(b) There is a valid written worker leasing contract between the worker leasing company and the lessee. If these conditions are not met, the department may determine that the lessee is the employer of the leased workers. Statements in contractual agreements concerning employer tax liabilities are not sufficient to transfer liabilities between worker leasing companies and lessors.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.167
Hist.: 1-69 as 150-316.167-(A), 150-316.167-(B), 150-316.167-(C), 150-316.197-(A); 12-1-9-75, Renumbered to 150-316.167(1); 12-31-82; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93

150-316.167(2)
Employer’s Election of Method of Computing Withholding

Employers have the option of using either the tax tables or the formulas developed and furnished by the Department in computing the amount to be withheld from regular wage payments. The tax tables and formulas are published by the Department. Employers may not modify the published tables or formulas except to update the exemption credit allowance as modified by state law.

Example: The version of the published formula for an annual wage, effective January 1, 1988, contains a subtraction of $90 x allowances, this may be modified to $128 x allowances because under 1997 state law the exemption credit is $128.

If a supplemental wage payment is made the employer may compute the amount to be withheld by using the tax tables or formulas, or may withhold at a flat rate which shall be 9 percent. Supplemental wage payments include bonuses, premiums, awards, gifts and other payments made to an employee, on the condition of their employment, occurring no more than twice a year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.167
Hist.: 1969 as 150-316.167-(D); 12-19-75, Renumbered; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 6-1998, f. 11-13-98, cert. ef. 12-31-98

150-316.168(1)-(A)
Withholding Payments: Cash Basis

All withholding is on a cash basis and must be reported on a cash basis.

Example: If services are performed in January but not compensated until April, withholding on the wages for those services is reported on the report for the quarter ending June 30.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.168
Hist.: RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.168(2)
Additional Time to File Reports

Oregon does not allow additional 10 day federal extension to file the quarterly tax report when all payments are paid when due. Information provided by the taxpayer on the tax report is essential to providing timely payment of Unemployment Insurance benefits.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.168
Hist.: RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; REV 6-1998, f. 11-13-98, cert. ef. 12-31-98

150-316.171
Treatment of Payroll Based Program Overpayments

(1) If an employer has overpaid their withholdings or transit district payroll taxes due for a quarter and files an original or amended combined quarterly tax return, the department will refund the overpayment or apply the overpayment (rollover) toward the employer's liability for the current or prior quarter as instructed by the employer. However, the following rules apply if the employer does not instruct the department:

(2) If an employer has overpaid their withholdings or transit district payroll taxes due for a quarter, the overpayment will be rolled over as a payment toward the employer's liability for that program for the current quarter.

(3) If the department records show that the employer is no longer in business, and all returns have been filed, the overpayment will be refunded.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.171
Hist.: RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 6-1998, f. 11-13-98, cert. ef. 12-31-98

150-316.177(1)-(A)
Exemption Status of Employees

Effective January 1, 1982 Internal Revenue Service's Form W-4, Employee's Withholding Allowance Certificate, may be used by an employer in the same manner for Oregon withholding as it is used for federal withholding. For the exemption claimed on line 7 of the W-4 to be effective for Oregon, all of the following conditions must be met. The employee:

(1) Did not owe any Oregon income tax last year.

(2) Does not expect to owe any Oregon income tax for the current tax year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.177
Hist.: RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.177(A); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.177-(A)

150-316.177(1)-(B)
Exemptions for Military Personnel

In addition to the withholding exemptions that a member of the Armed Forces may claim for federal income tax withholding purposes, such person who is a resident of the State of Oregon shall be allowed to claim a sufficient number of personal exemptions to equal the amount of active duty military pay that is permitted to be subtracted from gross income on the member's Oregon personal income tax return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.177
Hist.: 12-31-77, Renumbered from 150-316.177; 12-31-83; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.177-(B); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.177-(B)

150-316.177(2)
Penalty

(1) A penalty is assessable against an employe who files an erroneous withholding statement claiming:

(a) More than 10 withholding exemptions for federal or state income tax withholding; or

(b) Exemption from withholding and the employe's income is expected to exceed $200 per week for both federal and state purposes; or

(c) Exemption from withholding for state purposes but not for federal purposes; and

(d) As of the time the statement was made there was no reasonable basis for the statement.

(2) The penalty shall not be assessed against employes who have a reasonable basis for the erroneous statement. "Reasonable basis" includes but is not limited to the following situations:

(a) An employe in good faith files an erroneous W-4 for the first time.

(b) The employe computed the number of withholding allowances in accordance with the instructions on the Form W-4, but due to unforseen events, the number of allowances claimed is incorrect.

(c) The erroneous W-4 was filed because the employe relied upon the advice of an individual who is qualified to practice law or public accounting in this state or an individual who is licensed by the State Board of Tax Service Examiners and the employe supplied the individual with complete information connected with the advice given.

(3) The penalty shall be assessed against an employe filing an erroneous W-4 for the first time in reliance on a frivolous position or with the apparent intent to delay or impede the administration of the income tax laws of this state (or the federal government).

(4) As used in this section, a "frivolous position" includes, but is not limited to:

(a) Reference to a spurious constitutional argument;

(b) Reliance on a "gold standard" or "war tax" deduction;

(c) An argument that wages or salaries are not includable in taxable income;

(d) An argument that the Sixteenth Amendment to the United States Constitution was not properly adopted; or

(e) An argument that "unenfranchised, sovereign, free men or natural persons" are not subject to the tax laws.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.177
Hist.: RD 4-1988, f. 5-25-88, cert. ef. 6-1-88; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.177(4); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.177(4)

150-316.182
Procedure for Correcting the Filing of Withholding Certificates

(1) Except as provided by paragraph (2) an employer shall not use a withholding exemption certificate for state income tax withholding purposes if:

(a) The certificate claims an exempt status for state withholding purposes but not federal purposes; or

(b) The certificate is filed with the employer for use in determining both state and federal withholding, and the Internal Revenue Service has notified the employer that the certificate is materially defective.

(2) An employer may use a withholding exemption certificate that claims an exempt status for state purposes when the employee's compensation is exempt from Oregon tax under a provision of federal or state law. Examples of exempt compensation include those described in:

(a) Public Law 101-322, the Amtrak Reauthorization and Improvement Act of 1990, relating to certain rail carrier and motor carrier employees (Title 49 USC 11502 and Title 49 USC 14503, respectively);

(b) ORS 316.127(8), relating to federal employees of hydroelectric facilities on the Columbia River;

(c) Public Law 96-193, the Aviation Safety and Noise Abatement Act of 1979, relating to certain aircraft employees (Title 49 USC 40116);

(d) ORS 316.777 (relating to earnings of enrolled tribal members).

(3) If subsection (1) of this rule applies, the employer shall withhold as if the employee was single claiming zero exemptions, until such time as the employee files a new certificate. The employer shall give prompt notice to the employee of the employer's action. The employer shall give prompt notice to the employee that a certificate claiming an exempt status for state purposes only is not acceptable because there is no applicable provision under state or federal law for such exempt status.

(4) The employer shall submit to the department a copy of any withholding certificates which are:

(a) Certificates which claim more than 10 withholding exemptions for state purposes; or

(b) Certificates which claim exemption from withholding and the employee's income is expected to exceed $200 per week for both federal and state purposes; or

(c) Certificates which claim exemption from withholding for state purposes but not federal purposes. The copy shall be submitted within 20 days of the employer's receipt of the certificate.

(5) If, after receipt of a copy of the certificate, the department makes a written request to the employee for verification of the statements in the certificate, and after 20 days does not receive such verification, the department shall notify the employer in writing of the lack of verification. If the department makes a determination to change the withholding certificate based on available information, the department shall notify the employer and employee in writing of the change. Upon receipt of the notice, the employer shall withhold according to the department's determination.

(a) If the employee files a new certificate with the employer claiming more exemptions than the determination made by the department, or exemption from state withholding, the employee shall also submit a copy of the newly filed certificate to the department requesting a redetermination. The certificate should have the word "Redetermination" written on the top of the newly filed certificate. The employer shall continue to withhold according to the department's most recent determination until the department authorizes a subsequent change.

(b) If the employee files a new certificate with the employer claiming fewer exemptions than the determination made by the department, the employer may withhold according to the newly filed certificate. The employee may appeal the action of the department as otherwise provided by law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.182
Hist.: TC 15-1979(Temp), f. & cert. ef. 12-18-79; TC 2-1980, f. & cert. ef. 5-20-80; RD 3-1982(Temp), f. & cert. ef. 2-11-82; RD 6-1982, f. & cert. ef. 5-5-82; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1992, f. & cert. ef. 12-29-92; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98

150-316.187-(A)
Credit for Tax Withheld

If the tax has actually been withheld at the source and reported to the Department of Revenue, credit or refund shall be made to the recipient of the income even though such tax has not been paid to the Department by the employer. Where the employer has neither reported nor paid the tax required to be withheld from an employe's wages but the employe submits evidence proving to the satisfaction of the Department that the employer actually did withhold such a tax, the Department shall allow the employe credit or refund for the amount so proved. Ordinarily, minimum satisfactory evidence shall consist of a statement from the employer showing the amount of tax withheld and an affidavit of the employe as to the facts upon which the claim for credit or refund is based.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.187
Hist.: 1-69; 12-70

150-316.187-(B)
Where Taxpayer Reports on Fiscal Year Basis

Taxes withheld during any calendar year shall be allowed as a credit for the taxable year of the taxpayer which begins in that calendar year. For example, where an employe is on a fiscal year ending June 30, 1969, he would credit the tax withheld on his wages for the calendar year 1968.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.187
Hist.: 1-69

150-316.189
Withholding on IRAs, Annuities and Compensation Plans

(1) The withholding of taxes from commercial annuities, employers deferred compensation plans, and individual retirement plans is mandatory. However, an individual may elect, under certain circumstances, to have no withholding. Such an election will remain in effect until revoked by the individual.

(2) An individual may not make an election to have no withholding from the amount of a payment from a plan which is wages as defined in ORS 316.162. Therefore, an individual may not make an election if the individual is receiving payments from an employer deferred compensation plan as defined in IRC 457 or a nonqualified plan under IRC 403 if the contributions to the plan or payments from the plan are wages.

(3) The payor of any periodic distribution shall withhold as if the payment were wages using the withholding tables prepared and furnished by the department. The exemptions for state withholding purposes will be the same as listed on federal form W-4P. If no withholding election form has been filed by the payee, the withholding status is single and the number of exemptions is zero.

(4) The payor of any nonperiodic distribution shall withhold from such a payment at a rate of 8 percent of the amount of money or the fair market value of other property received in the distribution.

(5) The minimum amount of withholding per payee shall be no less than 10 dollars per distribution. The payor is not required to determine benefits subject to Oregon tax when figuring withholding.

(6) If an individual has elected to have no federal withholding from payments or distributions there shall be no state withholding unless the individual notifies the payor, in writing, otherwise.

(7) The payor shall provide a form to each payee, prior to the first periodic distribution, which shall explain the payee's right to elect to have no tax withheld. A completed form shall be returned to the payor no later than 30 days after the mailing date. If the payee does not elect out of withholding, it is the payee's responsibility to provide the payor with a completed Form W-4P which properly reflects the withholding needed for Oregon purposes. If a completed form W-4P is not provided, the payor shall withhold as directed in sections (3) to (5) of this rule. A separate election form shall be provided to the payee prior to each nonperiodic distribution. The election form must be returned to the payor no later than 30 days but can be returned as early as necessary to meet the date of distribution. If a completed form is not returned the payor shall withhold tax at the established rate. The payor may use federal form W-4P or a form that includes the same information as form W-4P.

(8) The payee may revoke the election to have withholding or may change the amount of withholding. The payee shall send a written request to the payor using federal form W-4P or an appropriate form furnished by the payor. The revocation or change shall be effective within 45 days after receipt by the payor.

(9) The payor shall be considered an employer and subject to the same withholding rules as are imposed under ORS 316.162 to 316.212 for withholding of income taxes from wages. The department shall provide appropriate forms, instructions and an account identification number necessary for reporting and remitting payments.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.189

Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93

150-316.189(6)
Withholding on IRA's, Annuities and Compensation Plans

Oregon's requirements to withhold taxes from IRAs, Annuities and Deferred Compensation plans will be consistent with the provisions of Internal Revenue Code Section 3405 except that mandatory backup withholding will not be required for a rollover from one qualifying plan to another qualifying plan under circumstances that would require such withholding for federal purposes.

Example: On July 1, 1992, Fred Smith removed his IRA account from Bank A and two days later placed it with Bank B. Since Fred didn't have Bank A do a direct transfer of funds to a new IRA account in Bank B, IRC 3405 requires Bank A to withhold 20 percent in payment of any taxes that may be due if Fred failed to roll the funds into a new qualifying plan (which would cause the funds to be includible in taxable income). For Oregon, Bank A is not required to withhold.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.189
Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93

150-316.191
Alternative Withholding Payment Method for Employers to Avoid Undue Burden

(1) ORS 316.191 allows alternate methods for making withholding payments when an undue burden is caused by the present withholding method. The following are two examples of "undue burden:"

(a) The employer is required to make Oregon tax withholding payments to the state of Oregon based on its nationwide payroll more often than it would based on payroll for its employees working in the state of Oregon.

(b) Oregon resident performs services outside the state and the employer is asked to register and withhold, voluntarily, as a convenience to the employee and the state of Oregon.

(2) Employers who believe that federal withholding methods create an undue burden for them which is not shared by most other similar employers, may request a different method of withholding tax payments by writing to the Payroll Tax Program, Department of Revenue, 955 Center Street, NE, Salem, OR 97310. The request shall contain the following information: Business name of employer; Oregon Business Identification Number (BIN), nature of burden; remedy requested; and proposed effective date of modified withholding method.

(3) An example for an alternate method indicated in (a) above would be to base the out-of-state employer's withholding method on their Oregon payroll only.

(4) Only those employers whose withholding accounts are current may request an alternative withholding method. No alternative withholding method shall be used before the Department of Revenue has approved the request in writing and has designated the effective date of the change.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.191
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99

150-316.193
Voluntary Withholding for Retired Members of the Uniformed Services

(1) Upon written request to the appropriate retired pay office of uniformed service, a member may request voluntary state withholding tax. This request shall include the following information:

(a) Member's full name;

(b) Social Security number;

(c) Amount of monthly withholding being requested;

(d) The state to receive withheld monies;

(e) Member's current address;

(f) Signature of member, or in the case of incompetence, the signature of his or her guardian or trustee.

(2) Retired members of uniformed service should send their requests for with-holding to the appropriate retired pay office. Their addresses can be obtained from the Department of Revenue.

(3) The minimum amount of monthly withholding per retiree shall be no less than $10 and the amount of the request for state tax withholding shall be an even dollar amount.

(4) A permanent withholding tax account shall be established in the name of each branch of the uniformed service for deposit of monies withheld by the request of the retirees. An account number and appropriate reporting forms shall be issued to each branch at the inception of its account.

(5) Reporting shall be done in a medium that complies with state reporting standards applicable to employers in general. For Oregon Department of Revenue purposes, reporting shall be required on the withholding portions of the Oregon Quarterly Combined Tax Report. This return shall be filed by the appropriate branch of service within 30 days after the end of each quarterly payroll period.

(6) Payment of withholding trust funds shall be made at the same time the quarterly return is filed. Payment shall be accompanied by appropriate identifying documentation, i.e., Form OTC (Oregon Tax Coupon).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.193
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.196
Voluntary Withholding for Civil Service Annuitants

(1) Upon written or telephone request to the U.S. Office of Personnel Management, a civil service annuitant may request voluntary state tax withholding.

(2) A permanent withholding tax account shall be established in the name of the U. S. Office of Personnel Management for deposit of monies withheld by the request of civil service annuitants. An account number and appropriate reporting forms shall be supplied at the inception of said account.

(3) Reporting shall be done in a medium that complies with state reporting standards applicable to employers in general. For Oregon Department of Revenue purposes, reporting shall be required on the withholding portions of the Oregon Quarterly Combined Tax Report. This return shall be filed by the U.S. Office of Personnel Management within 30 days after the end of each quarterly payroll period.

(4) Payment of withholding trust funds shall be made at the same time the quarterly return is filed.

(5) Reporting shall be done in a medium that complies with state reporting standards applicable to employers in general. For Oregon Department of Revenue purposes, reporting shall be required on the withholding portions of the Oregon Quarterly Combined Tax Report. This return shall be filed by the U. S. Office of Personnel Management within 30 days after the end of each quarterly payroll period.

(6) Payment of withholding trust funds shall be made at the same time the quarterly return is filed. Payment shall be accompanied by appropriate identifying documentation, i.e., Form OTC (Oregon Tax Coupon).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.196
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.197(1)(a)-(A)
Semiannual Reports and Payments

Purposes of semiannual reporting the calendar year will be divided into two six-month periods; the first period being January through June with the return and any payment due on or before July 31; the second period being July through December with the return and any payment due on or before January 31 of the following year. No other semiannual reporting periods will be permitted. Employers reporting on the semiannual method must file an annual report before February 16 as required of all employers under ORS 316.202(2). No semiannual returns will be allowed for periods after December 31, 1989. All returns due on, and subsequent to, January

1, 1990, shall be reported on the Oregon Quarterly Combined Tax Report form.

For rules governing annual agricultural filing, see OAR 150-316.202(4).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.197
Hist.: 12-19-75; 12-31-82; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83, Renumbered from 150-316.197(1)-(A)?; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.197(1)(a)-(B)
Withholding: Payment Due Dates

(1) Oregon withholding tax payment due dates are determined by corresponding federal due dates as outlined in the following rules:

Rule 1 — If the federal tax due is less than $1,000 at the end of any calendar quarter the Oregon tax due must be paid by the end of the month following the end of the quarter.

Rule 2 — If the federal tax liability is $50,000 or less in the lookback period, the Oregon tax due must be paid by the 15th of the month following, unless the employer meets the conditions under Rule 1 or Rule 4.

Rule 3 — If the federal tax liability is more than $50,000 in the lookback period, the Oregon tax due must be paid on the following semi-weekly schedule, unless the employer meets the conditions under Rule 1 or Rule 4: If the payday is on Wednesday, Thursday or Friday, the Oregon tax must be paid by the following Wednesday.

If the payday is on Saturday, Sunday, Monday or Tuesday, the Oregon tax must be paid by the following Friday.

Rule 4 — If the federal tax due is $100,000 or more at the end of any pay period, the Oregon tax must be paid by the close of the next banking day.

NOTE: If at any time an employer becomes subject to Rule 4, they immediately become a semi-weekly payer for the remainder of the calendar year and for the following calendar year, except for payments due within one banking day.

(2) Lookback period is the twelve-month period ended the preceding June 30 for nonagricultural employers. For agricultural employers the lookback period is the calendar year preceding the calendar year just ended.

(3) A legal holiday that falls between the end of the pay period and the payment due date extends the due date by one banking day.

(4) A banking day is any day that is not a Saturday, Sunday or a legal holiday. A legal holiday is a holiday in the District of Columbia.

(5) Federal tax is the sum of the federal withholding plus FICA plus Medicare taxes.

(6) ORS 316.197 establishes payment due dates only and does not incorporate the federal "safe harbor" rule for deposit shortfalls. If the full amount of the state tax withheld is not paid when the federal deposit is due the unpaid balance is delinquent.

(7) Payment due date examples:

(a) MONTHLY DEPOSITS: For employers whose total federal liability during the lookback period did not exceed $50,000. Lookback period is defined for 1998 as July 1, 1996 to June 30, 1997 (January 1, 1996 to December 31, 1996 for agricultural employers). [Table not included. See ED. NOTE.]

NOTE: If the federal tax liability for a payroll period exceeds $100,000, the federal and Oregon deposits are due the next banking day. Once an employer reaches $100,000 in federal tax during a payroll period, they are no longer considered to be a monthly depositor. For the rest of the calendar year and all of the following calendar years, all deposits are due semi-weekly, or within one banking day, if the federal tax is over $100,000.

(b) SEMI-WEEKLY DEPOSITS: For employers whose total federal liability during the lookback period exceeds $50,000. Lookback period is defined for 1998 as July 1, 1996 to June 30, 1997 (January 1, 1996 to December 31, 1996 for agricultural employers). [Table not included. See ED. NOTE.]

NOTE: If any federal tax liability for a payroll period exceeds $100,000, the federal and Oregon deposits are due the next banking day. An extra day is allowed due to a holiday during the period following the payroll date.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.197
Hist.: 10-5-83, 12-31-83; 12-31-84, Renumbered from 150-316.197(2); RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 6-1998, f. 11-13-98 cert. ef. 12-31-98

150-316.197(1)(b)
Withholding Tax Payment Requirements for Agricultural Employers

An employer of agricultural employees is required to pay Oregon taxes withheld at the same time as federal tax is deposited. Federal tax is the sum of withholding, FICA (social security) and Medicare taxes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.197
Hist.: RD 10-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 316.197(1)-(B)?; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99

150-316.197(2)
Employe's Rights

Recourse against an employer in regard to taxes on wages withheld and reported, but not paid to the Department of Revenue, is exclusively that of the state. An employe's rights as to any such tax withheld, reported and unpaid are those of a tax credit or refund as provided in ORS 316.187 and OAR 150-316.187-(A).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.197
Hist.: 1-69 as 150-316.197-(B); 12-31-75; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.197(3); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.197(3)

150-316.198
Requirement to use Electronic Funds Transfer

(1) An employer required to make payment of Oregon combined payroll taxes and assessments under ORS 316.162 through 316.216 shall do so by electronic funds transfer (EFT) if the employer is required to make federal payroll tax payments electronically.

(2) A taxpayer disadvantaged by the requirement to pay by EFT may request an exemption. The request must be in writing and sent to the address for EFT registration. The request must explain why the requirement to pay by EFT is a disadvantage to the taxpayer. An example of circumstances where the requirement is a disadvantage to the taxpayer is when the taxpayer's bank or the bank of the taxpayer's payroll service is unable to provide the service. Requests for an exemption will be evaluated on a case by case basis. If granted, the exemption will be for a period of 12 months, during which the taxpayer is expected to make arrangements to comply with the requirement to use EFT. The department will grant only one exemption period to a taxpayer.

(3) An exception to paying by electronic funds transfer is explained in Oregon Administrative Rule 150-316.191. The exception is available if this payment method will cause an undue burden to the employer. Additionally, an employer with limited activity in Oregon that is required to pay federal payroll taxes by electronic funds transfer need not do so for Oregon tax if the total of the annual payments to Oregon will not exceed $1,000.

(4) Employers not meeting the requirement to pay by EFT may voluntarily do so by completing and submitting to the department an application for either ACH Debit or ACH Credit EFT. Applications can be requested from the department.

(5) After beginning to make payments electronically, a volunteer may discontinue electronic payments by sending a written request to stop paying by EFT. The request must be sent at least 30 days prior to the date the volunteer wishes to stop paying by EFT. If the volunteer has not reached the then current mandate threshold, the department shall allow the employer to discontinue electronic payments. The volunteer shall continue to make payments by EFT until 30 days after sending the request to the department or the volunteer receives notice from the department agreeing to the discontinuance, whichever occurs earlier.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.198
Hist.: REV 6-1998, f. 11-13-98 cert. ef. 12-31-98; REV 8-2001, f. & cert. ef. 12-31-01

150-316.198-(A)

Electronic Funds Transfer. Payroll taxes and corporation estimated income and excise taxes not combined in determining mandate. Payments to be included.

(1) For the purpose of determining whether payment of combined quarterly payroll taxes and assessments is required to be made by electronic funds transfer (EFT), only the payments for related business activities shall be combined. The employer will not add combined payroll taxes paid with corporate income or excise taxes when making the determination. The employer will include combined payroll tax billing payments and amended payroll payments when making the determination.

(2) For the following examples, assume the current mandate threshold above which employers are required to pay by EFT is $1 million of annual payments.

Example 1: Business A is an insurance company. The business has registered twice with the department to pay by EFT, once for their employees' payroll tax payments and once for their withholdings on insurance payments to claimants. Each registration is under its own department Business Identification Number. Business A has annual deposits of combined quarterly payroll taxes and assessments under ORS 316.197 totaling $900,000 based on their status as an employer. Business A also pays withholding totaling $150,000 annually based on payments to their insurance claimants. Business A would not be mandated to pay by EFT.

Example 2: Business B is a retail chain. Business B has registered with the department three times. Each registration is under its own department Business Identification Number. Business B has registered once for their auto parts stores, once for their apparel stores and once for their restaurants. Payments of combined taxes and assessments are $280,000, $450,000 and $600,000 respectively. Business B would be mandated to pay by EFT because the payments made separately for each of their registrations are for payment of taxes and assessments based on their employee payroll.

Example 3: Business C is an incorporated grocery retailer. Annually, the business pays combined payroll taxes and assessments based on wages of its employees totaling $900,000 Additionally, Business C annually pays $400,000 in corporate excise taxes. Business C is not mandated to pay by EFT because payment of corporate excise taxes and payment of combined employer payroll taxes are unrelated, even though the taxes are paid under the same business identification number.

[ED. NOTE: Formulas referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.202

Hist.: REV 6-1998, f. 11-13-98 cert. ef. 12-31-98

150-316.202(1)

Withholding: Payment and Reports

It is the responsibility of a new employer to register with the department. A registration number shall be assigned by the department for use in it's administration of the withholding and transit excise tax laws. Employers shall use the registration number on all reports and payments filed with the department which are for tax programs on the Oregon Quarterly Combined Tax Report. A registered employer shall submit a report for each reporting period, even though the employer may not have had any payroll during that period. Failure by an employer to obtain remittance forms shall not constitute an excuse for failure to report total compensation paid and to remit the tax withheld within the time required by law. This responsibility ceases only after the employer notifies the department that the employer no longer has employes subject to withholding or transit excise taxes.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.202

Hist.: 1-69; 12-19-75; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83, Renumbered from 150-316.202(1)-(A)?; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.202(2)

Waiver of Termination Reports

For the purposes of waiver of termination reports, the Department of Revenue adopts the successor-in-interest definition as found in Employment Division OAR 471-031-0140, Filed 12-23-77 and Effective 1-1-78.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.202

Hist.: 1-69 as 150-316.202(1)-(B); 12-19-75; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83, Renumbered from 150-316.202(2)-(A)?; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.202(3)

Withholding: Annual Report by Employer

(1) Definitions. As used in this rule:

(a) "Employer" has the meaning given that term in ORS 316.162 and also includes lenders, sureties and other persons subject to withholding and reporting requirements under ORS 316.169.

(b) "Payer" has the meaning given that term in ORS 316.189(1)(g).

(c) "Payroll service provider" is any person that prepares payroll tax returns on behalf of another person for remuneration.

(d) "W-2" means the federal form W-2 required to be filed under 26 USC § 6051.

(2) Withholding Statements.

(a) Every employer or other payer must complete an individual withholding statement for each employee. The Oregon withholding statement must contain the same information as is required to be reported on a federal withholding statement including:

(A) Total state and local wages;

(B) State and local tax withheld during the calendar year; and

(C) The Oregon business identification number of the employer.

(b) The employer must use a federal withholding statement (W-2) for purposes of section (2) of this rule. If the employer or other payer is withholding from certain periodic payments as described in ORS 316.189, the employer or payer must use federal Form 1099-R for purposes of section (2) of this rule.

(c) The employer must provide a copy of the withholding statement to the employee within thirty-one days of the close of the calendar year. If an employee is terminated and requests a copy of the withholding statement, the employer must provide the form to the employee within 30 days of either the request or the final wage payment, whichever is later.

(d) The information in the withholding statement (W-2) must be filed electronically with the department..

(e) Under ORS 314.385, the due date for electronic filing of W-2s for Oregon purposes is the same as the federal due date for electronically filed W-2s; March 31 following the close of the calendar year.

(3) Reconciliation Reports (Form WR).

(a) Every employer must file a summary of total compensation paid and Oregon tax withheld for each employee. This report must include a reconciliation of tax remitted to the department by the employer for the calendar year to the total of tax withheld from employees' pay for the calendar year.

(b) If the reconciliation report is not filed within 30 days of the department's notice to the employer of a failure to file, a $100 failure-to-file penalty applies.

(c) If there is a difference between the amount paid to the department by the employer and the amount withheld by the employer from the employees' wages, the employer must explain the difference on the report.

(d) The report due date is the same as the due date of the corresponding federal report. If the employer ceases doing business, the report is due within 30 days of termination of business.

(4) Penalties. The department will assess penalties, as described in ORS 316.202(5), if an employer or other payer fails to file W-2s by the due date as required under section (2)(e) of this rule or the employer or other payer files incorrect or incomplete W-2s.

(a) A W-2 is incorrect or incomplete if one or more of the following occur:

(A) Identifying employee information is missing, such as the first or last name or social security number.

(B) The W-2 contains an incorrect statement of state income tax withheld, federal income, or state income amounts. Obvious math or clerical errors are not considered an incorrect statement for this purpose.

(C) Other information is missing or incorrect on the W-2.

(b) An employer or other payer knowingly fails to file a W-2 by the due date if the W-2 was not received by the department on or before the due date of the corresponding federal form W-2 for the tax year under consideration, and

(A) The employer or other payer has failed to file the W-2 for two consecutive years prior to the due date required for the second consecutive year.

(B) The employer or other payer has been assessed the penalty under ORS 316.202(5)(a) for one or more filing periods preceding the period at issue.

(C) The employer or other payer fails to file the W-2 upon written request to file by the department.

(D) The department determines that the facts and circumstances in the particular case warrant penalty assessment.

(c) An employer or other payer knowingly files an incomplete, false or misleading W-2 if:

(A) The employer or other payer has a pattern of repeatedly filing incorrect W-2s.

(B) The employer or other payer failed to correct the W-2 upon discovering incorrect information.

(C) The employer or other payer issued a corrected W-2 upon written request of the department.

(D) The amount of the potential penalty is less than the cost of complying with the requirement to include correct information on the W-2.

(E) The department determines that the facts and circumstances in the particular case warrant penalty assessment.

(5) If the employer or other payer fails to produce documentation to support the information on the W-2 or the number of W-2s required to be filed, the department will use the best information available to determine the appropriate penalty assessment amount.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.202
Hist.: 1-69 as 150-316.202(2); 11-73; 12-74; 12-19-75, Renumbered; RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 10-1984, f. 12-5-84, cert. ef. 12-31-84; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.202(2)-(B); RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 2-2014, f. & cert. ef. 7-31-14

150-316.202(4)
Combined Reports: Agricultural Employers

If an agricultural employer is subject to a tax program (in addition to withholding tax) for example, Tri-Met or Lane Transit tax, the employer is required to file the Oregon Combined Payroll Tax Report quarterly. The withholding portions of the Oregon Combined Payroll Tax Report may still be filed annually on Form WA. The annual agricultural return is due by January 31 of the following year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.202
Hist.: RD 4-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.207
Liability for Unpaid Withholdings; Warrant for Collection

(1) It is the employer's duty to hold in trust any amount of tax withheld from the wages of employees and to assume custodial liability for amounts to be paid to the Department of Revenue. Any employer who fails to pay the tax when due is subject to penalties as provided in ORS Chapter 314 the same as any other taxpayer who fails to file a return or pay a tax when due. Any employer who fails to pay the tax withheld to the department violates ORS 314.075 and is subject to the penalty provisions of subsection (1) of ORS 314.991.

(2) If a corporation or partnership is absorbed by another corporation or partnership in a statutory merger or consolidation, the resulting entity is regarded as the same employer as the absorbed entity. The new entity is liable for payment of withholdings.

(3) If a corporation or partnership fails to file returns or to pay the tax withheld when due, any or all officers, members and employees who are responsible for exercising the duties of an employer may be held personally responsible for the returns and payments together with any interest and penalties due. Whether the person has actually exercised the duties or not is immaterial.

(4) If the department issues a notice of liability or notice of determination and assessment naming any officer, member or employee as liable for unpaid withholdings, the department may issue a warrant against the person to enforce collection of any amount of delinquent withholdings, including interest and penalties. A notice of determination and assessment issued only in the name of the corporation or partnership does not authorize the department to issue a warrant against any officer, member or employee for collection of delinquent withholdings.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.207
Hist.: 11-71; 12-19-75; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; REV 1-2005, f. 6-27-05, cert. ef. 6-30-05

150-316.207(3)(a)
Officer Liability: Joint Determination of Liability Conference

(1) If one or more of the persons who may be held liable under ORS 316.162 to 316.212 appeals an assessment of unpaid withholding taxes, a joint conference may be required by the department. It is the policy of the department to notify all persons against whom liability may be asserted to attend the joint conference.

(2) If any of the persons notified fail to appear at the conference, the department may proceed with the conference.

(3) Notification of the conference may be mailed to each person against whom the department may assert liability. Mailing may be made by regular mail unless the person notified has requested receiving certified mail.

(4) A finding at the conference that a person or persons are liable does not preclude a later finding that other persons are also liable.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.207
Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 2-2003, f. & cert. ef. 7-31-03

150-316.212
Withholding Penalties

See ORS 305.228, 305.990, 305.992, 314.400, 314.410, 314.440, 314.991, 316.992 and the corresponding rules for provisions regarding penalties, misdemeanors and jeopardy assessments applicable to withholding taxes and reports.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.212
Hist.: 1-69; RD 7-1992, f. & cert. ef. 12-29-92; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-316.223
Nonresident Alternate Filing

(1) Out-of-state employers may elect an alternate method of filing, reporting or calculating tax liability for payroll earned in Oregon by nonresident employees for a payroll period not to exceed 200 days in one calendar year.

(2) Notice of election of alternative method shall be given on Oregon Department of Revenue form, Application for Alternative Filing Method for Temporary Employers, available from Oregon Department of Revenue, 955 Center Street, NE, Salem OR 97310.

(3) The Oregon Department of Revenue shall furnish the employer with Oregon Withholding Tax forms and instructions for filing and paying tax. The employer shall remit payment(s) and file completed Oregon quarterly combined tax reports as required by ORS 316.168 and 316.197.

(4) An employer electing the alternative method of withholding shall notify its employees of such election at the time withholding is made.

(5) If a qualifying nonresident employee files a personal income tax return under the allowed alternative method, the return also serves as a closing agreement. The amount of withholding is considered to be the amount of income tax owing for the tax year and is not subject to change by the taxpayer or the department unless it is determined that the taxpayer was not a "qualifying nonresident employee" while working for the nonresident employer.

(6) A nonresident employee who is working for an out-of-state employer which elects the alternative method under this rule, may elect to report and pay personal income tax on income earned by the employee in connection with the employee's performance of temporary services within this state in the same manner as any other nonresident.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.216

Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-316.857; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; Renumbered from 150-316.216, REV 8-2010, f. 7-23-10, cert. ef. 7-31-10

Resident Estates and Trusts

150-316.272
Deductions Allowed on Either the Inheritance Tax Return or the Fiduciary Income Tax Return

Certain deductions may not be taken on both the Oregon inheritance tax return (Form IT-1) and the Oregon fiduciary income tax return (Form 41). See OAR 150-118.010(2) for details.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.272
Hist.: REV 2-2004(Temp), f. 4-30-04 cert. ef. 5-1-04 thru 9-30-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-316.277
Tax Treatment of Unincorporated Organization

Except as otherwise provided by statute, regulations under Internal Revenue Code Section 7701 that allow unincorporated entities to elect to be classified as corporations or partnerships for federal tax purposes shall also be effective for Oregon tax purposes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.277
Hist.: RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.282
Resident and Nonresident Estates and Trusts

(1) For the purposes of the taxes imposed upon the income of estates and trusts and paid by the fiduciary thereof, estates and trusts are classified as either resident or nonresident.

(2) An estate is a resident if the fiduciary was appointed by an Oregon court or, where there is no appointment by an Oregon court, if the administration is carried on in Oregon. An estate of a decedent is but one taxable entity although there may be two or more fiduciaries appointed by courts of two or more states or countries. In such a case, the fiduciary appointed by the Oregon court (or administering the estate in Oregon) is required to file an Oregon state income tax return and is liable for any Oregon state income tax of the estate. The Oregon state income tax is determined by the status of the principal administration as to its resident or nonresident character, and shall be computed on an Oregon return required to be filed by the fiduciary of the principal administration. If the principal administration, considered without regard to other administrations, is an Oregon resident estate, all income of the estate, including that of nonresident fiduciaries, is taxable as that of an Oregon resident. If the principal administration, considered without regard to other administrations, is a nonresident of Oregon, the Oregon state income tax liability is to be computed as that of a nonresident.

(3) A trust is a resident if the fiduciary is a resident of Oregon or if it is administered in Oregon.

(4) A trust is a nonresident only if there is no Oregon resident trustee and the administration is not carried on in Oregon. See ORS 316.307 and the rules thereunder regarding treatment of nonresident trusts.

(5) If the trustee is a corporate fiduciary engaged in interstate trust administration, the trust is considered to be a resident of Oregon and the place of administration for that trust is considered to be Oregon if the trustee conducts the major part of its administration of the trust in Oregon. In this context, “administration” relates to fiduciary decision making of the trust and not to the incidental execution of such decisions. Incidental functions include, but are not limited to, preparing tax returns, executing investment trades as directed by account officers and portfolio managers, preparing and mailing trust accountings, and issuing disbursements from trust accounts as directed by account officers.

Example 1: X Trust Company, with its headquarters in Oregon, serves as trustee for trusts in Oregon and Washington. For its Washington trusts, account officers with offices in Washington: (a) serve as X’s primary contact with beneficiaries, (b) hire lawyers, accountants, and other professionals for the trust, and (c) make the majority of fiduciary decisions, which include when to make distributions and where to invest trust assets. Assets are invested in common trust funds or in mutual funds on the advice of either an affiliate of X located in Oregon or by unaffiliated investment companies located in Oregon or other states. A committee of X’s senior managers, including some stationed in Oregon, oversees the account officer’s activities. Various incidental functions for the Washington trusts are performed by X’s personnel in Oregon. Because the majority of the fiduciary decisions for the Washington trusts are made in Washington, those trusts are not administered in Oregon.

Example 2: Same facts as Example (1), except that the majority of fiduciary decisions for Washington trusts are made by account officers of X stationed in Oregon. Because the majority of fiduciary decisions are made in Oregon, the Washington trusts are administered in Oregon, and therefore are Oregon resident trusts.

Example 3: Same facts as Example (1), except that X and an Oregon resident serve as co-trustees of a Washington trust. Because the Washington trust has an Oregon resident trustee, that trust is an Oregon resident trust.

(6) The tax liability of a resident estate or trust is computed generally by utilizing the same principles as those governing individuals, except that in lieu of the modifications allowed to individuals by ORS 316.680 and 316.697 the estate or trust may be allowed a “fiduciary adjustment” as set forth in 316.287.

(7) For the purpose of determining whether income of an estate or trust which is deductible as a distribution deduction on its return is taxable on the Oregon return of a beneficiary, it is immaterial whether the estate or trust is a resident or nonresident. The income deductible as a distribution deduction on the return of an estate or trust is included in the net income of the beneficiary and is taxed in the same manner as if it had been received directly by the beneficiary without the intervention of the estate or trust. Its character is determined by the provisions of the Internal Revenue Code and not necessarily by the character or source of the money or property distributed.

(8) The amount of income to be reported by a beneficiary, including the allocation in case there is more than one beneficiary, is determined by:

(a) Residency status of the beneficiary;

(b) Allocation of the “fiduciary adjustment” as provided in ORS 3l6.287;

(c) Various provisions of local law; and

(d) The provisions of Subchapter J of Subtitle A of the Internal Revenue Code.

(9) For rules on accumulated income distributions from a trust to a resident or nonresident beneficiary, see OAR 150-316.737 and 150-316.298.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.282
Hist.: 11-71; 12-19-75; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97

150-316.282(4)
Oregon Qualified Trust Tax Return

(1) General Rule. A trustee who has met certain conditions set forth in IRC Section 685, and has elected to file returns as a qualified funeral trust for federal purposes, must file an Oregon Form 41 (Oregon Fiduciary Income Tax Return) as a resident funeral trust.

(2) Filing requirements. The trustee may file a single, composite Oregon resident funeral trust return for some or all trusts for which the trustee has filing responsibility, including trusts that had a short tax year.

(3) Computation of Tax. When filing a composite return, the trustee must compute the tax separately for each trust and enter the total on the form. If an individual trust would require a tax rate above the minimum tax rate, the trustee must attach a schedule showing how the Oregon tax is computed for each trust.

(4) Due Date. The Oregon resident funeral trust return is due the 15th day of the fourth month after the close of the tax year.

(5) Effective Date. The provisions of this rule apply to tax years beginning on or after January 1, 2004.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.282
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-316.287
Fiduciary Adjustment

The modifications applicable to individuals described in ORS Chapter 316 may or may not be applied in computing the income tax liability of an estate or trust, depending on the treatment of distributable net income of the estate or trust in the Internal Revenue Code. No modification may be added or deducted separately. Neither may trust principles of accounting or statutory provisions governing allocations of receipts and disbursements by the fiduciary be applied in allocating the tax burdens or benefits arising from modifications. The net amount of all modifications constitutes the "fiduciary adjustment," which must be allocated between the fiduciary and any beneficiaries as required in ORS 316.287(2). However, the share of a fiduciary adjustment allowable in reduction of the taxable income of a beneficiary shall be limited to the amount of the distribution deduction taxable on his individual federal return. The share of a fiduciary adjustment increasing taxable income of a beneficiary shall be limited to an amount computed by deducting the amount of income of the estate or trust taxable on his individual Oregon return from the total amount of money and the value of property distributed or required to be distributed to him during its current taxable year by the estate or trust. Any amounts not allocated to a beneficiary solely by reason of these limitations shall be added to the share of the estate or trust. A computation of the federal distributable net income must be shown on a copy of the federal Form 1041 attached to the Oregon fiduciary Form 41, unless it is clearly evident from the character of the estate or trust and the income that either

(1) There is no distributable net income as defined in the Internal Revenue Code;

(2) All distributable net income is taxable to the beneficiary; or

(3) No distributable net income is deductible on the federal fiduciary return as a distribution deduction.

Example: An estate had ordinary income and capital gains. A property worth in excess of the ordinary income was distributed to a residuary beneficiary in the taxable year. The total net fiduciary adjustment, including federal income tax paid on capital gains, is allocated to the distributee, although the personal representative must charge the federal income tax against principal. Thus, the tax benefit is granted to the beneficiary receiving current distribution while the eventual economic burden of payment falls on the residuary beneficiaries ratably. On the other hand, the beneficiary receiving a current distribution has been burdened with both federal and Oregon tax liability arising from ordinary income. Had he received no distribution the liability for tax would have fallen on the estate and the eventual economic burden on the residuary beneficiaries ratably. However, if the estate has federal taxable income which is not subject to Oregon income taxation, such as interest from the United States bonds, to include in the fiduciary adjustment to bring the total fiduciary adjustment up to an amount in excess of the value of the property distributed, the beneficiary may deduct on his individual return only the amount of fiduciary adjustment necessary to offset the income of the estate included in his taxable income. Similarly, if a U.S. income tax refund was claimed by and allowed to the estate in an amount to bring the total fiduciary adjustment up to an addition to income in excess of the value of the property distributed, the beneficiary need include only the amount of the fiduciary adjustment that, when added to the income of the estate included in his taxable income, equals the value of the property distributed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.287
Hist.: 11-71; 12-19-75

150-316.298
Accumulation Distribution Credit for Oregon Taxes Paid by Trust During Income Accumulation Years

(1) The accumulation distribution credit is determined by calculating the amount of tax that would have been paid by the trust if the distribution had been made in the year the income was earned, and then subtracting that amount from the tax that the trust actually paid in that year. The total available credit is distributed to the beneficiaries pro rata.

(2) Trusts, whose Oregon taxable income in the year of income accumulation included capital gains that were not part of its distributable net income (DNI), must determine the amount of Oregon tax paid on ordinary income to arrive at the maximum Oregon tax credit available to the beneficiary. For purposes of this computation, the percentage of Oregon taxable income representing capital gains not included in DNI must be determined.

Example 1: This example is a continuation of the first example in OAR 150-316.737. A review of the facts in that example would be helpful. Based on the facts in the example in OAR 150-316.737, the maximum credit available to the beneficiary for the Oregon tax paid by the trust is calculated as follows: [Example not included. See ED. NOTE.]

Example 2: The beneficiary's total 1993 tax is $150. The total tax calculated without inclusion of the accumulation distribution in taxable income is $100. Although the maximum calculated credit is $71, the beneficiary can only claim a credit of $50 (the difference between $150 and $100).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.298
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96

Nonresident Estates and Trusts

150-316.307
Taxable Income of Nonresident Estate or Trust

(1) The determination of the taxable income of a nonresident estate or trust differs from that of a nonresident individual in that there is no provision for proration of items of income, deductions or exemptions. Taxable income must be determined by first recomputing the fiduciary's net taxable income under the Internal Revenue Code using only those items of income, gain, loss and deductions derived from or connected with sources in Oregon, including the full amount of the personal exemption allowable in determining federal taxable income. This computation may be made on a federal Form 1041 and accompanying schedules if they are clearly marked as state schedules. Regardless of the form of the computation, a copy of the federal Form 1041, and all accompanying schedules, as filed with the Internal Revenue Service must be attached to the Oregon Fiduciary Form 41.

(2) To arrive at the fiduciary's Oregon taxable income, the recomputed federal net taxable income, limited to items derived from or connected with sources in Oregon, is increased or decreased by the "fiduciary adjustment" provided in ORS 316.287 and the transitional adjustment, if any, provided for in ORS 316.047. The "fiduciary adjustment" is computed in the same manner as that used for resident estates or trusts except that only items of income, gain, loss and deductions that are derived from or connected with sources in Oregon and a portion of any accrued federal income tax liability or refund are included in the computation. The amount of each federal income tax item of the fiduciary adjustment is computed by multiplying the accrued liability or refund by the percentage that the recomputed federal net income from Oregon sources bears to the federal net taxable income from all sources. Both factors in this computation must include only those items taken into account in determining net taxable income of the tax year to which the liability or refund applies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.307
Hist.: 11-71

Returns; Payment

150-316.362(1)(c)
Oregon Multiple Funeral Trust Tax Return

(1) General Rule. A trust established as a "funeral trust" and filing a fiduciary return under federal law as a grantor trust may join in filing an Oregon multiple funeral trust tax return.

(2) Election. The election provided in this rule is made each tax year. It is deemed to be made by the trustee of the funeral trust as of the date the multiple trust tax return is filed. The trustee of an individual funeral trust may elect not to join in filing an Oregon multiple funeral trust tax return by filing a separate Oregon fiduciary tax return under the trust name used for federal filing purposes.

(3) Filing Requirements:

(a) The Oregon multiple funeral trust return shall be made and filed on Oregon Form 41 (Oregon Fiduciary Income Tax Return) by the authorized fiduciary. If two or more fiduciaries are acting jointly, the return may be made by any one of them. If an Oregon multiple funeral trust tax return is not filed, the trustee of each individual funeral trust must file an Oregon fiduciary return for such trust under the usual filing requirements of ORS 316.362.

(b) The Form 41 (Oregon Fiduciary Income Tax Return) filed for the Oregon multiple funeral trust shall include the trustee's name in the name of the trust. [Example not included. See ED. NOTE.]

(c) The Form 41 for the Oregon multiple funeral trust tax return shall include a statement on the face of the return to the effect that under the terms of the trust instruments, the trusts included in the multiple filing are grantor trusts and all income is taxable to the grantors under the Internal Revenue Code.

(d) The Oregon multiple funeral trust tax return will not require a Federal Identification Number. The Department of Revenue will assign a Business Identification Number (BIN) to the multiple return. The BIN will be made available to the fiduciary of the multiple funeral trust return on request for identification purposes.

(e) In addition to the Form 41 required to be filed by the multiple funeral trust, a schedule shall be attached to the return. The schedule shall report the following information for each trust included in the multiple funeral trust tax return: The name, address and social security number of the grantor, the name and address of the trustee, the name and address of the funeral home, the trust federal identification number, the trust taxable year, the beneficiary's social security number, and the amount and description of income earned by the trust during the taxable year.

(4) Due Date: The Oregon multiple funeral trust tax return is due the 15th day of the fourth month after the close of the tax year.

(5) Estimated Payments: Under ORS 316.559, trusts are not required to make estimated payments.

(6) Effective Date: The provisions of this rule shall apply to qualifying grantor funeral trusts that join in filing Oregon multiple funeral trust tax returns for tax years beginning on or after January 1, 1994.

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.362
Hist.: RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-316.362(2)
Persons Required to Make Returns

A person having income taxable by this state which is not included in federal taxable income is required to file a return. For example, a return must be filed reporting interest on obligations of any foreign state or territorial possession of the United States which by the laws of the United States is exempt from federal income taxation but not from state income taxation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.362
Hist.: 12-70; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-316.362(6)

150-316.368
Petitioning Department to Equally Split Joint Liability

(1) A tax liability incurred by spouses filing a joint tax return is joint and several. Each spouse is responsible for the entire liability. However, the department may split a joint tax liability equally between two separated or divorced spouses. Either spouse may file a petition to split the joint liability equally between the spouses. In order to split the liability, the department must be satisfied that payment of the entire liability by the petitioning spouse will cause undue hardship on the petitioner and petitioner's household. Mere inconvenience is insufficient to establish hardship. A statement in the divorce decree is also insufficient to relieve either spouse of the liability.

(2) The conditions listed below may constitute hardship. The examples given are not intended to be all-inclusive.

(a) Annual household income of the petitioning spouse, number of dependents and limited assets within the household are such that petitioner could not, in the department's opinion, pay the entire liability within five years.

Example 1: The petitioning spouse receives social security income with no other income and only minimal assets.

Example 2: The petitioning spouse earns $20,000 annually, is not receiving child or spousal support, and is the sole support of three adolescent dependents. Household assets are minimal. The liability owed jointly with the petitioner's ex-spouse is $4,000.

(b) Major medical problems or a prolonged illness of either the petitioning spouse or a family member that either severely limits petitioning spouse's earning ability or creates an extreme financial burden on household resources.

Example 3: Petitioning spouse or family member has a major illness and has been forced to retire. The only household income is from social security.

Example 4: The petitioning spouse has a major illness and family is living on disability and attempting to meet high medical costs.

(3) Included within the petition must be:

(a) An explanation of how payment of the entire liability will cause undue hardship on the petitioner and petitioner's household;

(b) The current address of the non-petitioning spouse (if known);

(c) A completed Statement of Financial Condition for Individuals (form number 150-860-009);

(d) A copy of the legal separation or divorce decree; and

(e) An explanation of how the petitioner will pay the remaining liability.

(4) Following review of the petition, the department will either:

(a) Accept the petition, cause the liability to be split equally between spouses and notify both spouses of the action; or

(b) Notify the petitioning spouse the petition has not been accepted.

(5) Acceptance by the department of the petition is discretionary. If the department denies a petition to split a joint liability, the petitioner may appeal that denial to the Magistrate Division of the Oregon Tax Court.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.368
Hist.: RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.369
Innocent Spouse, Separation of Liability, and Equitable Relief Provisions

(1) Internal Revenue Service (IRS) Determination Made to Grant Relief. The department will grant relief from liability for tax under ORS 316.369 if the person seeking relief provides proof that the IRS has made a determination under IRC §6015 that relieved the person of liability for federal taxes for the same tax year. As soon as the determination is made regarding the request for relief, the department will send a letter to each spouse informing them of the department's determination.

(2)(a) No IRS Determination Made or IRS Denied Relief. A taxpayer who has filed an Oregon joint return may seek relief from liability by applying to the Department of Revenue even if the taxpayer has not applied for relief to the IRS. Or, if the IRS has denied relief, the taxpayer may ask the department to make a separate determination for relief from state liability. To request innocent spouse relief under the provisions of section (4), allocation of liability under the provisions of section (5), or equitable relief under the provisions of section (6), the taxpayer must write a letter to the department that includes the taxpayer's name, address, Social Security number, the taxpayer's spouse's (or former spouse's) name and Social Security number, the tax years for which the taxpayer is requesting relief for, and the type of relief the taxpayer is requesting. The department will treat the request for relief from liability as also constituting a request for any applicable refund. A taxpayer may file a request for innocent spouse relief, allocation of liability, or equitable relief with the department at any time. There is no statute of limitation on requesting relief under these provisions.

(b) The department will send a letter to the nonrequesting spouse if relief is requested from joint and several liability on a joint return and will allow the nonrequesting spouse to submit information related to the determination of the request for relief from liability. As soon as the determination is made regarding the request for relief, the department will send a letter to each spouse informing them of the department's determination.

(3) Definitions. For purposes of this rule:

(a) Understatement of Tax. An understatement of tax generally is the difference between the total amount of tax that should have been shown on the taxpayer's Oregon return and the amount of tax that actually was shown on the Oregon return. This includes a deficiency that arises in the original processing of the return and a deficiency due to an audit.

(b) Erroneous Items. Erroneous items include unreported income and an incorrectly reported deduction, credit, or basis. Unreported income is any gross income item the spouse of the requesting taxpayer received but did not report. An incorrectly reported deduction, credit, or basis is any improper deduction, credit, or property basis the spouse of the requesting taxpayer claims.

(c) Spouse. All references to spouse mean the spouse on the joint return for which relief is requested.

(4) Innocent Spouse. Innocent spouse relief is available only for deficiencies or assessed deficiencies. This provision does not authorize relief from liabilities that taxpayers reported properly on the joint return but did not pay. If the following four conditions are met, the individual will qualify for innocent spouse relief. The department will relieve the individual of state liability for tax in whole or in part (including interest, penalties, and other amounts) for the taxable year.

(a) Conditions:

(A) The requesting spouse filed a joint return for the taxable year for which relief is sought;

(B) On such return there is an understatement of tax attributable to erroneous items of the spouse with whom the requesting spouse filed the return;

(C) The requesting spouse establishes that he or she did not know, and had no reason to know, of the understatement when signing the return;

(D) Taking into account all of the facts and circumstances, it is unreasonable in the department's judgment to hold the requesting spouse liable for the deficiency attributable to the understatement.

(b) If the taxpayer seeking relief asks for a refund of state tax payments, the taxpayer also must provide proof that he or she made the payments to the Oregon Department of Revenue. If the department grants relief, it will refund payments made by the requesting spouse according to the procedures and refund limitations of ORS 305.270 and 314.415. This applies to any requests for relief received by the department on or after August 1, 2004.

(5) Allocation of liabilities for taxpayers no longer married, legally separated, or no longer living together. Relief is available only for deficiencies or assessed deficiencies. This provision does not authorize relief from liabilities that taxpayers reported properly on the joint return but did not pay.

(a) An individual may apply to allocate a deficiency if the following two conditions are met:

(A) The requesting spouse filed a joint return for the taxable year for which relief is sought; and

(B) At the time of the request, the requesting spouse is no longer married to, is legally separated from, or has not been a member of the same household as the other spouse at any time during the 12-month period ending on the filing date of the request.

(b) Relief under allocation of liability is subject to several limitations:

(A) A request will be denied if assets were transferred between the requesting spouse and the other spouse as part of a fraudulent scheme.

(B) Relief is not available if the department can demonstrate that the requesting spouse had actual knowledge when he or she signed the return of an item that gave rise to a deficiency.

(C) Relief will only be available if the liability exceeds the value of any disqualified assets (as defined in Internal Revenue Code §6015(c)(4)(B)) transferred to the requesting spouse by the nonrequesting spouse.

(D) The department will not refund payments made by the requesting spouse on the liability for which relief was granted if those payments were made before relief was granted. This applies to any requests for relief the department receives on or after August 1, 2004.

(6) Equitable relief. Equitable relief is available for unpaid liabilities that were reported properly on the joint return and for understatements of tax.

(a) To be eligible for equitable relief, all of the following conditions must be satisfied:

(A) The requesting spouse filed a joint return for the taxable year for which relief is sought;

(B) Relief is not available under either the innocent spouse or allocation of liability provisions;

(C) No assets were transferred between the spouses filing the joint return as part of a fraudulent scheme by the spouses;

(D) There were no disqualified assets transferred to the requesting spouse by the other spouse; and

(E) The requesting spouse did not file the return with fraudulent intent.

(b) The department will grant equitable relief generally in cases where all of the following elements are satisfied:

(A) At the time relief is requested, the requesting spouse is no longer married to the other spouse, or is legally separated from the other spouse, or has not been a member of the same household as the other spouse at any time during the 12-month period ending on the date relief was requested;

(B) When the requesting spouse signed the return, the requesting spouse had no knowledge or reason to know that the tax would not be paid; and

(C) The requesting spouse will suffer economic hardship if relief is not granted. The department will determine economic hardship by taking into account all of the facts and circumstances concerning the requesting spouse's financial situation, including but not limited to:

(i) Ability to pay now and in the future;

(ii) Personal assets such as stocks, bonds, dividends, retirement accounts, automobiles, equipment, etc.;

(iii) Ability to borrow funds;

(iv) Financial statements provided by the taxpayer; and

(v) Any other financial information that the department requests.

(c) The following is a partial list of the positive and negative factors that the department will take into account in determining whether to grant relief. No single factor will be determinative of whether equitable relief will or will not be granted in any particular case. All factors will be considered and weighed appropriately. The list includes but is not limited to the following:

(A) Factors in favor of relief.

(i) Marital status. The requesting spouse is separated (whether legally separated or living apart) or divorced from the nonrequesting spouse.

(ii) Economic hardship. The requesting spouse would suffer economic hardship if relief from liability is not granted.

(iii) Abuse. The requesting spouse was abused by the nonrequesting spouse, but such abuse did not amount to duress.

(iv) No knowledge or reason to know. In the case of a liability that was properly reported but not paid, the requesting spouse did not know and had no reason to know that the liability would not be paid. In the case of a liability that arose from a deficiency, the requesting spouse did not know and had no reason to know of the items giving rise to the deficiency.

(v) Other spouse's legal obligation. The other spouse has a legal obligation as part of a divorce decree or agreement to pay the outstanding liability. This will not be a factor weighing in favor of relief if the requesting spouse knew or had reason to know, when the divorce decree or agreement was entered into that the other spouse would not pay the liability.

(vi) Attributable to the nonrequesting spouse. The liability for which relief is sought is solely attributable to the nonrequesting spouse.

(B) Factors weighing against relief.

(i) Attributable to the requesting spouse. The unpaid liability or item giving rise to the deficiency is attributable to the requesting spouse.

(ii) Knowledge or reason to know. When the requesting spouse signed the return, the requesting spouse knew or had reason to know of the item giving rise to a deficiency or that the reported liability would not be paid.

(iii) Significant benefit. The requesting spouse has significantly benefited from the unpaid liability or items giving rise to the deficiency.

(iv) Lack of economic hardship. The requesting spouse will not experience economic hardship if relief from the liability is not granted.

(v) Noncompliance with Oregon income tax laws. The requesting spouse has not made a good faith effort to comply with Oregon income tax laws in the tax years following the tax year or years to which the request for relief relates.

(vi) Requesting spouse's legal obligation. The requesting spouse has a legal obligation as part of a divorce decree or agreement to pay the liability. If, taking into account all the facts and circumstances, the department determines that it would be unreasonable, in the department's judgment, to hold the requesting spouse liable for the liability, the department may relieve a requesting spouse of all or part of the joint liability.

(d) If the taxpayer seeking relief asks for a refund of state tax payments, the taxpayer also must provide proof that he or she made the payments to the Oregon Department of Revenue. If the department grants relief, it will refund only payments the requesting spouse made after the request for relief was filed with the department. Refunds are subject to the refund procedures and limitations of ORS 305.270 and 314.415. This applies to any request for relief the department receives on or after August 1, 2004.

(7) Appeal Rights. If the department denies the relief requested under any of the provisions described above, the department will send the requesting spouse a conference decision letter that will have appeal rights. To appeal the conference decision, the requesting spouse must file an appeal with the Magistrate Division of the Oregon Tax Court within 90 days of the date of the conference decision letter. Whether or not relief was granted, the nonrequesting spouse can not appeal the determination.

(8) Time Period For Requesting Relief. A taxpayer may request relief from liability for tax at any time. There is no statute of limitation on requesting relief. However, the department will not grant relief under any provision of ORS 316.369 if the requesting spouse has entered into a closing agreement or settlement agreement with the department or if the year at issue has been litigated at the Oregon Tax Court, and the requesting spouse was a party to the litigation.

(9) Relief provided under ORS 316.368. If the requesting spouse does not qualify for relief under 316.369, the department will determine if relief can be granted under 316.368.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.369
Hist.: RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 150-316.369(2); REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-316.382
Liability of Fiduciaries

A fiduciary is required to file a return reporting all of the income of the estate or trust even though such income may not in whole or in part be taxable to the estate or trust. If an estate or trust is exempt from filing under federal Internal Revenue Code regulations, it is also exempt from filing for Oregon unless notice to file is given by the Oregon Department of Revenue. The fiduciary also is required to pay the taxes on the income taxable to the estate or trust. Liability for the payment of the tax attaches to the person of the estate's personal representative up to and after discharge, where prior to distribution and discharge, personal representative failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax obligation. Liability for the tax also follows the estate itself. When by reason of the distribution of the estate and the discharge of the personal representative it appears that collection of tax cannot be made from the personal representative, legatees or distributees must account for their proportionate share of the tax due and unpaid to the extent of the distributive share received by them. See ORS 314.310. The same considerations apply in the case of trusts. See also ORS 316.387.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.382
Hist.: 1-69; 12-19-75; 2-11-82(Temp); 5-5-82

150-316.387(1)
Decedent's Estate: Request for a Final Tax Determination

(1) The representative of a decedent's estate has an affirmative duty to file any returns which the decedent failed to file or was unable to file (e.g., the return required for the part of the tax year prior to death, or returns required for previous tax years which weren't filed due to the final illness of the decedent) and to pay the indicated tax, penalties and interest, if any, from the funds of the estate. The state has no duty to watch for printed notices to creditors or to file a creditor's claim with the decedent's representative.

(2) The representative of a decedent's estate may make an election for a final tax determination of any returns required to be filed under chapter 316 during the period of estate administration from a decedent or a decedent's estate. The election must be in writing and may be made by filing Department of Revenue Form 150-101-151 "Election for Final Tax Determination." The election is applicable to:

(a) All individual income tax returns filed by the decedent for which the statute of limitations is open for adjustment at the time the election is filed;

(b) The decedent's final individual income tax return;

(c) Any individual income tax returns the representative of a decedent's estate is required to file on behalf of the decedent because the decedent failed to file the required returns prior to their death; and

(d) Any fiduciary income tax returns filed during the period of estate administration. The election must be filed with the return(s) for which the election is applicable.

(3) The Department of Revenue may give notice of deficiency as described in ORS 305.265 within 18 months after a written election for final tax determination is made by the representative of the decedent's estate. If the Department of Revenue fails to give notice of deficiency within the 18 month period, the statute of limitations for the returns covered by the election for final tax determination will expire, except as described in paragraph (4). The Department of Revenue has no affirmative duty to respond to the election for final tax determination in any way other than the giving of notice of deficiency within 18 months.

(4) The limitations to the giving of a notice of deficiency provided in this section shall not apply in the following circumstances:

(a) If the department finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return, notice of deficiency may be given at any time within five years after the return was filed;

(b) If the department finds that false or fraudulent returns were filed, or that no returns were filed but returns were required to be filed, notice of deficiency, or notice of assessment in the case of failure to file, may be given at any time after the department makes that finding;

(c) If the Commissioner of Internal Revenue makes a correction resulting in a change of the decedent's or the estate of the decedent's tax, then notice of deficiency may be given within one year after the department is notified of such federal correction, or within the applicable 18-month or five-year period, whichever period expires later.

(5) The representative of a decedent's estate may choose to close the estate administration at the earliest date practicable, even though the period for giving notice of deficiency has not expired. If the department then gives notice of deficiency, the transferees of the money or property of the estate shall be liable for the tax, penalties and interest imposed against the decedent or the decedent's estate.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.387
Hist.: 1-69; 12-70; 11-73; 12-19-75; RD 3-1987(Temp), f. & cert. ef. 4-3-87; RD 8-1987, f. & cert. ef. 6-5-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-316.387(4)
Decedents' Estate: Application for Discharge from Personal Liability for Tax on Decedent's Income

(1) The representative of a decedent's estate may make written application to the department for discharge from personal liability for tax on the decedent's income. This application must be made after filing the decedent's final individual income tax return, or any individual income tax returns the representative of a decedent's estate is required to file on behalf of the decedent because the decedent failed to file the required returns prior to their death.

(2) The written application must include the following information:

(a) The name of the decedent;

(b) The decedent's Social Security Number;

(c) A list of the tax years for which the representative of a decedent's estate filed individual income tax returns on behalf of the decedent during the period of estate administration. The representative of a decedent's estate must also provide a copy of the document which shows they were appointed to represent the estate.

(3) The discharge becomes effective nine months after the department receives the application for discharge, if the representative of a decedent's estate has received no notification of tax liability during that time, or if notification of tax liability was received and paid during that time.

(4) The discharge does not apply to tax liability resulting from assets of the decedent's estate which are still in the possession or control of the representative of a decedent's estate.

(5) The failure of a representative of a decedent's estate to make application under this subsection does not affect the protection available to the representative under ORS 116.113(2), 116.123 and 116.213.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.387
Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-316.457
Requirement of Copy of Federal Return

(1) Unless especially requested in individual cases, no copy of the federal income tax return need be filed with Form 40S ("short form").

(2) Beginning with tax year 1994, a copy of the federal Form 1040, 1040A, 1040EZ, or 1040PC, whichever is applicable, must always be filed with Forms 40, 40P and 40N or the returns shall be deemed incomplete. No other federal forms or schedules are required to be filed with the Oregon return. Copies of federal forms and schedules must be made available to the department on request. If partnership income is reported on the return, a copy of the federal partnership return must be filed with the department by one of the partners.

[ED. NOTE: The forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.457
Hist.: 1-69; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

Payment of Estimated Tax

150-316.563
Estimated Tax

(1)(a) No declaration of estimated tax is required if the estimated tax as defined ORS 316.557 is less than $1,000.

(b) A required declaration shall contain information and be in the form prescribed by the Department of Revenue. Federal forms are not acceptable.

(2) A taxpayer may amend the declaration of estimated tax by recalculating the estimated tax due for the year, subtracting the payments already made and dividing the balance by the remaining payment dates.

(3) Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. Where taxpayers establish to the satisfaction of the department that the facts warrant a refund, a refund of estimated taxes can be made prior to the filing of the tax return. Examples of fact situations which will be considered sufficient to warrant a refund are as follows:

(a) Estimated tax payments were made by an individual who will not be required to file a return for the tax year for which the estimated tax payments were made.

(b) The estimated tax payments were intended for the Internal Revenue Service but were sent to the Department of Revenue in error. The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient cause to refund such excess prior to the filing of the Oregon tax return.

(4) Estimated tax payments cannot be used to pay additional tax liabilities for prior or current tax years, regardless of whether the liability is created by the taxpayer filing an amended return or by adjustment of the return by the department.

Example 1: Douglas has made estimated tax payments for 1998 totaling $2,000. His 1996 tax return was audited & a deficiency of $500 was imposed. No part of the $2,000 payments may be used to pay the deficiency.

(5) Interest shall be computed on excess estimated tax payments starting 45 days after the return is filed, or 45 days after the due date of the return, whichever is later.

(6) An individual with a taxable year of less than 12 months may be required to file a declaration of estimated tax and pay estimated tax.

(a) No declaration is needed for a short taxable year that is:

(A) Less than four months.

(B) At least four months but less than six months and the declaration filing requirements of ORS 316.563 are met after the first day of the fourth month.

(C) At least six months but less than nine months and the requirements to file the declaration are met after the first day of the sixth month.

(D) At least nine months and the requirements to file the declaration are met after the first day of the ninth month.

(b) If the taxpayer is required to file the declaration, the declaration must be filed on or before:

(A) The 15th day of the fourth month if the requirements to file are met before the second day of the fourth month.

(B) The 15th day of the sixth month if the requirements to file are first met after the first day of the fourth month but before the second day of the sixth month.

(C) The 15th day of the ninth month if the requirements to file are first met after the first day of the sixth month but before the second day of the ninth month.

(D) The 15th day of the first month of the succeeding year if the requirements to file are first met after the first day of the ninth month but before the last day of the year unless the return for such tax year is filed on or before the last day of the first month of the succeeding year.

(c) The estimated tax shall be paid in equal installments. The amount of each installment depends on the length of the short taxable year and the date during the year when the requirements to file and pay estimated tax are first met.

Example 2. Tom has a short taxable year beginning January 1, 1998 & ending October 31, 1998. The requirements to filing a declaration of estimated tax are first met prior to April 2, 1998. The estimated tax is payable in four equal payments on April 15, June 15, September 15 & November 15, 1998. Each payment would equal one-fourth of the total estimated tax due. If, on the other hand, the requirements to filing a declaration of estimated tax were first met after April 1 but before June 2, the estimated tax would be payable in three equal payments of one-third of the total estimated tax. The payment dates would be June 15, September 15 & November 15, 1998.

Example 3. A five-month short taxable year beginning January 1, 1998, & ending May 31, 1998, & the requirements to file were met on March 31, 1998, Tom must file & pay:
1/2 of the estimated tax on April 15, 1998
1/2 of the estimated tax on June 15, 1998

Example 4. A seven-month short taxable year from April 1, 1998, through October 31, 1998, and the requirements to file are met on July 1, 1998. Tom must file and pay:
1/3 of the estimated tax on July 15, 1998
1/3 of the estimated tax on September 15, 1998
1/3 of the estimated tax on November 15, 1998

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.563
Hist.: 12-31-80; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 14-1982, f. 12-6-82, cert. ef. 12-31-82; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86, Renumbered from 150-316.563(1)?; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99

150-316.567
Allocation of Joint Estimated Tax Payments

(1) Husband and wife may make joint estimated tax payments for any part of the tax year although they may elect to file separate

tax returns. If separate returns are filed the joint estimated tax payments may be treated as the estimated tax of either the husband or wife or may be divided between the spouses in such manner as they agree.

(2) If the spouses do not agree on how to divide their joint estimated tax payments, the payments shall be allocated between them by the department. Spouses will be considered not to have agreed on a method for dividing their joint estimated payments when both spouses file separate returns claiming credit for estimated tax payments which when combined do not equal the amount of joint estimated tax payments received by the department during the tax year.

(3) The department shall divide the joint estimated tax payments by allocating to each spouse an amount of the payments in the proportion that the spouses' separate tax liability computed after credits, other than the credits for withholding and estimated tax payments, bears to the combined separate tax liabilities of both spouses. [Formula not included. See ED. NOTE.]

During 19X5, Adam and Betty make joint estimated tax payments of $2,000, Betty also has tax withholding of $1,000. Adam and Betty decide to file separate returns for 19X5 but fail to agree on how to divide their 19X5 joint estimated tax payments. Adam has a separate tax liability after credits of $1,500. Betty has a separate tax liability of $1,100 before credit for withholding of $1,000. Using the formula stated above, Adam's share of the estimated tax payments is $1,154 ($1,500 ÷ $2,600 x $2,000). Betty's share of the estimated tax payments is $846 ($1,100 ÷ $2,600 x $2,000). Adam will owe a net amount of $346 ($1,154 – $1,500) and Betty will receive a refund of $746 ($846 + $1,000 – $1,100).

(4) If a husband and wife make joint estimated tax payments and the department issues a notice of assessment against either or both of the spouses under the provisions of ORS 305.265(10), the department shall allocate the estimated tax payments between the spouses. The allocation of payments shall be made using the best information available to the department.

(5) In the event one of the spouses received credit for more than their allocable share of the joint estimated tax payments as determined by the department, the difference between their allocable share and the amount for which credit was received when the return was processed, shall be remitted to the department. This amount shall be remitted with the filing of an amended return or through payment of a notice of deficiency issued by the department.

[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.567
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96

150-316.573
Estimated Tax: Farmer's and Fisher's

For the purpose of declaring estimated tax, gross income is determined using sources within and without this state.

Example: John is a resident of the state of Washington and owns a farm which is located in Oregon. All of his other income is from nonfarm sources within the state of Washington. The total farm income from Oregon sources is $50,000. The total gross income from within and without Oregon is $90,000. Since the gross income from farming is not equal to or greater than two-thirds of John's total gross income, the exception for farmers and fishers to making estimated tax payments is not met.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.573
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87

150-316.583(2)
Estimated Tax: Application of Prior Year Overpayment (Refund)

(1) Definitions.

(a) Department notification. To properly notify the department that the overpayment is to be applied against an installment other than the first instalment, the taxpayer shall attach a statement to the income tax return showing the overpayment and indicate to which instalments the overpayment is to be applied.

(b) Delinquent return. If the taxpayer fails to file a return by the due date of the return and has not obtained an extension to file, the return is considered delinquent.

(2)(a) Refunds from current year's returns. The department shall apply overpayments occurring on or before the due date of a return against the first instalment payment of the next year's estimated tax, unless the taxpayer notifies the department that the overpayment should be applied against another instalment. The payment shall be applied as of the date which is the later of the due date of the return (without regard to extensions) or the date the overpayment was made.

Exception: The taxpayer's overpayment may not be applied to the following year's estimated tax if the taxpayer owes delinquent child or spousal support.

Example 1: The taxpayer makes all four estimated tax payments for tax year 1992. The last payment was made in January, 1993. The taxpayer filed the 1992 Oregon return on April 15, 1993. The return shows a refund due. The taxpayer requests that the refund be applied to 1993 estimated tax. The refund will be credited to the estimated tax account as of April 15, 1993.

(b) Refunds from delinquent returns. When the taxpayer files a delinquent return, and the tax shown due is less than the amount of withholding and prepayments, the taxpayer may apply the overpayment to an estimated tax account for a subsequent year. Overpayments shall be applied to the extent approved on review and as of the date the return is filed.

Example 2: Taxpayer files a 1992 return on October 25, 1993. The taxpayer made all four estimated tax payments for 1992. The return shows a refund due. The taxpayer requests that the refund be applied to the 1993 estimated tax account. The department processes the return and on December 13, 1993 verifies that the refund requested is correct. The overpayment is credited to the 1993 estimated tax account as of October 25, 1993.

(3) Refunds from amended returns. When an election is made to have an overpayment resulting from the amendment of a prior year return applied to an estimated tax account, the overpayment shall be applied to the extent approved on review and as of the date the return is filed.

Example 3: Taxpayer files an amended return for calendar year 1989 on October 15, 1990, claiming a $500 overpayment and electing to have it applied to the 1990 estimated tax account. The 1989 amended return was received by the department on October 20, 1990. The refund was reduced to $400 and approved on November 20, 1990. The actual transfer of the $400 plus interest was made on December 1, 1990. The application date to the 1990 estimated tax account is October 15, 1990.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.583
Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-316.587(1)
Tax Used to Compute Underpayment of Estimated Tax

Any interest due for underpaying estimated taxes is computed using the total tax shown on the return. If the return is adjusted in initial processing, the recomputed tax must be used for determining any underpayment interest. Prior to October 6, 2001, subsequent amendments to the tax will not affect the underpayment interest amount unless the amended return is received prior to the statutory due date of the original return. Amended returns filed on or after October 6, 2001 will not affect the underpayment interest amount unless the amended return is received by the statutory due date of the original return or within the extension period granted for the original return.

Example 1: Mary files an Oregon income tax return on a calendar year basis. She filed a return for tax year 2000 on February 15, 2001, showing a tax liability of $1,700. On April 10, 2001, she filed an amended return for tax year 2000 showing a tax liability of $1,450. The return for the taxable year for purposes of computing any interest on underpayment of estimated tax is the amended return filed on April 10, 2001.

Example 2: Using the same facts as given in Example 1 except that Mary's amended return was filed on May 20, 2001. The original return filed on February 15, 2001, is the return for the taxable year for purposes of computing any interest on underpayment of estimated tax.

Example 3: Mark files an Oregon income tax return on a calendar year basis and had an extension to October 15, 2008 in which to file his 2007 return. He filed his 2007 return on May 1, 2008 showing a tax liability of $2,150. On October 15, 2008, he filed an amended return for 2007 showing a tax liability of $1,375. The return for the taxable year for purposes of computing any interest on underpayment of estimated tax is the amended return filed on October 15, 2008.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.587
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 8-2001, f. & cert. ef. 12-31-01; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2006, f. & cert .ef. 7-31-06

150-316.587(5)(b)

Estimated Tax: Underpayment Interest Not Imposed if There is a Casualty, Disaster or Other Unusual Circumstances

(1) No interest for underpayment of estimated tax will be imposed on any portion of the underpayment that is caused by reason of casualty, disaster or other unusual circumstances where it would be against equity and good conscience to impose interest. The determination of whether unusual circumstances exist is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the effort required by the taxpayer to comply with the law and make the required installments.

(2) The following are examples of situations that will be accepted by the department as unusual circumstances for not imposing interest.

(a) Where the failure to make the necessary estimated tax payment was caused by death or serious illness of the taxpayer, or death or serious illness in the taxpayer's immediate family.

(b) Where the taxpayer's books and records are destroyed by fire, flood or other natural disaster and therefore, the taxpayer is unable to determine the correct estimated tax payment.

(c) Where the disaster is so overwhelming that the taxpayer neglects to make the necessary estimated tax payment.

(d) Where the failure to make the necessary estimated tax payment was caused by the unavoidable and unforeseen absence of the taxpayer from the state immediately prior to the due date of the estimated tax payment.

(3) Example: Sharon filed her 2003 Oregon income tax return and had tax to pay of $2,500. Interest on underpayment of estimated tax was imposed. Sharon's house was destroyed by fire on August 5, 2003 and all of her tax records were destroyed. The department will not impose the interest on underpayment of estimated tax for the third and fourth installment periods due to the casualty.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.587
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-316.587(5)(c)

Estimated Tax: Underpayment Interest Not Imposed If There Is Reasonable Cause

(1) No interest for underpayment of estimated tax will be imposed on any portion of the underpayment if in or prior to the tax year the estimated tax payment was required to be made, the taxpayer retired after attaining age 62 or became disabled, and the underpayment was due to reasonable cause and not to willful neglect. The determination of whether the taxpayer's actions were due to reasonable cause and not willful neglect is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the effort required by the taxpayer to assess the taxpayer's proper liability.

(2) The following are examples of situations that will be accepted by the department as reasonable cause for not imposing interest.

(a) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by the unavoidable and unforeseen absence of the taxpayer from the state immediately prior to the due date of the estimated tax payment.

(b) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by reliance on an information return or other facts, if under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. Reliance on information reported on a Form W-2, Form 1099 or other information is reasonable if the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows or has reason to know that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction.

(c) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by incorrect professional advice and:

(A) The taxpayer relied upon the advice of an individual who the taxpayer could reasonably assume was knowledgeable and experienced in the tax involved;

(B) The taxpayer supplied the individual with complete information connected with the advice given; and

(C) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous advice.

(d) Where the taxpayer exercised ordinary business care and prudence and nevertheless was unable to make the necessary estimated tax payment or to pay the correct amount of estimated tax.

(e) Where the taxpayer is unable to obtain records necessary to determine the amount of estimated tax due, for reasons beyond the taxpayer's control.

(f) Where the taxpayer failed to pay the tax based on erroneous written information received from an employee of the Department of Revenue.

(g) Examples:

(A) Bob, age 65, retired from his job on March 30, 2003. Bob did not request that Oregon state tax be withheld from his retirement income and he didn't know that he needed to make estimated tax payments. When Bob filed his 2003 tax return he found he owed $1,500 of tax. Since the underpayment was not due to reasonable cause, interest on underpayment of estimated tax will be imposed.

(B) Grace, age 62, retired from her job on February 1, 2003. Before Grace retired she consulted her tax consultant for advice on when to retire and what payment elections to make. Grace turned all her paperwork over to her tax consultant to fill out. The tax consultant neglected to have Oregon state tax withheld from Grace's retirement income. Because the underpayment was due to reasonable cause, interest on underpayment of estimated tax will not be imposed.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.587
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04

150-316.587(5)(d)

Estimated Tax: Partnership and S Corporation Income of Part-year Residents and Nonresidents

For purposes of imposing interest on underpayment of estimated tax, an exception exists for part-year and nonresidents receiving income from an S corporation. No interest will be imposed on the underpayment attributable to the shareholders pro rata share of the S corporation income if the income is for the initial year in which S corporation status is elected and the shareholder is a nonresident or for the prior tax year was a part-year resident for Oregon. This exception applies to tax years beginning on or after January 1, 1987.

Example: Frank and Ethel move to Oregon in August, 2006. Frank is a partner in an Oregon partnership. The partnership incorporates in 2007 and elects S corporation status. For 2007, Frank and Ethel file as full-year Oregon residents and report their share of the S corporation income. No interest is imposed on any underpayment attributable to Frank's share of the S corporation income because they meet the exception. They are part-year residents for 2006; 2007 is the initial year of election of S corporation status.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.587
Hist.: 10-7-85, 12-31-85, Renumbered from 150-316.587(4); 12-31-87, Renumbered from 150-316.587(4)(A); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.587(5); REV 6-2008, f. 8-29-08, cert. ef. 8-31-08; REV 4-2009, f. & cert. ef. 7-31-09

150-316.587(8)-(A)

Required Installments for Estimated Tax

(1) Definitions.

(a) "Required annual payment" means the total amount of required installment payments for the tax year.

(b) "Required installment payment" means the amount of the payment that is due for each of the four payment periods during the tax year.

(2) There are two steps to determine estimated tax payments. The first step is to determine the required annual payment, and the second step is to determine the amount of the required installment payments.

(3) Determination of required annual payment amount.

(a) The required annual payment is the lesser of:

(A) Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year); or

(B) One hundred percent of the tax shown on the prior year's return, if qualified. This is sometimes referred to as 'safe harbor.' To use the prior year's tax to determine the required annual payment, the prior year's return must be filed before the current year's return, and the prior tax year must consist of 12 months.

Example 1: Amanda's adjusted gross income on her 2012 return was $30,000 and her Oregon tax liability after credits was $2,000. Amanda's 2013 Oregon tax liability after credits is $2,800. Ninety percent of the 2013 tax after credits is $2,520. She can use the prior year tax and pay 2013 estimated tax payments equal to 100 percent of her 2012 tax liability ($500 on each installment due date).

(b) A part-year resident may use the prior year tax unless disqualified for a reason described in this section.

Example 2: Michael moved to Oregon from California on July 1, 2012 and filed as a part-year resident. His 2012 Oregon tax after credits was $1,500. Even though his 2012 return shows 6 months of Oregon residency, his taxable year for 2012 was 12 full months. He qualifies to use safe harbor (prior year tax) to determine his required annual payment for 2013. This is less than 90 percent of his 2013 tax, so he will use that to determine his required annual payment. His required installment payments in2013 are $375 for each period (25% of $1,500)) for regular installment payments, or the applicable percentage if using the annualized income installment payments, in order to avoid interest on underpayment of estimated tax for 2013.

(c) Tax shown on the prior year's return does not include any payment received as a state surplus refund of personal income tax determined under ORS 291.349.

Example 3: Roberta had tax after credits of $1,500 for 2006. She received a surplus refund check in November 2007 of $309 based on her 2006 tax before credits. That payment is not taken into account in determining the tax shown on her 2006 return (prior year) when figuring her required annual payment for 2007. Her 2007 tax after credits is $2,300, so she will use her prior year tax of $1,500 as her required annual payment because it is the lesser amount.

(d) Use the amounts from the original return to determine the payments unless an amended return was filed before the due date, including extensions. In that case, use the amounts from the amended return to determine the required annual payment. Amended returns filed after the due date of the original return, including extensions, cannot be used to determine the required annual payment.

Example 4: Aliyah's original tax return showed a tax liability after all credits of $1,400. Aliyah did not file an extension. In July, the return was amended and the tax liability after credits was $1,200. Aliyah bases her required annual payment on the $1,400 tax shown on the original return.

Example 5: Shaylee's original tax return was filed June 29, 2012 with an approved extension to October 15, 2012 showing a tax liability of $1,975. On October 09, 2012 the return was amended and the tax liability was reduced to $1,245. In 2013, if Shaylee chooses to use the prior year's tax, the required annual payment is based on the $1,245 tax shown on the amended return filed within the extension period.

(e) Estimated tax payments are not required if the amount of the required annual payment minus Oregon tax withheld is less than $1,000. For information about additional exceptions, see ORS 316.563 through 316.588, and OAR 150-316.573 through 150-316.587(5)(d).

Example 6: Brandon and Michelle are married and have three children. Brandon is self-employed. Michelle works part-time. They want to know if they are required to make estimated tax payments. Their estimated 2013 adjusted gross income is $75,000, their estimated net itemized deductions are $13,500 and they expect to have $630 withheld from Michelle's wages. They need to calculate the amount of their required annual payment as follows: [Table not included. See ED. NOTE.]

Their 2013 required annual payment minus Oregon withholding is more than $1,000. Brandon and Michelle are required to make estimated tax payments.

(4) Determination of the required installment payment amount.

(a) The required installment payment for each of the four tax periods is the lesser of the payment due under one of the following two methods for determining the amount of an installment payment:

(A) Regular Installment: The required installment payment for each period is 25 percent of the required annual payment.

(B) Annualized Income Installment: The required annualized income installment payment is the "applicable percentage" of the required annual payment for the taxable year minus the amount of any required installments paid for prior periods during the tax year. The applicable percentages are:

(i) 22.5% for the first period;

(ii) 45% for the first and second periods;

(iii) 67.5% for the first, second and third periods; and

(iv) 90 % for the first through fourth periods.

(b) If the taxpayer shows that the annualized income installment for a period (as determined from the annualized income worksheet) is less than the regular installment for that period, the amount of the required installment payment for that period is the annualized income installment.

(c) If the annualized income installment method is used to determine a required installment payment, the difference between that amount and the amount that would have been due if the regular installment method had been used must be added to the required installment payment for the next succeeding period.

(d) Generally, credits based on income or deductions are figured on the annualized income or deductions for each period.

(e) Credits computed as a percentage of income must be based upon the annualized income for the period.

(f) Credits that use income as a basis for determining an applicable percentage or for otherwise limiting the allowable credit must be based upon the total annualized income before allocation to the installment period.

Example 7: Richard and Terrie are married with no dependents. They had adjusted gross income of $14,000 for the period of January 1, 2013 to March 31, 2013. For the same period, they had itemized deductions of $2,810. For the period of January 1, 2013to May 31, 2013, they had adjusted gross income of $27,000 and itemized deductions of $4,300. For the period of January 1, 2013 to August 31, 2013, they had adjusted gross income of $41,000 and itemized deductions of $6,300. For the period January 1, 2013 to December 31, 2013, they had adjusted gross income of $69,000 and itemized deductions of $14,100. Their 2012 return showed tax after credits of $3,155. For purposes of computing the required installment, the following computations are necessary: Actual income from January 1 to March 31 x 4. Actual income from January 1 to May 31 x 2.4. Actual income from January 1 to August 31 x 1.5. Actual income from January 1 to December 31 x 1.0. First Estimated Tax Payment. [Table not included. See ED. NOTE.]

(g) Pass-through entity (PTE) income may be annualized following the methodology provided under Internal Revenue Code (IRC) section 6654, Treasury Regulation section 1.6654-2 and all other related regulations and rules, if annualizing more accurately reflects the fluctuations in income to the shareholder from the entity. Solely for purposes of annualizing, the shareholder or partner may recognize the distributable share of income or loss from the PTE for the months in the PTE's taxable year ending within the taxable year of the shareholder or partner that precede the month in which the estimated tax installment is due.

Example 8: Ed's Catering, Inc. (ECI) is a calendar year S corporation that is in the catering business. ECI has limited business outside of the busy holiday party season. The majority of its business occurs in October, November, and December. In 2013, ECI's income was $30,000 from January 1–March 31; $25,000 from April 1–June 30; $20,000 from July 1–September 30; and $450,000 October 1 to December 31. An ECI shareholder who receives most of his or her income during the last quarter in ECI's tax year may choose to use the annualized income installment method for purposes of determining estimated tax payments.

Example 9: Wedding Planner's, Inc. (WPI), an S corporation, has a fiscal year ending July 31st. The majority of its business occurs in May, June, and July. In fiscal year beginning 2012, WPI's income was $30,000 from August 1, 2012–October 31, 2012; $25,000 from November 1, 2012–January 31, 2013; $20,000 from February 1, 2013–April 30, 2013; and $450,000 May 1, 2013 to July 31, 2013. The shareholder must include the income attributable to WPI as follows when determining the required installment for the shareholder's calendar year 2013 using the annual method:

The 1st required installment is based on PTE income/loss from August 1st of the prior year to March 31st. Date payment is due is April 15th. The 2nd required installment is based on PTE income/loss from August 1st of the prior year to May 31st. Date payment is due is June 15th. The 3rd required installment is based on PTE income/loss from August 1st of the prior year to July 31st. Date payment is due is September 15th. The 4th required installment would already include the entire amount from the PTE received in the tax year of the shareholder but should not increase the underpayment for the 4th quarter since it was fully included by the third payment.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.587
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2006, f. & cert .ef. 7-31-06; REV 6-2008, f. 8-29-08, cert. ef. 8-31-08; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11; REV 1-2014, f. & cert. ef. 7-31-14

150-316.587(8)-(B)
Estimated Tax: Joint Return to Single or Separate Return

For estimated tax payments due for tax years beginning on or after January 1, 1988, in computing the required installment for the current year, the tax liability for the prior year may be used even though the current year is a single or separate return and the prior year's return is a joint return. The prior year's return must be filed timely including extensions and must cover 12 months. The prior year's tax will be allocated in the following manner:

(1) Recompute the prior year's tax liability as if each spouse had filed a single or separate return; and

(2) Multiply the joint tax liability for the prior year by a ratio of each spouse's single or separate liability to the combined single or separate liabilities.

Example: Dan and Jessica filed a joint return for the calendar year 2008 showing taxable income of $63,000 and a tax after credits of $4,084. Of the $63,000 taxable income, $38,000 was attributable to Dan and $25,000 was attributable to Jessica. Dan and Jessica will file separate returns in 2009. The tax shown on the return for the preceding taxable year, for determining the required installments for 2009, is determined as follows: [Formula not included. See ED. NOTE.]
[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.587
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 4-2009, f. & cert. ef. 7-31-09

150-316.587(8)-(C)
Estimated Tax: Single or Separate Returns to Joint Return

For estimated tax payments beginning on or after Jan. 1, 1988, in computing the required instalment for the current year, the tax liability for the prior year may be used even though the current year is a joint return and the prior year's returns are single or separate returns. This is done by combining the net income tax amounts from the previous year's returns of both spouses. The previous year's returns of both spouses must be filed timely including extensions, must have a tax liability, and must cover 12 months.

Example: Al and Darlene filed separate income tax returns for the calendar year 1987, showing tax liabilities of $2,640 and $350, respectively. In 1988 they elected to file a joint return. For the purpose of determining the required instalment mentioned above, the previous year's net income tax would be $2,990 ($2,640 plus $350).
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.587
Hist.: 10-5-87, 12-31-87, Renumbered from 150-316.587(4)-(B); RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

Modifications of Taxable Income Generally

150-316.680-(A)
Oregon Lottery Winnings and Losses

(1) For purposes of this rule:

(a) "Oregon lottery losses" means the amount of wagering losses defined in Internal Revenue Code Section 165(d) that is attributable to the Oregon State Lottery which was includable in federal taxable income.

(b) "Oregon lottery" means all games administered by the Oregon State Lottery Commission including those games jointly administered by Oregon and other states.

(c) "Other wagering earnings" means the amount of wagering earnings that is included in Oregon taxable income.

(2)(a) For purposes of Ch. 316, Oregon lottery winnings referred to in Ch. are not included in Oregon taxable income, if:

(A) The ticket was purchased before January 1, 1998; or

(B) The ticket was purchased on or after January 1, 1998 and the winnings from that ticket minus the purchase price are $600 or less.

(b) Oregon lottery losses and other wagering losses are allowable for Oregon purposes to the extent that total wagering losses do not exceed total wagering earnings included in Oregon taxable income.

Example: Angela is receiving lottery prize payments of $20,000 per year for the next 15 years from a Powerball ticket purchased before 1998. She also has winnings from three Oregon lottery tickets she bought after 1997. Those three tickets paid $300, $400 and $750, respectively. During the current year, Angela won $800 in other gambling winnings. She spent $1,000 on Oregon lottery tickets and had $1,300 in other gambling losses. Angela determines her net Oregon adjustment to be a subtraction of $19,950, as follows: [Table not included. See ED. NOTE.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.680
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98

150-316.680-(B)
Modification of Federal Taxable Income: Interest and Dividends

(1) The character of interest and dividends received by an intermediary entity which owns the underlying obligations shall flow through to a taxpayer receiving a distribution from the intermediary entity.

(2) Oregon law allows the character of the interest or dividends to flow through to the taxpayer as if the taxpayer had received the interest or dividends directly from the obligor. If federal or Oregon law allows the character of such interest or dividends to flow through to the taxpayer, then such laws shall determine whether the distributions are taxable or nontaxable for Oregon purposes.

(3) No modifications will be allowed on the taxpayer's Oregon return if the intermediary entity is the guarantor of the taxpayer's principle and interest. See Example 6.

Example 1: Bill and Fay invested in a mutual fund in 1987 that invests in federal Series E obligations. The mutual fund holds title to the obligations. The mutual fund qualifies under ORS 316.683 to pay state exempt-interest dividends from the fund. Because the state exempt-interest dividends are treated as an item of interest described in ORS 316.680(1)(a), Bill and Fay may subtract those dividends from federal taxable income.

Example 2: Frank is a shareholder in an S corporation (qualifying as such for Oregon purposes after 12/31/82) which purchased some federal Series E obligations. Frank's share of income from the S corporation includes interest income from the Series E obligations. Federal law, IRC §1366, allows the character of the interest to flow through to Frank. Therefore, ORS 316.680(1)(a) allows Frank to subtract his share of the Series E interest from federal taxable income.

Example 3: Mary is a shareholder in a mutual fund. The mutual fund invests solely in obligations of this state. The mutual fund qualifies under IRC §852(b)(5) to pay exempt-interest dividends. Mary received a distribution of exempt-interest dividends from the fund. The exempt-interest dividends retain the character given to them by the underlying obligations owned by the fund. Therefore, since federal and Oregon law do not tax such income, Mary is not required to make a modification to her federal taxable income for such distributions.

Example 4: Susan is a shareholder in a mutual fund. The mutual fund invests solely in obligations of states (other than Oregon). The mutual fund qualifies under Internal Revenue Code Section 852(b)(5) to pay exempt-interest dividends. Susan received a distribution of the federally exempt-interest dividends from the fund. Since exempt-interest dividends retain the character given to them by the underlying obligations owned by the fund, and ORS 316.680(2) requires interest from other states' obligations to be added to federal taxable income, Susan shall add the amount of the distribution from the fund to her federal taxable income.

Example 5: Barbara is a shareholder in a mutual fund. The mutual fund invests solely in obligations of territories and possessions of the United States. The mutual fund qualifies under IRC §852(b)(5) to pay exempt-interest dividends. Barbara received a distribution of the exempt-interest dividends from the fund. The exempt-interest dividends retain the character given to them by the underlying obligations owned by the fund. The dividends retain the exempt character and are not taxed by federal. Federal law also prohibits states or other authorities from taxing interest on such obligations. Barbara is not required to make any modification to her federal taxable income for the distribution.

Example 6: Leo invests $500 in an interest bearing obligation issued by an investment firm. The obligation issued by the firm is a certificate entitling Leo to $1,000 payable by the firm in 1995. Although the firm makes investments in various securities, including U.S. government obligations, none of the interest received by Leo will qualify for subtraction on the Oregon return. The investment firm is liable for making repayment of the principal and interest, not the U.S. government.
Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.680
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-316.680(1)(a)
U.S. Government Obligations

(1) Interest and dividend income on obligations of the federal government which are exempt from state income taxation but not from federal income taxation shall be subtracted from federal taxable income in arriving at Oregon taxable income.

(2) Amounts that may not be subtracted include:

(a) Timely payments of interest by the insurer of obligations backed by the U.S. government;

(b) Interest received on federal tax refunds.

Example: Paul and Margaret filed a joint income tax return and received a federal tax refund from the U.S. Treasury Department for $1,200. This amount included $1,000 tax and $200 interest. The $200 interest amount does not qualify for the subtraction for interest or dividend income on U.S. government obligations as provided under ORS 316.680(1)(a).

(c) Interest received on obligations of territories and possessions of the United States. Interest on these obligations is not taxable for federal or state purposes and is not included in federal adjusted gross income so no subtraction is made on the Oregon return. Interest on the following obligations is not subtracted under ORS 316.680(1)(c):

(A) Territory of Guam;

(B) Commonwealth of Puerto Rico;

(C) Territory of Puerto Rico;

(D) Territory of Samoa;

(E) Territory of Virgin Islands;

(d) Income received from repurchase agreements. These are agreements in which a seller other than the United States sells securities (which can be federal obligations), and agrees to repurchase the same or similar securities at a price that includes interest for the period of the sale. The seller, in this case, is the true owner; and, the buyer merely receives interest under a contract with the seller. It is not interest paid by the United States, but it is income (or the equivalent to interest) paid by the seller at the time of repurchase.

(3) For interest received from organizations that invest in U.S. government securities refer to OAR 150-316.680-(B).

(4) If expenses connected with U.S. government obligations are claimed as an itemized deduction, an adjustment is required. These expenses include interest on indebtedness incurred to carry the bonds or notes and expenses incurred in the production of income from the bonds or notes. Oregon doesn't allow a deduction for these expenses, since the income from the bonds or notes is exempt from Oregon tax. The subtraction allowable under ORS 316.680(1)(a) shall be reduced by the amount of the expenses deducted in arriving at federal taxable income.

Example: Charles reported $500 interest income from Series EE Bonds. He borrowed $6,000 to purchase the bonds. During the year he paid $200 interest on the amount he borrowed. He claimed the $200 interest expense as an itemized deduction. His allowable subtraction under ORS 316.680(1)(a) of $300 is computed as follows: [Formula not included. See ED. NOTE.]

(5) Below is a list of obligations that may or may not qualify for the subtraction permitted under ORS 316.680(1)(a). [List not included. See ED. NOTE.]

[ED. NOTE: Formulas & Lists referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.680
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-316.680(2)(a)
Addition for Original Issue Discount (OID)

(1) The "original issue discount" (OID), as defined in section 1273 of the Internal Revenue Code, is considered as paid in lieu of interest on state and municipal obligations of other states, and is taxable for Oregon purposes.

(2) Holders of state and municipal bonds of other states (foreign states) shall include in income the sum of the daily portion of original issue discount determined for each day during the taxable year the bond is held. The original issue discount (OID) shall be prorated over the life of the bond using the federal rules for taxable securities under Section 1272 of the Internal Revenue Code and corresponding regulations.

Example: On July 1, 1987, Jack purchased a California municipal bond for $800. The bond matures in two years and has a stated redemption price of $1,000. The bond contains $200 of original issue discount (stated redemption price of $1,000 less issue price of $800). Because the bond does not provide for periodic payments of interest, a six-month accrual period ending December 31 and June 30 of each calendar year is used to determine the semiannual yield factor of 5.74 percent ($800 compounded semi-annually for two years at 5.74 percent is $1,000). The amount of the original issue discount included in income for the period ending December 31, 1987, is the issue price ($800), multiplied by the semiannual yield factor of 5.74 percent, or $45.90. The adjusted issue price (basis) at the beginning of the second accrual period is equal to the issue price plus the portion of original issue discount included in the first accrual period ($845.90 = $800 + $45.90). The includable original issue discount and basis is determined for each subsequent period in the same manner. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.680
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-316.680(2)(b)
Modification of Federal Taxable Income: Adding Interest or Dividends of the United States Exempted by Federal Income Tax Law

Interest or dividend income attributable to obligations of any authority, commission, instrumentality or territorial possession of the United States, which by the laws of the United States is exempt from federal income taxation but not from state income taxation, shall be added to federal taxable income. Costs incurred to carry the income-producing securities may be deducted, to the extent those costs are not already deducted in arriving at federal taxable income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.680
Hist.: 1-69; 12-70, Renumbered from 150-316.097(2)(b); 12-31-83; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-316.680(2)(c)
Modification of Federal Taxable Income: Adding Federal Estate Tax Attributable to Income in Respect of a Decedent Not Taxable by Oregon

The deduction allowed in the computation of federal taxable income for federal estate tax attributable to income in respect of a decedent must be added to federal taxable income to the extent that the deduction is allocable to income not taxable by Oregon. The federal estate tax deduction allowed in arriving at federal taxable income is computed in accordance with section 691(c) of the Internal Revenue Code and section 1.691(c)-1 of the Treasury Regulations. The amount thus computed must be allocated to the income in respect of a decedent not taxable by Oregon. The following formula will be used in determining the amount to be added to federal taxable income on the Oregon return: [Formula not included. See ED. NOTE.]

[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.680
Hist.: 11-73, Renumbered from 150-316.067(2)(g); 12-31-80, Renumbered from 150-316.067(2)(c); 12-31-83; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.680(2)(i)
Addition of Long-Term Care Insurance Premiums Claimed as Federal Deductions

(1) If the Oregon credit for long-term care insurance premiums is claimed and the premiums are also taken as a federal deduction, an Oregon addition is required. The taxpayer must add back to income on the Oregon return a specified percentage of medical expenses allowed as a deduction on the federal return. The specified percentage is determined as the amount of long-term care insurance premiums included in total medical deductions on the federal return divided by the total medical deductions on the federal return. The Oregon addition equals the specified percentage multiplied by the total allowed medical deductions on the federal return. See the examples for further clarification.

Example 1: Rebecca, age 35, paid long-term care insurance premiums of $1,200 during the tax year. Under Internal Revenue Code section

213(d)(10), she is limited to a $210 federal itemized deduction for the premiums. She has other medical expenses of $3,600 for a total of $3,810 in deductible medical expenses. After the 7.5 percent federal adjusted gross income (FAGI) limitation, her allowed medical itemized deduction is $175. Rebecca determines the specified percentage is equal to 5.5 percent ($210 ÷ $3,810). She multiplies that percentage by her allowed medical deduction of $175. The result is $10 ($175 x 5.5 percent), which is the addition she must include on her Oregon return.

Rebecca's Oregon credit under ORS 315.610 is based on the entire $1,200 of long-term care insurance premiums paid during the year.

Example 2: Sid paid long-term care insurance premiums of $1,200 during the tax year. He is over age 71 so his premium expenses are less than the federal limit under IRC 213(d)(10). His other medical expenses are $2,800 for a total of $4,000 in medical itemized deductions. After the 7.5 percent FAGI limitation, his allowed medical itemized deduction on the federal return is $2,050. On his Oregon return, Sid claims $1,950 as a special medical deduction under ORS 316.695(1)(d)(B).

Sid computes his specified percentage by dividing the long-term care insurance premiums claimed on his federal return by the total medical deductions allowed on the federal return. The result is 30 percent ($1,200 ÷ 4,000 = 30 percent). Sid multiplies the allowed medical expense on his federal return of $2,050 by 30 percent. The result is $615, which is the amount Sid must report as an addition on the Oregon return if he claims the Oregon credit.

Example 3: Don provides long-term care insurance coverage for his five Oregon employees and claims the credit under ORS 315.610. He deducts the $5,000 premium expense as a business expense on his federal return. Don also claimed a self-employed health insurance deduction of $400. His total medical itemized deductions include long-term care premiums of $200 and other medical expenses of $2,000. His allowed medical itemized deduction after the 7.5 percent limitation is $700. Don computes his specified percentage of 40.6 percentage by dividing total long-term care premiums of $5,200 ($5,000 + 200) by total medical expenses of $12,800 ($5,000 + 200 + 400 + 2,000).

Don multiplies the total allowed medical deductions on the federal return of $5,700 ($5,000 + 700), by 40.6 percent to determine his Oregon addition of $2,314.

(2) No addition is required if the taxpayer claims the standard deduction on the federal tax return but claims medical expenses as an itemized deduction for Oregon.

Example 4: Jose and Luisa claim the standard deduction on the federal return but itemize deductions for Oregon. Included in the Oregon itemized deductions is $1,000 of long-term care insurance premiums. Jose and Luisa may claim a credit of $150 for the premiums paid during the tax year. They are not required to make an addition on the Oregon return.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.680

Hist.: REV 5-2000, f. & cert. ef. 8-3-00

150-316.680(5)

Gain or Loss Upon the Sale of State and Municipal Bonds of Other States (Foreign States)

(1) Holders of state and municipal bonds of other states (foreign states) shall determine the gain or loss upon the sale or disposition of the bonds by following the federal rules for taxable securities under Internal Revenue Code sections 1271 to 1283 inclusive.

(2) Adjusted Issue Price: The adjusted issue price or basis of the bonds shall be the issue price increased by the total amount of original issue discount (OID) included in Oregon taxable income using the rules for federal taxable securities in section 1272 of the Internal Revenue Code and corresponding regulations. See OAR 150-316.680(2)(a) for example.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.680

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-316.681

U.S. Government Interest in Retirement Accounts

(1) Interest or dividends on U.S. obligations under ORS 316.680(1)(a) included in distributions from self-employed plans or individual retirement accounts as described under sections 401 to 408 of the Internal Revenue Code shall be subtracted from federal taxable income to determine Oregon taxable income.

(2) Annuities: The amount of the subtraction shall be determined by applying a "state exempt-interest ratio" to distributions received as annuity payments to the extent the payments are included in federal adjusted gross income for the taxable year. The "state exempt-interest ratio" is the year-to-date balance of qualifying interest or dividends under ORS 316.680(1)(a) included in the account balance prior to the current year distribution divided by the account balance prior to the current year distribution. The year-to-date balance of qualifying interest or dividends is equal to the cumulative total of those earnings less any prior year's subtraction. The formula is as follows: [Formula not included. See ED. NOTE.] The ratio shall be applied on the later of the annuity starting date or the date on which the taxpayer established residency. The annuity starting date shall be the date determined under Treas. Reg. Section 1.72-4(b).

Example 1: Sylvester Taxpayer set up an individual retirement account (IRA) which invested solely in U.S. Government securities throughout the life of the IRA. Sylvester contributed $2,000 per year for a period of 35 years to the IRA. At retirement his account balance is $542,041, of which $472,041 consists of interest and $70,000 the original contributions. His life expectancy is 20 years and the annual payout will be $63,668 paid at the end of each year. The rate of earnings equals 10 percent and for simplicity, the investments continue to earn at the rate of 10 percent.

Since the IRA continued to invest solely in U.S. Government securities after Sylvester retired, the numerator of the ratio for the first year's distribution would include all prior year's earnings plus the earnings for that year. The earnings for the first year of retirement equals $54,204. Therefore, the numerator in the ratio equals 526,245 (472,041 + 54,204). The account balance at the end of the first year equals $532,577 (Note: this is after the current year's distribution). We add back the current year's distribution to obtain the balance of the account just prior to the current year's distribution (the denominator in the formula).

Sylvester's tax-exempt interest for his first year of retirement is $56,193, computed as follows: [Formula not included. See ED. NOTE.]

In the third year the account earns $52,217, and the account balance at the end of the year is $510,716. Sylvester's tax-exempt interest that year is $57,491, computed as follows: [Formula not included. See ED. NOTE.]

This table illustrates **Example 1:** [Table not included. See ED. NOTE.].

Example 2: Assume the facts in Example 1, except the IRA which Sylvester set up ceased investing in U.S. Government securities the year in which Sylvester retired. Therefore, the balance of exempt interest earnings is equal to 472,041 for computing the first year's subtraction (the numerator of the ratio). It would not include the first year's earnings as in Example 1 since those earnings are not earnings on U.S. Government securities. For simplicity we will assume the investment is earning at the same rate (10 percent each year). Therefore, the account balance is the same as in Example 1. Sylvester's tax-exempt interest for his first year of retirement is $50,405, computed as follows: [Formula not included. See ED. NOTE.]

During Sylvester's second year of retirement the account earns $53,258, and the account balance at the end of the year is $522,167. His tax-exempt interest that year is $45,823, computed as follows: [Formula not included. See ED. NOTE.]

During Sylvester's third year of retirement the account earns $52,217, and the account balance at the end of the year is $510,715. His tax-exempt interest that year is $41,657, computed as follows: [Formula not included. See ED. NOTE.]

(3) Lump-sum distributions: For lump-sum distributions from individual retirement accounts and self-employed retirement plans, the subtraction shall be equal to the total qualifying interest under ORS 316.680(1)(a) included in the account balance at the time of distribution. This table illustrates Example 2: [Table not included. See ED. NOTE.]

Example 3: Assume the same facts as in Example 2, except that Sylvester elected to receive the $542,041 balance of his account as a lump-sum distribution. The subtraction for the taxable year is $472,041, the amount of U.S. government interest in the account.

(4) Change of status from nonresident to resident: Nonresidents who become residents sometime after the annuity starting date shall use the same formula for computation of the ratio as if they were residents at the annuity starting date. For purposes of the formula shown in subsection (2)(a), "a" will equal the year-to-date balance of qualifying interest or dividends which is equal to the cumulative total of those earnings less any prior years deemed or actual subtraction.

Example 4: Assume the same facts in Example 2, except Sylvester became a resident in the second year of distribution. Sylvester's subtraction would equal $45,823 in that year. Note: This is the same amount of subtraction Sylvester received in the second year of distribution as computed in Example 2. Sylvester's subtraction would equal $41,657 in the third year of distribution (same as if he were a resident at the annuity starting date).

[ED. NOTE: Formulas & Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.681

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.683(1)
Pool of Assets that Qualify to Pay State Exempt-Interest Dividends

As used in ORS 316.683(1), a "pool of assets" means funds that are managed by financial institutions acting in a fiduciary capacity for the benefit of trust beneficiaries. Financial institutions shall include, but not be limited to banks, savings associations, or credit unions. The pool of assets need not be incorporated as a regulated investment company in order to pay state exempt-interest dividends to its beneficiaries.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.683
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-316.685(1)
Federal Tax Deduction: Accrual Method of Accounting Required; Deductions Allowable to Cash Basis Taxpayers; Refunds to Be Included

(1) Regardless of the method of accounting used by the taxpayer to report income to the federal government and to the State of Oregon, the federal income tax deduction for tax years beginning on or after January 1, 1969, shall be computed under the accrual method of accounting. Under ORS 316.685, an individual's federal income tax for the year must first be computed. The amount of federal income tax for that year will be the taxpayer's deduction on the Oregon income tax return for the same year. Time of actual payment will not be significant.

(2) For tax years beginning January, 1979, or later, any additional federal tax for a prior year shall be deducted when the tax is paid or when the adjustment is finally determined, whichever is later.

Example 1: Cash basis taxpayers' computation of federal income taxes on their 1979 federal tax return was $550. Their federal withholding for 1979 was $600. The amount of taxes deductible on their 1979 Oregon return is $550. In 1980 their federal tax liability as computed on their federal return was $780. Their withholding for the year 1980 was $650. Their federal tax deduction for 1980 is $780.

Example 2: Assume the same situation as in Example (1) except that, in 1979, federal tax deficiencies amounting to $170 for 1976 and $180 for 1978 were paid. The total tax deduction for 1979 is: [Table not included. See ED. NOTE.] Total 1979 deduction is $900

(3) If a person receives a refund of federal income taxes previously deducted on an Oregon return, the amount received shall be added to income in the year in which the refund was received. However, a taxpayer should add only those refunds for which a prior tax benefit has been received.

Example: John and Mary compute their joint 1984 federal income tax to be $1,200. They had $1,700 withheld from wages and received a federal refund of $500. The Internal Revenue Service audited the return, resulting in a refund of $150 in 1986. They are required to add $150 to their 1986 Oregon taxable income.

(4) Federal Tax Deduction:

(a) For tax years beginning on or after January 1, 1987, the federal tax deduction on each return is limited to the lesser of:

(A) The amount of federal tax accrued attributable to the current year; or

(B) $3,000 ($1,500 if married filing separately).

(b) Refunds of federal tax for a prior year for which a previous tax benefit was received are included as income in the year received. The amount of the addition on the Oregon return is the amount of tax benefit received. Tax benefit is the amount of federal tax deducted in a prior year for which you received a refund in a later year.

Example 1: Dan and Karen have a 1987 federal tax liability of $4,000. They are limited to a $3,000 federal tax subtraction on their 1987 Oregon return. In 1989, their 1987 return is audited by IRS and they receive a $1,200 refund. Tax benefit received is calculated as follows: [Table not included. See ED. NOTE.]

(c) Additional tax for a prior year. The deduction for additional federal income taxes paid or determined for tax years beginning on or after January 1, 1987, is the lesser of:

(A) The amount of federal tax accrued attributable to the current year plus any deficiencies paid or determined for prior years during the current year; or

(B) $3,000 ($1,500 if married filing separately).

Example 2: Randy's 1989 federal tax liability is $2,100. During 1989, his 1987 federal return is audited by the IRS. After the audit, he owes $1,500 additional federal tax. He pays that amount in 1989. On his 1989 Oregon return, Randy may subtract a total of $3,000 federal tax. Of this, $2,100 is his 1989 federal tax liability. He may subtract $900 of the $1,500 of federal tax paid for 1987 on his 1989 Oregon return. [Table not included. See ED. NOTE.]

(d) If additional federal income taxes are paid or determined in tax years beginning on or after January 1, 1987, for tax years beginning on or before December 31, 1986, the deduction for the additional tax is the lesser of:

(A) The difference between the federal tax deducted on the original return and $7,000 ($3,500 if married filing separately); or

(B) The actual amount of additional federal income taxes paid or determined.

Example 3: Ralph and Louise have a 1989 federal tax liability of $4,500. Also in 1989, they amend their 1986 federal return and pay additional federal tax of $2,700. Their federal tax deducted on their original 1986 return was $5,200. Their federal tax subtraction for the 1989 federal tax is limited to $3,000 but because the additional federal tax paid is for a tax year beginning before December 31, 1986, the additional tax paid is not subject to the $3,000 limit. Their subtraction for the additional 1986 federal tax paid is the lesser of: [Table not included. See ED. NOTE.]

(5) If husband and wife change from separate returns to joint returns after the original return is filed, the federal tax subtraction to be claimed on the amended return shall be the amount of combined federal tax liability shown on the original returns subject to the dollar limitation in effect for the taxable year. Any additional tax due or refund from the amended federal return shall be reported on the Oregon return in the year paid or received.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.685
Hist.: 1-69; 12-70; 11-73; 9-74; 12-19-75; 11-19-76; 12-31-77; 12-31-78, Renumbered from 150-316.072; 12-31-79, Renumbered from 150-316.072(1); 12-31-83; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-316.685(2)
Adjustment of Federal Tax Liability

The federal tax liability accrued shall be the correct federal tax based on all information on the return. If, during processing, the Department recomputes and adjusts the federal tax liability, the adjusted tax shall be the amount accrued for that year.

Example 1: Because of a computation error on their joint federal return, A and B overstated their federal tax liability on both their federal and Oregon returns. When the Department processed the return, the federal tax liability was recomputed and reduced from the $500 reported on the return to $300. The $300 is the 1979 tax accrued and deducted in 1979. If the taxpayers receive a federal refund for the same $200, that amount should not be added to income in the year received.

Example 2: On their 1979 return, A and B claimed a federal tax subtraction of $1,000, which was the amount of federal tax withheld from their wages. Their federal tax liability was actually $2,500. When the Department processes the return, the federal tax deduction shall be increased to $2,500.

Example 3: A and B claimed a federal tax deduction of $5,000 for 1979. When their Oregon return was processed, the Department computed their correct federal tax liability to be $6,000. Their 1979 federal tax accrued in 1979 is $6,000.

In 1980, they are required to pay the additional federal tax of $1,000. Since the taxpayers have already received a benefit for the additional 1979 tax, they cannot deduct it in 1980.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.685
Hist.: 12-18-79(Temp); 5-20-80, Renumbered from 150-316.072(2); 12-31-83

150-316.687
Election to Include Child's Unearned Income — Addition Required

An addition to federal taxable income is required for taxpayers who elect to include a minor child's unearned income on their federal return. For federal purposes, unearned income in excess of a dependent's standard deduction, but less than twice that amount, is taxed at a special rate on a separate schedule and is not included in taxable income of the parent. For Oregon, this amount must be added to federal taxable income. The excess unearned income already included in the parent's federal taxable income requires no addition to the parent's return.

Example 1: Bob and Phyllis file a joint federal return for tax year 1997. Their son Ray has $1,700 interest income from a trust account. Bob and Phyllis elect to include Ray's unearned income in excess of the $650 exclusion on their 1997 federal return. For federal purposes, $650 is taxed at a special rate and $400 is included in taxable income. For Oregon, Bob and Phyllis must add $650 to federal taxable income. This is the $650 of Ray's unearned income that was taxed at the special federal rate. Since the remaining $400 is included in federal taxable income, no addition is required for this amount.

Example 2: Assume the same facts above, except that Ray's unearned income is only $750. For federal purposes, Bob and Phyllis exclude the first $650. The remaining $100 is taxed at the special federal rate. For Oregon, Bob and Phyllis must add $100 to federal taxable income.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.687

Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.693
Special Oregon Medical Subtraction

(1) Eligible Expenses. Expenses eligible for this subtraction are those authorized under IRC §213. Medical and dental expenses not allowed for this subtraction include expenses:

(a) Otherwise deducted in the calculation of Oregon taxable income for any tax period; or

(b) Paid on behalf of any other individual who is not an eligible taxpayer or eligible spouse of the taxpayer under ORS 316.693.

Example 1: Sam (age 66) and Rebecca (age 60) file a joint return and claim Rebecca's 80-year-old mother as a dependent. During the year, Sam and Rebecca paid $4,000 in medical and dental expenses: $1,000 for Sam, $1,000 for Rebecca and $2,000 for Rebecca's mother. Sam's medical expenses are the only medical expenses that qualify for the special Oregon medical subtraction because Rebecca does not meet the age requirement and Rebecca's mother is a dependent.

Example 2: Shannon and Dustin, both age 66, file a joint return with Oregon itemized deductions. During the year, Shannon and Dustin paid $18,900 in unreimbursed medical and dental expenses: $6,900 for self-employed health insurance premiums (claimed on the front of Form 1040), $10,000 for health insurance for two employees (claimed on Schedule C), and $2,000 of unreimbursed medical and dental expenses (claimed on Schedule A, line 1). Only the medical and dental expenses on Schedule A, line 1 ($2,000) can be used in the calculation of eligible expenses for the special Oregon medical subtraction because deduction for the self-employed health insurance was already used in the calculation of Oregon taxable income and employee insurance is not an eligible expense.

(2) Calculation of Eligible Expenses.

(a) General rule. The general rule is that if the expenses can be attributed to a particular individual, only that individual can claim those expenses.

Example 3: Mary (age 59) and Steve (age 66). Mary and Steve each have their own insurance policy and do not cover each other on the individual policies. Mary's premium is $350 per month and Steve's premium is $400 per month. The only expenses that are eligible to be considered for this subtraction are Steve's premiums, ($4,800). Depending on his income and the portion of Steve's premiums already included in itemized deductions on Schedule A, Steve may claim up to $1,800 as a special Oregon medical subtraction.

(b) Expenses that cannot be attributed to a particular individual. A taxpayer that cannot determine to whom the expense is attributable must prorate the expense using a method that is reasonable based on the taxpayer's particular facts and circumstances. Common examples of expenses that are not attributable to a particular individual include, but are not limited to, medical, dental or long-term care insurance premiums. Depending on the facts and circumstances, reasonable methods of proration for such expenses may include:

(A) Dividing the eligible expenses that are for more than one person by the number of individuals covered by the policy.

(B) In the case of spouses filing separate returns, splitting any eligible expenses paid out of a joint checking account in which the taxpayer and the taxpayer's spouse have the same interest equally, unless you can show otherwise.

Example 4: Branden (age 66) and Natalie (age 61) file a joint return with Oregon itemized deductions and three dependent children. During the year, Branden and Natalie paid $19,380 in medical expenses: $16,600 in health insurance premiums for a plan that covered Branden, Natalie, and all three children; $500 in dental expenses for Branden; $1,500 in medical expenses for Natalie; and $780 in medical and dental expenses for the children. Natalie and the children's medical and dental expenses do not qualify for this subtraction because Natalie does not meet the age requirement and the children are dependents. For Branden and Natalie, a reasonable method to calculate the joint expenses attributable to Branden is to divide the total health insurance premiums paid ($16,600) by the number of insured (5) to arrive at $3,320 for Branden's portion of the joint expenses. Add the additional medical expenses attributable to Branden, $500, to arrive at a total of $3,820 of eligible expenses.

(3) Taxpayer who itemizes deductions. If a taxpayer has already claimed a portion of the eligible expenses as an itemized deduction on federal schedule A, line 4, the taxpayer must make an adjustment for those eligible expenses already deducted. Only medical and dental expenses for an age-qualifying taxpayer that are not already deducted in the calculation of Oregon taxable income are eligible for the subtraction. The taxpayer must prorate medical and dental expenses included in itemized deductions to determine what portion is eligible for this subtraction.

Example 5: Jeff and Maggie, both age 64, file a joint return with Oregon itemized deductions and federal Adjusted Gross Income (AGI) of $55,000. Jeff and Maggie also claim Maggie's 84-year-old mother as a dependent. During the year, Jeff and Maggie paid $12,300 in unreimbursed medical and dental expenses: $3,400 for self-employed health insurance premiums (claimed on the front of the 1040), $1,200 for Jeff, $4,200 for Maggie, $1,500 for Maggie's mother, and $2,000 in long-term care insurance premiums for Jeff and Maggie.

Jeff and Maggie deduct the entire self-employed health insurance premiums on the federal return; therefore, they do not include those expenses in the calculation of the subtraction. They can only include the $8,900 of medical expenses claimed on Schedule A, line 1, to calculate the subtraction ($1,200 for Jeff, $4,200 for Maggie, $1,500 for Maggie's mother, and $2,000 in long-term care insurance premiums for Jeff and Maggie).

For Jeff and Maggie, a reasonable method to calculate their joint expenses is to divide by two the total long-term care insurance premiums paid ($2,000) to arrive at $1,000 for each individual. Add the additional medical expenses attributable to Jeff and Maggie to arrive at total eligible expenses before calculating the subtraction. Jeff's expenses total $2,200 ($1,200 + $1,000) and Maggie's expenses total $5,200 ($4,200 + $1,000). Jeff's expenses claimed on the Schedule A are 24.7% of the total expenses ($2,200 divided by $8,900). Maggie's expenses claimed on the Schedule A are 58.4% of the total expenses ($5,200 divided by $8,900). Jeff and Maggie could not deduct $5,500 of their expenses on Schedule A because of the AGI limitation. Jeff's portion of the expenses that were not deducted are $1,359 ($5,500 x 24.7%; rounded). Maggie's portion of the expenses that were not deducted is $3,212 ($5,500 x 58.4%). Based on their federal AGI, each of their expenses may not exceed $1,400 for this subtraction. Jeff's expenses are less than the limit, so his subtraction is limited to $1,359. Maggie's expenses are more than the limit, so her subtraction is $1,400. They will claim a $2,759 special Oregon medical subtraction on their return.

Stat. Auth.: ORS 305.100 & 316.693

Stats. Implemented: ORS 316.693

Hist.: REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.695(1)
Modification of Federal Taxable Income: Itemized vs. Standard Deduction

(1) The election of an Oregon taxpayer to itemize or claim a standard deduction is independent of the federal election. Beginning on or after January 1, 1978, a taxpayer may claim the greater of the Oregon standard deduction or net itemized deductions.

(2) The standard deduction is zero for Oregon taxpayers in the following cases:

(a) Married persons filing separate returns and their spouse itemizes;

(b) Nonresident aliens;

(c) Individuals making a return for a period of less than 12 months on account of a change in annual accounting period;

(d) Estates and trusts;

(e) A common trust fund;

(f) A partnership.

(3) Taxpayer claimed as a dependent.

(a) For a taxpayer who can be claimed as a dependent on another person's return, the standard deduction claimed by the dependent is limited to the lesser of:

(A) The amount allowed to a dependent under the Internal Revenue Code Section 63(c)(5) for the tax year; or

(B) The standard deduction amount as provided in ORS 316.695.

(b) In addition to the standard deduction, a taxpayer claimed as a dependent on another person's return can also claim the additional deduction amounts under ORS 316.695(7) if they are blind or age 65 or older.

Example 1: Brian is 17 and works part-time. He earned $2,000 wages and

$1,300 interest income in 1997. Brian is claimed as a dependent on his parents' 1997 return. His federal standard deduction is the greater of $650 or his earned income. Brian's $2,000 federal standard deduction, based on earned income, is limited by the Oregon standard deduction for a single person of $1,800. Therefore, Brian's standard deduction for 1997 would be $1,800.

Example 2: Assume the same facts as in Example 1, except that Brian is blind. Brian's total deduction is equal to $3,000 ($1,800 standard deduction + $1,200 additional deduction for being blind).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.695
Hist.: 12-31-80, Renumbered from 150-316.068(1); 12-31-83; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.695(1)(c)-(A)
Modification of Federal Taxable Income: Oregon Income Tax Claimed as an Itemized Deduction

Beginning in tax year 1991, if the taxpayer itemizes deductions for Oregon, the itemized deductions will be subject to the same phase-out requirement as required for federal income tax purposes under IRC Section 68. Oregon law allows federal itemized deductions, after the phase-out, reduced by any Oregon income tax that has been itemized for federal income tax purposes. To determine the amount of phased-out Oregon income tax that must be removed from total itemized deductions, taxpayers will use the following formula: [Formula not included. See ED. NOTE.] For Oregon, the taxpayers need to reduce the $93,000 of itemized deductions by $30,426 of Oregon income tax. Taxpayers have net Oregon itemized deductions of $62,574 ($93,000 - 30,426).

[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.695
Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-316.695(2)
Modification of Federal Taxable Income: Previously Taxed Contributions to Pension or Annuity

If part of the contributions toward the purchase of a pension or annuity was taxed by the state of Oregon and not taxed by the federal government, that part taxed by Oregon shall be subtracted from federal taxable income on the Oregon return. The subtraction allowed by this section shall be taken each year to the extent any amount is included in federal taxable income until the total amount taxed by Oregon and not taxed by the federal government in years beginning prior to January 1, 1969, has been recovered. Thereafter, the distribution will be taxed for Oregon income tax purposes in the same manner and amount as taxed for federal purposes.

Example: A retired employee began receiving benefits from a pension plan on January 1, 1975. In tax years beginning prior to January 1, 1969, Oregon taxed $3,000 of the contributions to the pension plan. None of the contributions were taxed for federal purposes. The taxpayer is receiving $2,000 each year, all of which is taxable for federal purposes. In 1975 the taxpayer will subtract $2,000 and in 1976 $1,000 from federal taxable income in arriving at Oregon taxable income. In subsequent years, Oregon will tax the same amount taxed for federal purposes.

This section applies to tax years ending on or after September 13, 1975.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.695
Hist.: 12-19-75, Renumbered from 150-316.068(3); 12-31-83; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-316.695(3)

150-316.707(1)-(A)
Basis of Depreciable Assets Moved into Oregon

(1) For purposes of this rule taxpayer means an individual, S corporation, or partnership.

(2) Taxpayers not subject to the apportionment provision of ORS 314.280 or 314.605 to 314.675.

(a) For Assets First Brought into Oregon's Taxing Jurisdiction in Tax Years Beginning After 1982 and Prior to Tax Years Beginning January 1, 1985.

(A) If a taxpayer first brings a depreciable asset into Oregon's taxing jurisdiction in tax years beginning after December 31, 1982 and prior to tax years beginning January 1, 1985, the asset shall be treated as if it is being converted from personal use to business use. The asset's Oregon basis shall be the lower of the federal unadjusted basis or fair market value. However, in no instance shall the asset's Oregon basis be greater than the lower of:

(i) The federal unadjusted basis less Oregon depreciation previously allowed for Oregon tax purposes; or

(ii) The fair market value less Oregon depreciation previously allowed for Oregon tax purposes.

(B) The federal unadjusted basis of an asset is its original basis prior to any adjustments (including, but not limited to, reductions for investment tax credits, depreciation, depletion, amortization, or amounts properly expensed under IRC Section 179). The asset's fair market value and its expected useful life shall be determined as of the time the asset was brought into Oregon's taxing jurisdiction. The taxpayer shall depreciate the asset using a method consistent with federal tax law as of December 31, 1980.

Example 1: A nonresident taxpayer has a business in California. The taxpayer has a light truck that is used only for business purposes. The truck was purchased on June 1, 1981 at a cost of $10,000. The truck was depreciated in California over a life of three years. The taxpayer moved to Oregon on September 1, 1983. The fair market value of the truck was $6,000 on this date. The expected useful life of the truck on September 1, 1983 was four years. The taxpayer elected to depreciate the truck using the straight-line method for Oregon purposes over four years. The amount of depreciation the taxpayer can claim in 1983 for Oregon purposes is $500 (4⁄12 x 1⁄4 x 6,000).

Example 2: Assume the same facts as in Example 1 above. The taxpayer sold the asset for $11,000 on January 1, 1985. The taxpayer shall recognize a total Oregon gain of $7,000. The type and amount of gain the taxpayer shall recognize for Oregon purposes is computed as follows: [Formula not included. See ED. NOTE.]

(b) For Assets First Brought into Oregon's Taxing Jurisdiction in Tax Years Beginning After 1984. Assets first brought into Oregon's taxing jurisdiction in tax years beginning after December 31, 1984, shall be allowed to use the Accelerated Cost Recovery System (ACRS) method of depreciation as defined and allowed in IRC Section 168 for Oregon purposes, if such assets were first placed in service in tax years beginning after December 31, 1984 pursuant to the conditions set forth in OAR 150-316.707(1)-(B). The basis of all assets first brought into Oregon's taxing jurisdiction beginning after December 31, 1984, shall be computed as if the asset is being converted from personal use to business use. The asset's Oregon basis shall be the lower of the federal unadjusted basis or fair market value. However, in no instance shall the asset's Oregon basis be greater than the lower of:

(A) The federal unadjusted basis less Oregon depreciation previously allowed for Oregon tax purposes; or

(B) The fair market value less Oregon depreciation previously allowed for Oregon tax purposes. The allowable depreciation method for Oregon purposes shall be determined as of the time the asset was first placed in service as defined in OAR 150-316.707(1)-(B).

Example: Mike is a California resident. He has owned a beanery business in Yreka since 1984. Mike purchased an office building for $100,000 and placed it in service on April 1, 1984. For federal purposes, the building qualifies as 18-year real property and is being depreciated using the applicable percentages allowed under ACRS. On January 1, 1988, Mike purchased his only other asset, a light truck, for $10,000. For federal purposes, the truck qualifies as a 5-year property and is being depreciated using the applicable percentages allowed under MACRS. On January 1, 1990, Mike moved to Ashland, Oregon and continued his California business in Yreka. Since Mike has moved into Oregon's taxing jurisdiction, Mike must determine his Oregon adjusted basis in the building and the truck in order to depreciate the assets for Oregon. The Oregon adjusted basis is computed as follows: [Formula not included. See ED. NOTE.]

The Oregon basis for depreciation of the building is the lesser of the net basis of $100,000 or fair market value of $115,000. The basis for Oregon depreciation is $100,000. Since Oregon did not adopt ACRS for assets first placed in service in tax years beginning before January 1, 1985, Mike must use an allowable depreciation method available for such assets using the federal laws in effect as of December 31, 1980. Mike elects for Oregon purposes to depreciate the building using the straight-line method over a useful life of 14 years.

The Oregon basis for depreciation of the truck is the lesser of the net basis of $10,000 or fair market value of $6,000. The basis for Oregon depreciation is $6,000. Since Oregon adopted ACRS for assets first placed in service in tax years beginning after December 31, 1984, and subsequently MACRS for assets placed in service in tax years beginning after December 31, 1986, Mike will use MACRS for his Oregon and federal depreciation deduction.

(3) For taxpayers subject to the apportionment provisions of ORS 314.280 or 314.605 to 314.675. The basis for depreciation on a previously acquired asset shall be computed as if the taxpayer had always been subject to Oregon tax. The original unadjusted basis shall be reduced by the depreciation allowable in previous years, using a method acceptable for Oregon tax purposes in the year the asset is placed in service. The remaining basis of the asset shall be depreciated over the remainder of its original useful life, using the same allowable method.

Example: Alpha, Ltd. is a partnership that started operation in Washington. On January 1, 1984, the partnership purchased a building in Seattle for $100,000. For federal purposes, the partnership is depreciating the building under ACRS as 15-year property. The partnership expanded and began doing business in Oregon on July 1, 1986. In 1984 Oregon did not allow the ACRS depreciation method. For Oregon purposes, the partnership elected to depreciate the building under the straight-line method over a 20-year life. Since the partnership is subject to the apportionment rules, the basis of the building for Oregon will be as if the building was depreciated for Oregon tax purposes using the straight-line method from the date of purchase. [Formula not included. See ED. NOTE.]

For purposes of determining Oregon taxable income, the partnership will depreciate the building using an Oregon basis of $87,500 and the straight-line method over the remaining life. For purposes of determining federal taxable income, the partnership will continue to depreciate the building under ACRS.

(4) Bringing assets into Oregon's taxing jurisdiction. A taxpayer may bring assets into Oregon's taxing jurisdiction in several different manners. First, a nonresident may become an Oregon resident and physically bring business assets into Oregon. Second, a nonresident taxpayer may become an Oregon resident and leave the assets in the other state. Third, a nonresident may open a business operation in Oregon and transfer business assets from a different state to the Oregon business.

(5) Applicable dates. Section (2) of this rule applies to tax years beginning after December 31, 1982.

(6) Five year provision. If for any period of five consecutive calendar years beginning on or after January 1, 1985, the Oregon and federal depreciation methods are identical, the Oregon basis for depreciation may be the same as the federal basis at the option of the taxpayer. This election applies only to assets first brought into Oregon's taxing jurisdiction upon the expiration of the five-year period.

[ED. NOTE: Formulas referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.707
Hist.: 12-20-83, 12-31-83(Temp); RD 2-1984, f. & cert. ef. 2-21-84, Renumbered from 150-316.707; RD 10-1986, f. & cert. ef. 12-31-86; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-316.707(1)-(B)(1) General
Property Subject to Accelerated Cost Recovery System

(1)(a) In general, the Accelerated Cost Recovery System (ACRS) is available to recovery property placed in service in tax years beginning on or after January 1, 1985. "Recovery Property" means tangible property of a character subject to the allowance for depreciation. This property must be used in a trade or business or be held for the production of income.

(b) Property is considered placed in service when it is in a condition or state of readiness and availability for a specifically assigned function whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity. Where property was placed in service for personal use in a tax year which begins before 1985 and is thereafter converted to business or income producing use, the property is not recovery property for Oregon purposes.

Example: Beth Muhlenberg purchased her personal residence in 1978. She is a calendar year taxpayer. On November 15, 1985 she converted her residence to rental property. The residence is considered to be placed in service when it is in a condition of readiness for a specifically assigned function whether in a trade or business, for the production of income, in a personal activity, etc. This occurred in 1978. Thus, the rental property is not considered recovery property for Oregon purposes.

(2) Property Excluded from ACRS Treatment.

(a) Recovery property does not include property which is placed in service by the taxpayer prior to the taxpayer's tax year which begins in 1985.

(b) Recovery property does not include property which is the subject of transactions referred to in Internal Revenue Code (IRC) Section 168(e)(4). For purposes of this rule, the following dates shall be substituted for dates used in IRC Sections 168(e)(4):

(A) For "after December 31, 1980" substitute "in taxable years beginning on or after January 1, 1985;"

(B) For "1980" substitute "the taxpayer's tax year which begins in 1984;" and

(C) For "January 1, 1981" substitute "the taxpayer's tax year which begins in 1985."

(c) Recovery property does not include property which is described in IRC Sections 168(e)(2), 168(e)(3), and 168(e)(5).

Example 1: Dr. Randall Farwell purchased and placed in service $20,000 of dental equipment on January 18, 1984. Dr. Farwell is a calendar year taxpayer. The equipment is IRC Section 1245 class property. On June 1, 1985, Dr. Farwell decides to sell the equipment to Laura Ryan by contract under which Dr. Farwell will lease back and use the same dental equipment. Laura Ryan, is precluded from using the ACRS method because Dr. Farwell used the same equipment in a tax year prior to 1985.

Example 2: Dee Brinlee purchased a house which she used as rental property in 1979. Dee is a calendar year taxpayer. Since 1984, she has been trying to sell her rental house. On July 2, 1985, she sold her rental house to her daughter Jennifer. Jennifer uses the house as rental property. The house is not recovery property to Jennifer since Jennifer bought the property from a "related person" who used it in tax years prior to January 1, 1985.

Example 3: In 1980 through 1984, Gary Humphrey was in business as a sole proprietorship. Gary is a calendar year taxpayer and incorporates his business during 1985 with Gary as the sole shareholder. The depreciable personal and real property, having an adjusted basis of $50,000, was transferred to the corporation in a nontaxable transfer under IRC Section 351. Since the adjusted basis of the transferred property is carried over to the corporation, the corporation may not use ACRS with respect to the $50,000 transferred basis.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.707
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-316.707(1)-(C)
Adjustment to Income for Basis Differences

On the return for the first taxable year beginning after December 31, 1995, federal taxable income shall be increased or decreased by an amount equal to the difference between the property's adjusted federal basis as determined for regular tax purposes and its adjusted Oregon basis due to the use of different federal and Oregon depreciation methods, periods, or conventions, as defined by IRC 168. If the adjusted Oregon basis is less than the adjusted federal basis, the modification shall be an addition. If the adjusted Oregon basis is greater than the adjusted federal basis, the modification shall be a subtraction. For tax years beginning after December 31, 1996, no modifications to depreciation expense shall be made as a result of using different depreciation methods, periods, or conventions prior to January 1, 1996.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.707
Hist.: RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-316.737
Amount Specially Taxed Under Federal Law to Be Included in Computation of State Taxable Income: Accumulation Distributions

(1) Oregon law contains no alternate method of calculating tax in the manner provided by the Internal Revenue Code for the federal tax treatment of accumulation distributions. Therefore, income from an accumulation distribution must be added to Oregon taxable income.

(2) Distribution of a trust's income accumulation must be included in the income of the Oregon resident beneficiary for the taxable year that such income is distributed by the trust. The distributions are included in Oregon income in the same manner and to the same extent that the trust's income accumulations are includable in the taxable income of the beneficiary under federal law. The change in the Oregon fiduciary adjustment will also be distributed to the beneficiary.

Example 1: In 1987, the ABC trust had $27,596 of gross income. Of this amount, $15,496 was included in distributable net income (DNI). The other $12,100 was capital gain income, which was not included in DNI. The trust made a distribution of $9,460 to the beneficiary, leaving $6,036 in undistributed net income (UNI). After the $9,460 distribution deduction and the $100 exemption, the trust's federal taxable income was $18,036 ($12,000 capital gain plus $6,036 UNI).

On the Oregon return, the total fiduciary adjustment was ($10,862), of which the beneficiary's share was ($6,626), leaving ($4,236) as the fiduciary's share. The fiduciary's Oregon taxable income was $13,800 ($18,036 minus $4,236), and the Oregon tax was $1,102.

In 1993, the trust distributed more DNI to the beneficiary than the current year's DNI amount, resulting in a distribution of the 1987 accumulated income. The addition to Oregon income is the taxable accumulation distribution as defined in the Internal Revenue Code, Sections 665–668. The beneficiary is also allowed an additional fiduciary adjustment amount, based on the additional 1987 DNI distributed in 1993. This additional amount is calculated as follows: [Formula not included. See ED. NOTE.]

(3) See OAR 150-316.287 for the limitations imposed on the portion of the fiduciary subtraction allowed to the beneficiaries.

(4) The change in fiduciary adjustment will be distributed to the beneficiaries in the same allocable portions as the income was distributed, according to the provisions in the trust instrument.

Example 2: If there's only one beneficiary, they will receive the entire $2,064 subtraction calculated in the previous example. If there are two beneficiaries who each get one-half of the income, they will each get one-half of the additional fiduciary adjustment.

(5) Income accumulation distributions of a trust must be included in the income of a nonresident beneficiary for the taxable year that distribution is actually made by the trust. The distributions are included in the adjusted gross income of a nonresident in accordance with the provisions of ORS 316.127. The nonresident will also be allowed the change in fiduciary adjustment to the extent this change is applicable to Oregon source income.

(6) A copy of the Schedule J of federal Form 1041, "Allocation of Accumulation Distribution," shall be attached to the Oregon fiduciary return for the taxable year of distribution, and a copy of federal Form 4970, "Tax on Accumulation Distribution of Trust," shall be attached to the Oregon return of the beneficiary.

(7) For information about calculating the accumulation distribution credit for Oregon taxes paid by a trust during income accumulation years, see OAR 150-316.298.

[ED. NOTE: Formulas referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.737

Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-316.752
Definition for Severely Disabled Exemption

"Physical or mental condition" means an impairment of the body which is of such gravity as to prevent a person from engaging in normal activity without the aid of special equipment or assistance.

Examples of severe disabilities include cerebral palsy, multiple sclerosis, and brain damage. These disabilities may or may not be permanent. Disabilities due to surgery, hospitalization, disease, or injury or acute infectious diseases do not qualify where a person can be expected to resume a normal life within a generally accepted recovery period.

If the disabled person was employed in a substantially gainful occupation, the fact that a physical or mental condition will not permit the resumption in the same occupation will not, in and of itself, qualify the taxpayer for the exemption.

Example: A baseball player was injured in an accident and was unable to resume that occupation. Subsequently, the player was employed full time as a sales representative of a sports company. The player received disability compensation from the former employer. The taxpayer is not eligible for the exemption.

"Orthopedic or medical equipment" means special equipment approved and recommended by a physician. The equipment should alleviate some or all of the difficulties which result from the physical or mental condition and contribute to the person's mobility and independence. Examples of such equipment includes, but are not limited to, wheelchairs, special braces, prosthesis or special crutches. Special equipment does not include: glasses, ordinary crutches, hearing aids and protective gloves.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.752

Hist.: 12-6-82, 12-31-82, Renumbered from 150-316.135; 12-31-83; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97

150-316.758
Exemption for Blind and Severely Disabled

(1) Oregon allows a personal exemption credit (in the amount determined under ORS 316.085) multiplied by the number of personal exemptions claimed under IRC Section 151. If a taxpayer or spouse qualifies for the additional standard deduction for blindness as defined under ORS 316.695(8)(d), the taxpayer or spouse also qualifies for the credit for severely disabled as defined under ORS 316.752(1)(c).

(2) The additional personal exemption will be allowed even if the taxpayer can be claimed on another taxpayer's return and is unable to claim their own personal exemption.

Example: Sam is 23 years old and blind. He qualifies as a dependent on his parents' return. Because Sam is over the age of 17, his parents cannot claim the additional exemption for their dependent disabled child allowed under ORS 316.099. Sam invests in a partnership and is required to file a tax return for federal and state purposes. Since his parents are eligible to claim him on their return, he cannot claim his own personal exemption. Sam is allowed to claim the additional exemption for being severely disabled allowed under ORS 316.758 and the additional standard deduction for being blind.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.758

Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96

150-316.771
Substantiation for Permanently Severely Disabled

(1) Upon audit, taxpayers who are permanently severely disabled shall have available a letter from a physician, which substantiates their disability. The letter must:

(a) State the nature and extent of the physical disability in layman's terms; and

(b) Confirm that the disability is of a permanent nature according to the requirements for permanent severe disability stated below.

(2) "Permanently severely disabled" taxpayer means a taxpayer who:

(a) Meets and continues to meet the qualifications for severely disabled under ORS 316.752; and

(b) Has a disability that is reasonably certain to continue throughout the life of the taxpayer; and

(c) Has a disability of such a character that there is no likelihood of improvement.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.758

Hist.: 12-6-82, 12-31-82, Renumbered from 150-316.138; 12-31-83; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-316.777
Exempt Income of Native Americans

(1) ORS 316.777 exempts from Oregon taxation certain income earned by an enrolled member of a federally recognized Indian tribe. To qualify under these provisions, at the time the income is earned the tribal member must reside in "Indian country" in Oregon, and the income must be derived from sources within Indian country in Oregon. A tribal member who resides outside of Indian country can not exclude income from Oregon tax under the provisions of ORS 316.777. The person is subject to the statutes and rules governing Oregon residents and nonresidents and is taxed accordingly.

(2) Definitions: For purposes of this rule:

(a) "Current reservation boundaries" means the boundaries in existence at the time of the transaction.

(b) "Indian country" means any federally recognized Indian reservation in Oregon or other land in Oregon that has been set aside for the residence of tribal Indians under federal protection, and includes:

(A) Any land within the current reservation boundaries of a federally recognized reservation regardless of ownership.

(B) Tribal- or member-owned land outside current reservation boundaries if held in trust for the benefit of the tribe or its members.

(C) Land that the federal government allotted to a tribal member that since the time of the allotment has been continuously either:

(i) Held in trust by the federal government for the benefit of an individual tribal member(s), i.e. a trust allotment; or

(ii) Owned by a tribal member(s) with continuing federal restrictions against sale of the land, i.e., a restricted allotment.

(3) Income derived from sources within Indian country includes:

(a) Wages earned for work performed in Indian country;

(b) Income from a business or real estate located in Indian country;

(c) Distributions, including earnings, from retirement plans, if the contributions to the plan were derived from or connected with services performed in Indian country;

(d) Unemployment compensation, if the benefits are received as a result of work performed in Indian country;

(e) Interest, dividends, capital gain from the sale of stock, and other income from intangibles regardless of the location of the bank accounts or other intangible assets.

(4) To be exempted from Oregon personal income tax withholding, a tribal member whose wages are exempt from Oregon tax must furnish the member's employer with an extract from the tribal rolls as proof of enrolled status. Any employer of a qualified exempt tribal member who has documentary proof under this rule must keep this proof as part of the employer's payroll records.

(5) The following examples illustrate the provisions of this rule:

Example 1: Margaret, an enrolled member of the Confederated Tribes of Warm Springs, lives and works on the reservation of the Confederated Tribes of the Umatilla Indian Reservation. Under ORS 316.777, her income is exempt from state income tax.

Example 2: Claire, an enrolled member of the Coquille Indian Tribe, resides on reservation land in Oregon and works as an accountant for the city of Coos Bay at City Hall. Claire's income is taxable by Oregon because she resides on, but does not work on, Indian country on Oregon.

Example 3: Charles, an enrolled member of the Confederated Tribes of the Umatilla Indian Reservation, resides on the reservation of the Confederated Tribes of the Umatilla Indians. For six months of each year, he works on a fishing trawler off the Alaska coast. During the remaining six months, he is employed as a forester by the Blue Mountain Timber Company. None of his work is performed in Indian country. Charles owns a Certificate of Deposit, (CD), at a bank in Portland, Oregon. Charles is taxed on the income he earns fishing in Alaska and on his wages from the timber company because none of that income is earned in Indian country. Charles is not taxed on the interest from the CD because that income is considered to be earned on the reservation on which he lives.

Example 4: Using the facts in Example 3, assume that Charles is retired and receives a pension from the lumber company. His pension income is subject to state tax because the contributions made to the plan were not related to services performed in Indian country.

Example 5: William, an enrolled member of the Navajo Nation, is a resident of the Navajo Nation reservation in Arizona. During the summer months, he temporarily lives and works on the reservation of the Burns Paiute Tribe in Oregon. Under ORS 316.777, Oregon will not tax any of William's wages earned on the reservation of the Burns Paiute Tribe because he lives and works in Indian country in Oregon and he is an enrolled member of a federally recognized Indian tribe.

Example 6: John, an enrolled member of the Confederated Tribes of the Grande Ronde, resides on land that he inherited from his father's estate. The land came into John's family through an allotment by the federal government to tribal members. The federal government holds the land in trust for the benefit of John. It is allotment land. As long as John lives on allotment land and works in Indian country, his income is exempt from Oregon tax.

Example 7: Ben, an enrolled member of the Confederated Tribes of the Grande Ronde, lives on land that a prior owner, who was also a tribal member, received from the federal government in an allotment. Ben owns the land, but the federal restrictions prohibit him from selling it. Those restrictions have been in place since the federal government allotted the land, but they will be lifted next month. The land is allotment land now, but it will not be after the restrictions are lifted. Once the federal restrictions are lifted, all of Ben's income is taxed by Oregon. The land is no longer Indian country and Ben may sell the land.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.777

Hist.: RD 11-1985, f. 12-26-85, cert. ef. 12-31-85; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-316.778

Oregon Investment Advantage Business Income Exemption

(1) Definitions. For purposes of ORS 316.778 and this rule, "business firm's income" has the meaning given the term "business income" in ORS 314.610(1) and OAR 150-314.610(1)-(A).

(2) Computing exempt income. Any ratio contained in the formulas outlined in ORS 316.778 may not be greater than 100 percent or less than zero.

(3) Method of determining the business firm's income derived from the activities at the certified facility. A business firm's income derived from the firm's activities at a certified facility is determined by multiplying the total business income of the business firm by a fraction, the numerator of which is the total sales from the certified facility during the tax period, and the denominator of which is the total sales of the business firm everywhere during the tax period.

Example 1: Wee Company had sales of $2,250,000 from its certified facility. Total sales of Wee Company were $3,450,000. Business income of Wee Company for the same fiscal year equaled $500,000. Wee Company computes its income derived from the certified facility as follows: $2,250,000 (Sales from certified facility) ÷ $3,450,000 (Total firm sales) = 65.2 percent. $500,000 (Business income) x 0.652 = $326,000 (Business firm's income derived from certified facility).

(4) Intra-firm transfers. If a business firm transfers product from a certified facility to a non-certified facility without a sale actually occurring (intra-firm transfer), the business firm must impute sales to the product transferred from the certified facility to use the method prescribed in section 3 of this rule.

(a) Imputing sales value for transferred production when part of total production is transferred. If a business firm transfers some of its production at the certified facility to a non-certified facility without a sale actually occurring (intra-firm transfer), the business firm needs to impute the sales value of the transferred production. This is necessary in order to determine sales from the certified facility. To impute the sales value, the taxpayer must first compute a ratio, the numerator of which is the total sales for all other items sold from the certified facility and the denominator of which is the cost of goods sold (COGS) for all other items sold from the certified facility. This ratio is then multiplied by the COGS of the transferred product to determine its imputed sales value.

Example 2: Zee Company has two facilities in Oregon. One is a tackle box manufacturing facility in the Willamette Valley. The other is a new part-making facility that qualifies as a "certified facility" under ORS 316.778(6)(b). The part-making facility builds parts R, S, T, and U. Zee Company makes the R-Parts for internal use in building the tackle boxes. The part-making facility sold S, T, and U Parts for $675,000 to companies other than Zee Company. Zee Company's total sales for the fiscal year were $2,175,000 ($1,500,000 from tackle box sales and $675,000 from S, T, and U Parts sales). Zee Company's business income for the same fiscal year was $1,250,000. To determine sales value derived from R-Parts produced at the certified facility, Zee Company computed the ratio of total sales from parts S, T, and U over the cost of goods sold (COGS) for parts S, T, and U and multiplied the result by the COGS for R-Parts to determine the value of tackle box sales attributable to R-Parts. Zee Company calculated that COGS for R-Parts was $200,000. COGS for S-Parts was $100,000 and sales were $200,000; COGS for T-Parts was $50,000 and sales were $75,000; and COGS for U-Parts was $300,000 and sales were $400,000. Sales value computed as follows: $675,000 (Total sales for parts S, T, and U) ÷ $450,000 (COGS for parts S, T, and U) = 1.5 $200,000 (COGS for part R) x 1.5 = $300,000 (Sales value attributed to R-Parts) Zee Company uses $300,000 of the total sales of the tackle boxes as sales value attributable to the certified facility for R-Parts. Zee Company uses $975,000 ($675,000 + $300,000) as the sales attributed to the certified facility to determine the amount of income that is exempt from tax.

(b) Imputing sales for transferred production when all product is transferred. If a business firm transfers all of its production at the certified facility to a non-certified facility without a sale actually occurring (intra-firm transfer), the business firm must impute the sales value attributed to the production transferred in order to determine sales from the certified facility. To impute the sales value for product transferred, the taxpayer uses a ratio of COGS of the transferred production over COGS of all production. This ratio is then multiplied by total sales for the non-certified facility.

Example 3: Tee Company operates a wholesale facility in Southern Oregon. It has a processing plant in Eastern Oregon that is a certified facility. The processing plant transfers all of its output to the wholesale facility. Tee Company's total sales from all activities were $20,000,000. Cost of production at the processing plant was $4,000,000. The total cost of all goods sold (COGS) was $18,000,000. Tee will use $4,440,000 of total sales from the wholesale facility to determine the business firm's income that is attributable to the certified facility computed as follows: $4,000,000 (Cost of processing plant output) ÷ $18,000,000 (Total COGS) = 22.2 percent $20,000,000 (Total sales) x 0.222 = $4,440,000 (Sales attributed to certified facility).

(c) Alternate approach for imputing sales value. If a taxpayer's circumstances do not substantially meet the standards for imputing sales value in this rule, the taxpayer must consult with the department on an appropriate allocation approach based on that taxpayer's facts and circumstances.

Stat. Auth.: ORS 305.100, 316.778
Stats. Implemented: ORS 316.778
Hist.: REV 3-2006, f. & cert .ef. 7-31-06

150-316.792
Military Pay Subtraction

(1) Definitions.

(a) "Uniformed services" refers only to services under the orders of the President of the United States and means the commissioned corps of the National Oceanic and Atmospheric Administration (i.e., the Coast and Geodetic Survey) and the Public Health Service (regular and reserve), consistent with 10 USC § 101(a)(5)(B) and (5)(C). Other members of the National Oceanic and Atmospheric Administration and the Public Health Service, or members of these organizations not under the orders of the President, are not included in this definition and would not qualify for an Oregon military pay subtraction.

(b) "Home of the taxpayer" is where the taxpayer does any of the following:

(A) Maintains his or her primary residence;

(B) Lives with his or her family; or

(C) Incurs continuing living expenses, such as mortgage or rent, utilities, and real and personal property taxes and insurance.

(2) Military pay subtraction. A member of the Armed Forces as defined in ORS Chapter 316 and this rule may subtract the following from their taxable military pay:

(a) Year of entry-Year of discharge. Military pay earned for services performed outside of Oregon.

(A) Year of discharge includes termination of full-time active duty from the Armed Forces of the United States.

(B) Year of entry is for initial enlistment or draft and only allowed one time per taxpayer, but the subtraction for year of discharge is allowed each time a taxpayer is discharged.

(C) The date of the enlistment order or date of discharge is the applicable tax year.

Example 1: Brian is domiciled in Oregon and remains domiciled in Oregon for all years relevant to this example. He enlists in the U.S. Army for the first time in 2004 and is stationed in California. In 2008, he is discharged and moves back to Oregon. The Army offers him a position in Portland, Oregon. He accepts the offer and reenlists shortly after the discharge. In 2012, Brian is reassigned to Florida. He plans to retire from the Army in 2024 and move back to Oregon. Brian will qualify for a subtraction of all military pay earned outside Oregon for tax year 2004 because that is his initial year of enlistment into the Armed Forces. He will also qualify for a subtraction for all of his military pay earned outside Oregon for tax years 2008 and 2024 because both years are treated as a year of discharge. From 2008 to 2012, he will qualify for a subtraction of $6,000 of his military pay while stationed in Oregon.

Example 2: Karen is domiciled in Oregon and remains domiciled in Oregon for all years relevant to this example. She enlists in the U.S. Navy in 2000 and is discharged in 2004 and returns to Oregon. Karen decides to reenlist in 2005 at which time she leaves Oregon and is assigned outside Oregon for the rest of her military career. In 2021, she retires from the Navy and returns to Oregon. Karen qualifies for a subtraction of military pay earned outside Oregon for tax year 2000 because that is her initial year of enlistment into the Armed Forces. She will also qualify for a subtraction for her military pay earned outside Oregon for tax years 2004 and 2021 because both years are treated as a year of discharge. Karen does not qualify for a subtraction for her military pay earned outside Oregon in 2005 under the year of entry or year of discharge rules because it was not her initial year of entry. However, she may subtract all of her military pay earned outside Oregon for that year under the subtraction for service performed outside of Oregon discussed in subsection (2)(b) of this rule.

(b) Service outside Oregon. Military pay earned for service performed outside of Oregon from August 1, 1990, to the date set by the President as the end of combat activities in the Persian Gulf Desert Shield area can be subtracted (Executive Order 12744).

Example 3: Jan enlisted in the Air Force Reserves in 2010. She was called to active duty September 15, 2013, and shipped to Fort Lewis, Washington. She earned a total of $10,000 military pay in 2013. $2,000 was earned in Oregon before September 15. She qualifies to subtract her military pay earned outside Oregon after September 15. Jan also qualifies to subtract the remaining $2,000 because it is less than $6,000. Her military pay subtraction is $10,000.

Example 4: Mike enlisted in the Oregon Army National Guard in 2000. He was called to active duty on August 1, 2013 and assigned outside Oregon. He earned $15,000 in military pay -- $10,000 prior to August 1, and $5,000 after. Mike's military pay subtraction for 2013 is $11,000 ($5,000 for service performed outside Oregon and up to $6,000 of his remaining military pay).

(c) Reserve component members away from home overnight. The taxpayer is "away from home" when the taxpayer is required to stay in a temporary location that is not a home of the taxpayer and is not allowed to go home while at the temporary location. The pay earned while away from home for 21 days or longer may only be subtracted by someone who is a member of a reserve component; reserves or National Guard.

Example 5: Hallie is a member of the Army National Guard assigned to her unit in Medford and earned a total of $12,000 for the year. She was required to go on assignment to Umatilla from April 5 to June 23 and stayed overnight in that area. Hallie wasn't authorized to go home during this time. She may subtract the $3,000 she earned during her assignment because she was away from home overnight for 21 days or longer. She may also subtract $6,000 of her remaining military pay.

(d) Other military pay. Any taxable military pay that is not eligible for one of the above subtractions may be subtracted up to $6,000. The military pay subtraction may not exceed the taxable military pay on the return. If both taxpayers on a joint tax return are eligible for a military pay subtraction, each person's subtraction is separately figured before adding them together to report on the return.

Example 6: Joe is a member of the Marine Corps and on active duty for all of 2013. He is domiciled and stationed in Oregon. He earned $25,000 of military pay during 2013. Joe's military pay subtraction is $6,000.

Example 7: Mary and Clyde are married and both members of the Army National Guard. During 2013, Mary was stationed overseas on active duty for 10 months. She received $1,000 of military pay before she was deployed. During her deployment she received $28,000 and $15,000 of that was excluded from federal taxable income. Of the total $29,000 she made, she's only reporting $14,000 as taxable income. She qualifies for a military pay subtraction of all $14,000; $13,000 of her taxable military pay was earned outside Oregon and the remaining taxable military pay is eligible as other military pay. Clyde remained in Oregon during 2013 and earned $10,000 of taxable military pay. He isn't eligible for any of the subtractions allowed for certain situations, but he is eligible to subtract up to $6,000 of his taxable military pay. Together the subtraction on their joint Oregon tax return is $20,000; $14,000 is Mary's and $6,000 is Clyde's.

(3) Combat zone benefits.

(a) Additional time to file and pay. Members of the Armed Forces who served in a combat zone are allowed extra time to take care of their Oregon income tax matters. Taxpayers are allowed the statutory filing period of 3 months and 15 days following the close of the tax year plus at least 180 days after the later of:

(A) The last day the person was in a combat zone (or the last day the area qualifies as a combat zone); or

(B) The last day of any continuous qualified hospitalization for injury from service in the combat.

(b) Eligible actions. The following are some of the income tax actions that can be extended:

(A) Filing any return of income tax (except withholding taxes);

(B) Paying any income tax (except withholding taxes);

(C) Filing a petition with the Tax Court;

(D) Filing a refund claim;

(E) Collection of any income tax due by the Department of Revenue.

(c) For purposes of this subsection (3), "income tax" includes the taxes imposed upon the income of estates and trusts and paid by the fiduciary thereof.

Example 8: Margaret entered Saudi Arabia on August 26, 2012. She remained there through March 16, 2013, when she departed for the United States. She was not injured and did not return to the combat zone. She has 285 days (180 plus 105) after her last day in the combat zone, March 16, to file her 2012 income tax return. The 105 additional days are the number of days in the three and a half month filing period that were left when she entered the combat zone (January 1–April 15). Margaret's return is due by December 26, 2013.

Example 9: Leonard's ship entered the Persian Gulf on January 5, 2013. On February 15, 2013, he was injured and flown to a U.S. hospital. Leonard remained in the hospital through April 21, 2013. He has 281 days (180 plus 101) after April 21, his last day in the hospital, to file his 2012 income tax return. The 101 additional days are the number of days in the three and a half month filing period that were left when he entered the combat zone (January 5–April 15). His 2012 return is due by January 27, 2014.

Stat. Auth.: ORS 305.100 & 316.792
Stats. Implemented: ORS 316.792
Hist.: REV 10-2013, f. 12-26-13, cert. ef. 1-1-14

150-316.806
Road Construction Worker's Travel Expenses

(1) As used in ORS 316.806(1), the term "construction job site" includes a roadway.

(2) As used in ORS 316.806(2), the term "structure" includes a road or railway.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.806
Hist.: RD 10-1986, f. & cert. ef. 12-31-86

150-316.818
Substantiation Required

Upon audit, the taxpayer may be required to provide the same substantiation that would be necessary for a travel expense deduction allowable under IRC 162(a).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.818
Hist.: 11-6-78(Temp); 12-31-78, Renumbered from 150-316.059; 12-31-83

150-316.832(2)
Substantiation Required

Upon audit, the taxpayer may be required to provide the same substantiation that would be necessary for a travel expense deduction allowable under IRC 162(a).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.832
Hist.: 12-31-79, Renumbered from 150-316.063(2); 12-31-83

150-316.844
(Miscellaneous) Valuation of Forest Land or "Farm Use" Land for Oregon Inheritance Tax Purposes

(1) Real property appraised under ORS 308.370 as land for farm use and passing by reason of death, is valued for purposes of Oregon inheritance tax as farm use land and the value used is the same as appraised for ad valorem purposes. ORS 308.370 provides for the assessment of farmland as "farm use" rather than "the highest and best use." See OAR 150-118.155.

(2) For deaths occurring on or after October 3, 1979, land which received special assessment as forest land or land classified under the Western Oregon small tract option tax law is valued as provided in ORS 118.155(3) and (4).

(3) The valuation for Oregon inheritance tax purposes may not be the same as the valuation for federal estate tax purposes. The difference in values may result in a required modification under this section. Federal will value the land at fair market value upon the date of death of the decedent under IRC Section 1014 or the alternate valuation date under IRC Section 2032.

(4) If the real property is subsequently disposed of, the difference in taxable gain or loss computed from the disposition using the federal valuation and the taxable gain or loss that would have been computed using the valuation for Oregon inheritance tax purposes, must be added to federal taxable income as gain or reduction of loss. The addition to a fiduciary return is not included as part of the fiduciary adjustment. It is a separate adjustment to federal net income of the fiduciary. In the case of forest land and Western Oregon small tract option land, the addition is applicable only to dispositions occurring on or after November 1, 1981.

(5) The adjustment to federal taxable income is required not only when gain or loss is realized by the beneficiary on the inherited property, but is also required when:

(a) Gain or loss is realized on other property which, in the computation of its basis, the basis of the inherited property is used. Examples of this type of property is that received as a result of a fully or partially nontaxed exchange or involuntary conversion where there has been a proper reinvestment.

(b) A taxpayer, other than the beneficiary, may realize gain or loss on the disposition of inherited property, or property the basis of which is computed in whole or in part with respect to such inherited property, when the basis of the beneficiary is used. For example: property under this section received as a gift from a donor who acquired it by inheritance. The adjustment must be made to the donee's tax return at the time the donee disposes of the property in a manner that results in a taxable event.

(6) This rule applies to gains and losses from disposition of property acquired from a decedent, or from property the basis of which is computed in whole or in part with respect to property acquired from a decedent, whose death occurred before January 1, 1987.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.844
Hist.: 11-73; 12-19-75; 12-31-81; 12-31-82, Renumbered from 150-316.081; 12-31-83; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-316.846
Scholarship Awards used for Housing Expenses

(1) If a scholarship award is used to pay housing expenses, the taxpayer may subtract the amount paid for such expenses from federal taxable income, but not in excess of the amount of the award included in federal taxable income.

(2) For purposes of ORS 316.846 and this rule, "housing expenses" are the reasonable expenses paid or incurred during the taxable year by an individual for housing for the individual. The term includes expenses attributable to the housing (such as utilities and insurance) and not otherwise taken into account as a deduction on the federal income tax return of the individual. Housing expenses will be treated as reasonable to the extent the department determines the expenses are neither lavish nor extravagant under the circumstances.

Example 1: Jasmine, a student at Oregon State University, receives a scholarship award that she includes in her federal taxable income. She buys a house close to the school. She uses part of the scholarship award to pay the mortgage interest and property taxes. She also uses part of the scholarship award to buy food and to fix the roof. Jasmine may subtract the mortgage interest and property taxes from her federal taxable income on her Oregon return if she does not claim them as itemized deductions on her federal return, but not in excess of the amount of the award included in federal taxable income. She may not subtract the food purchases and the cost of fixing the roof.

Example 2: Louis, a student at Portland State University, receives a scholarship award that he includes in his federal taxable income. He rents an apartment with a roommate about three blocks from school. In addition to the rent he is responsible for half of the electric bill and for a monthly parking fee at the apartment complex. He also pays for half of the monthly fee to Rent-A-Center to rent a sofa and loveseat. He uses part of the scholarship award to pay for these housing expenses. Louis may subtract from his federal taxable income on his Oregon return the sum of his portion of the rent, his portion of the electric bill, the parking fees, and his portion of the monthly fees for renting a sofa and loveseat, to the extent such sum does not exceed the amount of the award included in federal taxable income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.846
Hist.: REV 10-2008, f. & cert. ef. 9-23-08

150-316.852
Subtraction for Land Contributed to Educational Institutions

(1) *General*. A taxpayer who donates land, or who sells land at less than its fair market value, to a qualified educational institution may claim a subtraction from income. The subtraction is limited to a specific percentage of the taxpayer's contribution base. Any subtraction not allowed because it exceeds the specified percentage of the contribution base may be carried forward for a maximum of 15 years. An individual's contribution base is defined in section 170 of the Internal Revenue Code as federal adjusted gross income computed without regard to any net operating loss carryback.

(2) *Donations of land*. If land is donated to a qualified entity, the Oregon subtraction cannot exceed 50 percent of the taxpayer's contribution base.

Example 1: Sandy's contribution base is $100,000. Sandy donates land with a fair market value of $60,000 to a public school district. Sandy's subtraction on the Oregon return is limited to $50,000.

(3) *Reduced sale of land*. If land is sold to a qualified entity for less than its fair market value, the Oregon subtraction cannot exceed 25 percent of the contribution base.

Example 2: Mary has a contribution base of $100,000. Mary sells land worth $175,000 to a local school district for $120,000 cash. Mary is limited to a subtraction on the Oregon return of $25,000.

(4) *Add-back of amounts claimed as a federal deduction*. If the taxpayer has claimed a deduction for the donation or reduced sale of land for federal purposes, the amount deducted from federal income must be added to Oregon income if a subtraction is taken under this provision.

Example 3: Singh's contribution base is $100,000. He contributes $27,000 to a church and land worth $40,000 to a university. Singh must consider two limitations in figuring his charitable contribution deduction for federal purposes. First, his total charitable contribution deduction cannot exceed 50 percent of his contribution base, or $50,000 (50 percent of $100,000). Second, the donation of land, which is capital gain property, cannot exceed 30 percent of his contribution base, or $30,000. Singh's contribution of land worth $40,000 is limited to a deduction of $23,000, which is the unused portion of the overall $50,000 deduction limit after taking into account his $27,000 cash donation. To figure the Oregon subtraction, Singh restores $23,000, the amount of federal deduction he received for his qualifying land donation, to federal income by showing it as an addition to income on his Oregon return. He then computes the Oregon subtraction for the land donation as the lesser of:

(a) $50,000 (50 percent of his contribution base of $100,000); or

(b) $40,000 (fair market value of the land that is the qualified donation).

Singh benefits from the full $40,000 donation on his Oregon return in the year of donation.

(5) If the taxpayer's itemized deductions for Oregon are limited because of the phase-out requirements under section 68 of the Internal Revenue Code, the amount of the addition will be computed using the formula shown at OAR 150-316.695(1)(c)-(A).

Example 4: Max has a contribution base of $100,000. During the tax year he gave $35,000 cash to a 50 percent limitation charitable organization. He owned land with a fair market value (FMV) of $75,000 near an Oregon public high school. The school wanted the property for a sports field. Max agreed to exchange his property for a piece of property owned by the school district with a FMV of $25,000. His contribution from this qualifying reduced sale is $50,000; that is, $75,000 fair market value given up less $25,000 fair market value received. For federal purposes, his contribution of the land is limited to 30 percent of his contribution base, $30,000, and is further limited to $15,000, the unused portion of 50 percent of his contribution base, $50,000, after taking into account his $35,000 cash donation. His federal charitable deduction for the land is $15,000 with a five-year carryover of the remaining $35,000. On his Oregon return he first restores the $15,000 to income by showing an Oregon addition for that amount. He then computes his Oregon subtraction for the qualified bargain sale of land as 25 percent of his $100,000 contribution base. His Oregon subtraction is $25,000 with a fifteen-year carryover of the remaining $25,000.

Stat. Auth.: ORS 305.100

Stats. Implemented:

Hist.: REV 5-2000, f. & cert. ef. 8-3-00; Administrative correction 7-25-02, Renumbered from Chapter 358, 1999 Oregon Laws

150-316.856

Subtraction for Qualified Investment of Severance Pay

(1) Definitions.

(a) "Invest" means to exchange cash for equity, debt, convertible debt, or management responsibilities, accompanied by terms that substantiate ownership or control of an interest in a business. "Invest" does not mean to make a loan to a business.

(b) "Material participation" means regular, continuous, and substantial participation in the small business. A taxpayer is considered to have materially participated in the small business if the taxpayer:

(A) Worked for the small business for more than 500 hours in each of the 12 month periods required under section 2(b) of this rule;

(B) Worked for the small business for more than 100 hours in each of the 12 month periods required under section 2(b) of this rule and at least as much as any other owner or employee; or

(C) Performed substantially all the work in the small business.

(c) "Severance pay" means compensation payable, other than back wages, vacation pay or sick pay, on voluntary termination or involuntary termination of employment based on length of service, a percentage of final salary, a contract between the employer and the employee, or some other reasonable method. "Severance pay" does not include retirement income as defined in ORS 316.127(9).

(d) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees.

(2) Qualifications. Severance pay that a taxpayer receives during the tax year and invests in a new or existing small business in Oregon may be subtracted from federal taxable income if:

(a) The investment occurs on or before the due date of the return, including extensions, for the first tax year in which the subtraction may be claimed;

(b) The investment continues for at least 24 consecutive calendar months following the termination of employment (for example - July 13, 2010 through July 12, 2012);

(c) The small business is not the employer that paid the severance pay and does not have any owner in common with the employer that paid the severance pay;

(d) No subtraction has previously been claimed under this section;

(e) The taxpayer completes a form provided by the department that is attached to the return of the taxpayer or is otherwise maintained or filed pursuant to form instructions; and

(f) The taxpayer materially participates in the small business for the period required under subsection (b) of this section.

(3) The taxpayer must demonstrate to the department's satisfaction that the small business is carrying on an activity for profit. If requested, the taxpayer must provide documentation to that effect to the department. In making such a determination, the department may consider the following nonexclusive list of factors:

(a) Whether the small business keeps and maintains a detailed business plan that includes strategies or methods to make a profit or improve profitability;

(b) Whether separate books, records and bank account(s) are maintained for the small business;

(c) Whether the taxpayer carries on the activity in a businesslike manner.

(4) Severance pay received as an annuity. Only cash invested on or before the due date of the return, including extensions, qualifies for this subtraction. Any severance pay invested after the return is filed does not qualify for a subtraction under this section.

(5) Severance pay received as stock options. All stock options must be converted to cash before being invested to qualify for a subtraction under this section.

(6) The subtraction may not exceed the lesser of:

(a) The minimum balance of principal that remains invested by the taxpayer in the small business at the close of any month during the 24 consecutive calendar months following the termination of employment; or

(b) $500,000.

(7) Interest accrues as provided in ORS 305.220 on any unpaid tax attributable to any disallowance or withdrawal of principal.

Example 1: Maggie was terminated from employment on October 1, 2010, and received severance pay of $50,000 as a condition of her termination. On April 1, 2011, Maggie filed her personal income tax return, for which she had not requested an extension of time to file. On August 11, 2011, Maggie invested the severance pay in a qualifying small business. Maggie does not qualify for the subtraction because she did not invest the severance pay by the due date of the return.

Example 2: Joe was terminated from employment on July 1, 2010, and received severance pay of $20,000 as a condition of his termination. Joe invested the entire $20,000 in Company A, which qualifies as a small business, on September 1, 2010, and took a $20,000 subtraction on his 2010 return. On January 30, 2012, Joe withdrew the entire $20,000 he invested. Joe must file an amended return for tax year 2010 to remove the $20,000 subtraction (and pay any additional tax and interest that may be due) because he did not continue the investment for at least 24 consecutive months following the termination of employment.

Example 3: Alicia was terminated from employment on October 1, 2010, and received severance pay of $80,000 as a condition of her termination. Alicia invested the entire $80,000 in Company B, which qualifies as a small business, on December 1, 2010. Alicia took an $80,000 subtraction on her 2010 personal income tax return. On July 30, 2012, Alicia withdrew $20,000 of principal from her initial investment for personal use. Alicia must amend her 2010 return to remove $20,000 of the subtraction (and pay any additional tax and interest that may be due).

Example 4: Ryan was terminated from employment on October 1, 2010. He received severance pay in the form of a $1,000 a month annuity over 5 years beginning in October of 2010. Ryan accumulated his severance payments for 6 months and invested the $6,000 in a small business. He claimed a subtraction of $6,000 on his return he filed on April 1, 2011. Ryan continues to accumulate his severance pay for the next year and invests another $12,000 in the small business on March 1, 2012. Ryan cannot claim a subtraction for the additional severance pay he invested because it was invested after the return was filed.

(8)(a) If the small business is doing business both in Oregon and some other place outside of Oregon, the amount of the subtraction allowed is generally determined by multiplying the total qualifying amount of severance pay invested by the sales factor determined under ORS 314.665 and associated administrative rules.

(b) The taxpayer may present an alternative method of calculating the amount of the qualified subtraction if the calculation under subsection (a) does not result in a reasonable reflection of the extent of the business activity in Oregon. To be considered reasonable, the method of calculation must take into account the business activity taking place within Oregon versus the activity taking place outside of Oregon. The method must be fully described in an attachment to the taxpayer's return on which the subtraction is claimed.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 316.856
Stats. Implemented: ORS 316.856
Hist.: REV 12-2010(Temp), f. & cert. ef. 7-23-10 thru 12-31-10; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11

150-316.863
Individual Pension and Retirement Plans

A plan (Individual Retirement Account, IRA; Self-employment Account, HR 10 or KEOGH; or Simplified Employee Account, SEP) shall not be disqualified for Oregon income tax purposes solely as the result of an increase to the percentage allowable or maximum allowable contribution amount for federal tax purposes. A taxpayer may still deduct, for Oregon tax purposes, the lesser of the percentage allowable or maximum allowable contribution under the federal rules in effect for tax years beginning on or before December 31, 1984. This difference in allowable deductions for federal and state purposes requires that the taxpayer add or subtract the difference from federal taxable income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.863
Hist.: 10-5-83, 12-31-83, Renumbered from 150-318.020(Note); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-316.992
Waiver of Frivolous Return Penalty Imposed Under ORS 316.992

The department will waive 50 percent of the $250 penalty if the taxpayer:

(1) Submits a timely written request for waiver as required in OAR 150-305.145(4);

(2) Files a return for that same tax year that is not frivolous under ORS 316.992; and

(3) Pays the balance of the account (other than the penalty amount that may be waived under this rule) for the tax period for which waiver is requested, or has entered into and is in compliance with a department-approved plan for payment of the amounts.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.992
Hist.: REV 6-2007, f. 7-30-07, cert. ef. 7-31-07

150-316.992(5)
Frivolous Return Penalty

(1) A $250 penalty shall be assessed if a taxpayer takes a "frivolous position" in respect to preparing the taxpayer's return. A return is considered frivolous if a taxpayer does not provide information on which the substantial correctness of the self-assessment may be judged or if the return contains information that on its face indicates that the self-assessment is substantially incorrect.

(2) Some additional examples where a "frivolous position" is considered to have been taken include but are not limited to:

(a) An argument that wages or salary are not included in taxable income. This can occur when the taxpayer alters lines on the return to recharacterize wages or salary as nontaxable or takes deductions on Schedule C equal to income and characterizes the deductions as the total of business expenses or cost of goods sold.

(b) An argument that the law directs "taxpayers" to file a return and they aren't a taxpayer.

(c) An argument that by filing a return their rights of nonself-incrimination under the Fifth Amendment to the United States Constitution will be violated. An example of this is when a taxpayer writes "object" or "object — self-incrimination" in the amount columns or across the face of the return.

(d) An argument that requiring a taxpayer to file a return violates their right to prohibition of involuntary servitude provided in the Thirteenth Amendment to the United States Constitution.

(e) Submitting a return that may show an address, be signed and have W-2's attached but has zeros, object, Fifth Amendment or self-incriminating written in the columns or on the face of the return.

(f) An argument that the tax system is discriminatory.

(g) An argument that the taxpayer's right to free speech as provided by the First Amendment to the United States Constitution has been violated by requiring a return or by providing the information required on the return.

(h) An argument that a check which can only be redeemed in Federal Reserve Notes is not taxable income. The taxpayer's argument is that only gold and silver can be taxed and that Federal Reserve Notes are not income because they can't be redeemed for gold or silver. Also, that the Federal Reserve Notes should be considered accounts receivable that do not have to be reported as income until they are paid in gold or silver.

(i) An argument that a graduated tax is unconstitutional.

(j) Taking unauthorized deductions or credits based on a percentage of the national debt used for defense (war tax) or abortions.

(k) Taking unauthorized deductions or credits based on the declining value of the dollar to reflect the difference between the face value and the fair market value of Federal Reserve Notes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.992
Hist.: RD 4-1988, f. 5-25-88, cert. ef. 6-1-88

DIVISION 317

CORPORATION EXCISE TAX ACT OF 1929: RULES AND GENERAL PROVISIONS

150-317.NOTE
Procedure for Handling State Surplus Refund

(1) For purposes of determining underpayment of estimated tax for tax years beginning on or after January 1, 1985 the credit allowed for the state surplus refund shall be used to reduce the amount of the current year "net excise or income tax" of the taxpayer. Net excise or income tax means the total tax minus any credits against tax.

(2) Whenever the taxpayer's excise or income tax liability for tax years beginning on or after January 1, 1985 is either increased or decreased, the amount of the credit for the state surplus refund shall be adjusted accordingly.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.Note
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-317.010
Substantial Nexus Guidelines

(1) The State of Oregon imposes taxes on or measured by net income to the extent allowed under state statutes, federal Public Law 86-272, and the Oregon and U.S. Constitutions. For purposes of determining whether Oregon has jurisdiction to impose an excise tax for the privilege of doing business in the state under ORS Chapter 317 or tax on income from sources within this state under ORS Chapter 318, there must exist a substantial nexus between the state and the activity or income it seeks to tax.

(2) "Substantial nexus" for corporate excise and income tax jurisdiction purposes, under the Commerce Clause of the U.S. Constitution, does not require a taxpayer to have a physical presence in Oregon. Substantial nexus exists where a taxpayer regularly takes advantage of Oregon's economy to produce income for the taxpayer and may be established through the significant economic presence of a taxpayer in the state.

(3) In determining whether a taxpayer has a substantial nexus with Oregon the department may consider whether the taxpayer:

(a) Maintains continuous and systematic contacts with Oregon's economy or market;

(b) Conducts deliberate marketing to or solicitation of Oregon customers;

(c) Files or is required to file reports or returns with Oregon regulatory bodies;

(d) Receives significant gross receipts attributable to customers in Oregon;

(e) Receives significant gross receipts attributable to the use of taxpayer's intangible property in Oregon; or

(f) Receives benefits provided by the state, such as:

(A) Laws providing protection of business interests or regulating consumer credit;

(B) Access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights;

(C) Highway or transportation system access for transport of taxpayer's goods or services;

(D) Access to educated workforce in Oregon; or

(E) Police and fire protection for property in Oregon that displays taxpayer's intellectual or intangible property.

(4) The list of possible facts in section (3) that the department may consider in determining whether a taxpayer has a substantial nexus with Oregon is meant to be nonexclusive, and those facts should be considered only to the extent they are relevant. The department may consider any other relevant facts and circumstances.

(5) The provisions in sections (1) through (4) of this rule, as well as the provisions in OAR 150-314.620-(A), 150-314.620-(B), and 150-314.620-(C), must be applied in determining if a taxpayer has substantial nexus in a state other than Oregon.

Example 1: Credit Card Company (CC) has, for several years, provided credit card lending services over the internet and by mail to over 25,000 Oregon customers. Solicitations for such credit cards have been mailed three or four times a year for the last three years to prospective Oregon customers in six Oregon cities. CC has substantial nexus in Oregon.

Example 2: IS Company (IS), headquartered in San Francisco, operates a website supporting internet sales, primarily to Asian country customers. IS made approximately 50 sales, at $6.95 per sale, to residents of Oregon during the tax year. IS contracts with an Oregon mailing service to make deliveries of the merchandise in Oregon (all sales are final). IS does not have substantial nexus in Oregon. Even though activities in greater volume might be sufficient for nexus, the amount of sales is de minimis.

Example 3: WB Distributing Company (WB) has for many years distributed wine and beer throughout Oregon, through Oregon licensed distributors with whom WB has distribution agreements. WB is required to obtain and maintain a wholesaler's license from the Oregon Liquor Control Commission (OLCC). A condition of the license is that WB must make monthly reports of sales volumes to the OLCC. WB also periodically seeks advice and approval from the OLCC for special event activities in Oregon, at which no sales are solicited by the corporation. WB has substantial nexus in Oregon.

Example 4: IP Company (IP), organized under Delaware law and wholly owned by FP Company (FP) a foreign parent, owns intellectual property including trade marks, trade names, and logos. RS Company (RS), also wholly owned by FP but not unitary with IP, operates retail stores in Oregon that prominently and beneficially use the intellectual property owned by IP. By agreement, RS pays IP five percent of its gross sales for the right to use the intellectual property. IP has substantial nexus in Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.010
Hist.: REV 3-2008, f. & cert. ef. 5-5-08

150-317.010(4)
Definition: "Doing Business"

(1) A taxpayer is doing business when it engages in any profit-seeking activity in the State of Oregon. What transaction or transactions need be entered into within this state in the course of such an activity to constitute the doing or carrying on of business within the state is primarily a question of fact, depending upon the circumstances in each case.

Example 1: The taxpayer is clearly doing business within this state if it occupies, has, maintains or operates an office, shop, store, warehouse, factory, agency or other place within this state where some of its affairs are systematically and regularly carried on, notwithstanding the fact that it may also enter into transactions outside this state.

Example 2: A corporation engaged in the sale of tangible personal property is doing business within this state if sales activities are regularly carried on within this state by an employee or agent of the seller, and if either a stock of goods is maintained within this state, or an office or other place of business where affairs of the corporation are regularly carried on is maintained within this state.

Example 3: A foreign corporation consigns goods to one or more consignees within Oregon who then sell the goods. The foreign corporation is doing business in Oregon since it has sales activity and a stock of goods within Oregon.

(2) A foreign corporation whose business is providing services is "doing business" in this state if it has employees providing those services in Oregon. It does not matter whether the services are provided on the client's property or on the corporation's own property since it is engaged in a profit seeking activity in Oregon.

(3) If a foreign corporation's business activities in this state are confined to purchase and storage of personal property incident to shipment outside the state, the corporation is not deemed to be doing business for corporation excise tax purposes if the following conditions are met:

(a) The personal property remains in the exact state or form as it was when purchased during the time it is located within Oregon.

(b) The foreign corporation is not an affiliate of another foreign or domestic corporation, as defined in section 1504 of the Internal Revenue Code, which is doing business in Oregon.

(4) The fact that a corporation has no employees in Oregon does not mean the corporation is not doing business in this state. If activities are performed in Oregon by a third party on behalf of the corporation, and the activities are not protected under Public Law 86-272, the corporation is doing business in Oregon.

Example 4: The provision of in-state repair and warranty services by an independent contractor for a direct marketing computer company, advertised as part of its standard warranty or as an option that can be separately purchased, contribute significantly to the company's ability to establish and maintain its market for computer hardware sales in Oregon. Therefore, the computer company is doing business in Oregon. The extension of immunity for activities by independent contractors under Public Law 86-272 does not include repair and warranty service.

(5) A corporation that is not "doing business" in Oregon may still be subject to tax in this state. The Oregon corporation income tax under ORS Chapter 318 imposes tax on corporations that have income derived from sources within Oregon. See OAR 150-318.020(2) for a list and description of the activities that, if conducted in Oregon, will result in a corporation being subject to the corporation income tax.

[Publications: The publication(s) referred to in this rule is available from the agency pursuant to ORS 183.360(2) and 183.355(6).]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.010
Hist.: 1959; 1-1-77, Renumbered from 150-317.010(8); RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-317.010(10)
Taxable Income of Regulated Investment Companies and Real Estate Investment Trusts

(1) In the case of a corporation that is treated for federal tax purposes as a regulated investment company under IRC Section 851, for purposes of ORS 317.010(10) taxable income under Chapter 1, Subtitle A of the Internal Revenue Code means "investment company taxable income," as defined in IRC Section 852.

(2) In the case of an entity that is treated for federal tax purposes as a real estate investment trust under IRC Section 856, for purposes of ORS 317.010(10) taxable income under Chapter 1, Subtitle A of the Internal Revenue Code means "real estate investment trust taxable income" as defined in IRC Section 857(b)(2), except that the adjustments provided by IRC Sections 857(b)(2)(D) and (F) shall not be allowed.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.010
Hist.: RD 1-1984, f. & cert. ef. 2-21-84; RD 3-1984(Temp), f. & cert. ef. 4-9-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-317.010(10)-(B)
Foreign Corporations Subject to Tax

(1) Generally, foreign corporations doing business in Oregon that are exempt from federal income taxes pursuant to treaties between the United States and a foreign country are not exempt from Oregon corporation excise and income taxes.

(2) For foreign corporations to be exempt from the Oregon corporation excise or income tax, the federal treaty must specifically contain a provision exempting them from state corporation taxes upon or measured by net income.

(3) Oregon taxable income is determined by calculating the corporation's federal taxable income as if the corporation was subject to federal income taxes and making certain modifications as provided by Oregon law. As provided under ORS 317.625, income from outside the United States is accounted for in the computation of Oregon taxable income without regard to IRC sections 861 to 864. Income classified as income from outside the United States and excluded from federal taxable income must be added to the federal taxable income calculation required by this rule as an "other addition."

(4) Oregon has adopted the federal IRC provisions for computing taxable income, but did not adopt the federal provisions that define exempt corporations. Oregon law in ORS 317.080 lists those corporations that are exempt from Oregon corporate taxes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.010
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 5-2000, f. & cert. ef. 8-3-00

150-317.013
Capital Losses — Carrybacks and Carry-overs

(1) This rule is effective July 31, 2010 and is applicable to all tax years beginning on or after January 1, 1986 that are open to examination.

(2) Federal law applies to capital losses occurring in tax years beginning on or after January 1, 1986.

(a) Capital losses are deducted to the extent of capital gains in the same tax year.

(b) Capital losses in excess of capital gains must be carried back three tax years. Capital losses that do not fully offset capital gains for a year to which the losses are carried back may be carried forward for up to five tax years after the tax year in which the capital losses were incurred.(c) Capital loss carrybacks and carryovers can only be used to reduce capital gains in the tax years to which they are carried.

(d) A capital loss carryback cannot be used to create or increase a net loss in the tax year to which it is carried.

(e) If a capital loss is not carried to tax years in the order provided in subsections (1)(b) through (1)(d), the amount of net capital loss that should have been utilized to decrease capital gain net income cannot be used to offset capital gains in other taxable years.

(3) Oregon provisions, such as the requirement that corporations be unitary to be included in the consolidated Oregon return and the apportionment provisions, may result in differences between the Oregon and federal capital loss deductions and carryovers. (a) Capital losses in excess of capital gains in tax years beginning prior to January 1, 1986, cannot be carried forward since those losses were deductible in full in the tax year they occurred.

(b) When a corporation or consolidated group of corporations is taxable within and without this state, its Oregon net capital loss carryback and carryover must be computed using the apportionment provisions. The Oregon capital loss is computed using the apportionment factor for the tax year of the loss. The capital loss is applied to the Oregon capital gains for the year of carryback or carryover. Oregon capital gains are computed using the apportionment factor for the tax year of the gain.

Example 1: Corporation X has a federal net capital loss of $3,000 for 2009. X's apportionment factor for 2009 is 40 percent. In 2006, X had a federal net capital gain of $1,000 and its Oregon apportionment factor was 50 percent. X has a $1,200 ($3000 x 40 percent) Oregon net capital loss available for carryback to 2006. X will deduct $500 ($1000 x 50 percent) on the 2006 return and must carry the remaining $700 forward to other tax years.

(c) Oregon net capital losses that are attributed to corporations that continue to be included in the same consolidated Oregon return may be deducted fully against the Oregon consolidated net capital gain of the tax years to which such losses are carried. Example 2: Corporations X and Y filed a consolidated Oregon return in 2009 reporting a net capital loss of $5,000 that is attributable to Y. The consolidated apportionment factor for 2009 is 40 percent. In 2006, X and Y filed a consolidated Oregon return reporting a net capital gain of $10,000 attributable to X. The consolidated Oregon apportionment factor in 2006 was 25 percent. The Oregon capital loss carryback of $2,000 ($5,000 x 40 percent) from 2009 is fully deductible in 2006 because it does not exceed the Oregon consolidated net capital gain of $2,500 ($10,000 x 25 percent).

(4) If a corporation is included in a combined return, separate return or in a different consolidated return in the year of the capital loss and the capital loss is carried into a year when a consolidated Oregon return is filed, the Oregon capital loss carryover may be subject to the federal separate return limitation year (SRLY) limitations in Treas. Regs. 1.1502-22.

(a) If a net capital loss is reported on a separate Oregon return by a corporation doing business only in Oregon, the SRLY limitation applies if the loss is carried to a tax year in which a consolidated return is filed, apportionment is not required, and the corporation with the loss (the limited member) is not the parent corporation. To compute the Oregon SRLY limitation, first recompute the consolidated net capital gain by excluding the capital gains and losses and the IRC section 1231 gains and losses of the limited member. Then subtract the recomputed consolidated net capital gain from the total consolidated net capital gain (computed without regard to any net capital loss carryover or carrybacks).

Example 3: Corporation R filed a separate Oregon return for 2008 reflecting an Oregon net capital loss of $3,000. Corporation R did not have net capital gains in any of the prior three years. For 2009, Corporation R was included in a consolidated Oregon return with Corporations S and T. The consolidated group was not subject to the apportionment provisions. [Table not included. See ED. NOTE.]

(b) If a corporation is included in a consolidated Oregon return in the year of the consolidated net capital loss and files a separate Oregon return or is included in a different consolidated Oregon return in the year to which the net capital loss is carried, the Oregon consolidated net capital loss is attributed to the corporations with net capital losses for purposes of determining the allowable net capital loss carryover. The portion of an Oregon consolidated net capital loss attributable to a member of a consolidated group is an amount equal to such Oregon consolidated net capital loss multiplied by a fraction, the numerator of which is the net capital loss of such member and the denominator of which is the sum of the net capital losses of those members of the consolidated group having net capital losses.

Example 4: X Corp. and unitary subsidiaries Y and Z filed a consolidated Oregon return for 2008, their first year in business. X had a $3,000 capital loss, Y had a $2,000 capital gain and Z had a $1,000 capital loss (consolidated net capital loss of $2,000). The 2008 Oregon apportionment factor for the consolidated group is 75 percent. On December 31, 2008, X Corp. sold 100 percent of Z's stock to an outside investor. The capital loss that can be carried forward to the 2009 consolidated return of X and Y is computed as follows: [Table not included. See ED. NOTE.]

(c) If corporations carry their net capital losses to a tax year in which separate tax returns are filed, the net capital losses can be deducted by each corporation only if a net capital gain is shown on the separate tax return. The net capital loss deduction is further limited by the amount of the net capital gain attributable to Oregon based on the Oregon apportionment factor.

Example 5: Assume the same facts as in Example 4. The 2009 separate Oregon return of Z shows a net capital gain of $200 with an Oregon apportionment factor of 50 percent. The net capital loss deduction allowed is $100 ($200 x 50 percent). Z has a net capital loss carryover to 2010 of $275.

(d) If a group of unitary corporations, taxable within and without this state, filed a consolidated return for the year of the net capital loss and carries the net capital loss after apportionment back to a year in which a combined return is filed, the net capital loss must be allocated among the corporations as provided under the SRLY limitations in Treas. Reg. 1.1502-22. The net capital gain of the unitary group in the combined year must be apportioned among the corporations based on each corporation's Oregon apportionment percentage.

(5) If a corporation, taxable within and without this state, filed a separate return or was included in a different consolidated return for the year of the net capital loss and carries the net capital loss after apportionment to a year in which a consolidated return is filed, the net capital loss can be deducted only to the extent that the same corporation has a net capital gain which is attributed to Oregon. If the consolidated group in the carryover year is subject to the apportionment provisions, the net capital gain of the member must be attributed to Oregon based on the consolidated Oregon apportionment factor.

Example 6: In its first tax year 2008, B Corporation had a net capital loss of $6,000. Because of its 50 percent Oregon apportionment factor, $3,000 of the loss is apportioned to Oregon. On January 1, 2009, 100 percent of B's stock was purchased by P Corporation. Because they were unitary, P and B file a 2009 consolidated Oregon return that includes B's net capital gain of $1,000 and P's net capital gain of $3,000. The consolidated return apportionment factor is 35 percent. On the 2009 consolidated return, only $350 of B's $3,000 net capital loss carryover can be deducted (the lesser of $1,000 x .35 or $4,000 x .35).

(6) If a corporation participated in Oregon's tax amnesty program pursuant to Oregon Laws 2009, chapter 710 (SB 880), the capital loss carried from another year is applied to the total Oregon capital gains reported as if the taxpayer had not participated in the amnesty program. A refund may be paid when a capital loss is applied to a year in which the taxpayer participated in the amnesty program only to the extent that the taxpayer paid taxes for that year other than under the amnesty program and in excess of the statutory minimum tax. Whether or not a refund is paid, the capital loss carried to subsequent years is reduced by the amount applied to the amnesty year as if the taxpayer had not participated in the amnesty program.

Example 7: Corporation X has a federal net capital loss of $3,000 for 2009. X's Oregon apportionment factor for 2009 is 40 percent. X has a $1,200 ($3000 x 40 percent) Oregon net capital loss available for carryback to 2006. For tax year 2006, X filed an original Oregon corporate tax return under Oregon's amnesty program. The 2006 return reported a federal net capital gain of $1,000 and an Oregon apportionment factor of 50 percent, resulting in an Oregon net capital gain of $500. X must carry back the capital loss to tax year 2006 but cannot receive a refund for any taxes paid because all taxes paid for tax year 2006 were paid under the amnesty program. X must reduce the capital loss carried to subsequent years to $700. The $500 capital loss that would have been allowed to offset against the capital gains had the 2006 return not been filed under the Oregon amnesty program is eliminated.

Example 8: Corporation Y has a federal net capital loss of $5,000 for 2009. Y's Oregon apportionment factor for 2009 is 30 percent. Y has a $1,500 ($5,000 x 30 percent) Oregon net capital loss available for carryback to 2006. For tax year 2006, Y filed a timely Oregon corporate tax return showing no capital gain income and paying $50 Oregon net excise tax. During Oregon's amnesty program, Y filed an approved amnesty amended return claiming previously unreported federal net capital gain of $3,000 and a revised Oregon apportionment factor of 60 percent, resulting in Oregon capital gains of $1,800. Additional Oregon taxes paid were $119.

All of the $1,500 capital loss carryback is offset against the $1,800 capital gain income for tax year 2006. Any resulting refund is limited to taxes paid outside the amnesty program that exceed the statutory minimum tax. Y is entitled to a refund of $40 ($50 tax paid outside the amnesty program minus the $10 minimum tax for tax year 2006). Y does not have a remaining capital loss to carry to subsequent years.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.013
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10

150-317.013(2)
Administrative and Judicial Interpretations

As used in ORS 317.013(2) "administrative and judicial interpretations of the federal income tax law" include interpretive regulations promulgated by the Secretary of the Treasury, Revenue Rulings and Revenue Procedures issued by the Commissioner of Internal Revenue, and decisions of the federal courts interpreting those provisions of the Internal Revenue Code that are incorporated into Oregon law under ORS 317.013(1), regardless of the date of promulgation or issuance of the regulation, ruling, procedure or decision.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.013
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-317.018
Adoption of Federal Law

Generally, Oregon corporation excise tax law, as related to the definition of taxable income, is tied to federal tax law as applicable to the tax year of the taxpayer. Changes enacted to the definition of federal taxable income are effective for Oregon tax purposes in the same manner as for federal tax purposes, unless otherwise provided in Oregon tax law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.018
Hist.: 10-5-83, 12-31-83; 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-317.018(1)
Policy — Application of Various Provisions of the Federal Internal Revenue Code

(1) The policy of the State of Oregon is to follow the Internal Revenue Code as closely as possible relating to the computation of taxable income of corporations. Other areas, such as tax credits, special tax computations, and administrative provisions are not tied to federal law because they do not relate to the computation of taxable income.

(2) The provisions of this rule concerning "Claim of right" apply to tax years beginning before January 1, 1998. For tax years beginning on or after January 1, 1998, a credit is allowed to a taxpayer for a claim of right income repayment under section 2, Chapter 1007, Or Laws 1999.

(3) *Claim of right:* IRC section 1341 allows a deduction on the federal return for amounts repaid by a taxpayer on income previously reported under a claim of right. This deduction is also allowed on the Oregon return. If the amount repaid exceeds $3,000 in the year of repayment, IRC section 1341 allows the taxpayer to instead use a special tax computation rather than claim a deduction. If the taxpayer uses this special tax computation on the federal return, the taxpayer may not make a special tax computation for Oregon. However, the taxpayer may claim any repayments as a subtraction on the Oregon return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.018
Hist.: REV 12-1999, f. 12-30-99, cert. ef. 12-31-99

150-317.018(2)
Periods of Less than 12 Months Are Tax Years

(1) Under Oregon's tie to federal accounting periods, an Oregon return shall cover the same period as the corresponding federal return. See also OAR 150-314.085(2).

(2) Internal Revenue Code Regulation 1.1502-76 provides that any period of less than 12 months for which either a separate return or a consolidated return is filed shall be considered as a separate taxable year.

Example: Corporation X and its federal consolidated subsidiaries have a fiscal year end of June 30. On January 31, 1989, Corporation X sold Corporation Y (one of its 100 percent owned subsidiaries included in its consolidated returns) to Corporation Z. Corporation Z has a fiscal year ending May 31, 1988 and Corporation Y is required to change its tax year to be the same.

Corporation Y must file two short-period returns for federal and Oregon tax purposes (one for July 1, 1988, through January 31, 1989, and another for February 1 through May 31, 1989). Each short-period return shall count as a tax year for purposes of net operating loss and tax credit carryovers. If Corporation Y was not unitary with Corporation X or Corporation Z, it shall file separate Oregon returns for the two periods. For tax years beginning before January 1, 1986, Corporation Y was allowed by the department to file one Oregon return with the two short-period federal returns attached.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.018

Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-317.021
Tax Reform Act of 1984 Adjustments

The rule under OAR 150-316.021 shall be followed in determining how adjustments due to adoption of effective dates in the federal Tax Reform Act of 1984 shall be reported.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.021
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-317.063
Farm Capital Gain

(1) This rule is effective July 31, 2010 and applies to all tax years open to examination.

(2) Definitions. For purposes of ORS 317.063 and this rule:

(a) "Substantially complete termination" means the taxpayer is:

(A) No longer involved, directly or indirectly, in a trade or business engaged in farming, or

(B) No longer owns, directly or indirectly, property used in the trade or business of farming.

(b) "A trade or business engaged in farming" means a distinct farming operation separately run from the taxpayer's other businesses. Businesses that share employees, equipment, buildings, or land are not separate businesses. Businesses that share records, accounts, registration, identification numbers, or a business name are also not separate businesses.

(3) A taxpayer's net long-term capital gain qualifies for the reduced tax rate if all four of the following tests are met:

(a) Asset Test. The gain is derived from either IRC section 1231 assets or an ownership interest of at least 10 percent in an entity.

(b) Use Test. The property that was sold consisted of:

(A) An ownership interest in an entity engaged in the trade or business of farming; or

(B) Property that was predominantly used in the trade or business of farming.

(c) Relationship Test. The assets are not sold to a related taxpayer as defined under IRC section 267.

(d) Termination Test. The sale is a substantially complete termination of all of the taxpayer's ownership interests in:

(A) A trade or business engaged in farming; or

(B) Property that is predominantly used in the trade or business of farming.

(4) Asset Test. The part of the taxpayer's net long-term capital gain that is eligible for the reduced rate must be from capital assets under IRC section 1231 or a 10 percent or more ownership interest in an entity engaged in the trade or business of farming.

Example 1: Forty years ago, Corporation A purchased an orchard next to the company's row crop farm. The company did not regularly harvest the fruit or care for the trees but allowed its employees and their families to use the fruit. Last year, the urban growth boundary moved to include the company's parcel. Corporation A wanted to sell the property to developers so it had all the trees removed and sold the property. The sale of the orchard does not qualify for the reduced rate because it was not held as a trade or business; thus, it was not an IRC section 1231 asset. It was land held for investment and personal use.

(5) Use Test. The asset sold must be predominantly used in the trade or business of farming. Any other use of the asset must be incidental to, and not interfere with, the primary purpose of being engaged in the trade or business of farming.

(a) Property used 80 percent or more in the trade or business of farming is considered and presumed to be predominant use. Accepted farming practices common to the type of farming activity and region, such as land lying fallow for one year, are included in the trade or business of farming.

(b) Property used more than 50 percent but less than 80 percent in a farming trade or business, qualifies as predominant if the difference between the actual percentage use in a farming trade or business and 80 percent use in a farming trade or business is incidental. Incidental use does not include holding property as an investment, using property for personal (non-business) use, or using property for another business. Incidental use includes, but is not limited to:

(A) Farmland that is bordered by or contains a waterway;

(B) Land that consists of terrain that cannot be farmed (i.e. marshland, desert);

(C) Land that contains a utility easement that makes farming impractical or impossible; or

(D) The period of the time when the farm property or business was "actively for sale" immediately prior to the sale. A property was "actively for sale" if the property was listed and advertised for sale for a price comparable to similar properties and the seller did not reject any reasonable offers.

(c) Property used for personal or business activities that take place on the land concurrently and do not interfere with the primary farming trade or business use are considered incidental use.

(d) Allocation. Property that is used less than 80 percent in a farm trade or business may be allocated between the actual portion that is predominantly used in the business of farming and the portion not predominantly used in the business of farming.

Example 2: BJ Farms raised corn and beans on 500 acres the entire time it owned the acreage. BJ Farms used the cornfields as a corn maze after the corn was harvested. BJ Farms sold the 500 acres to CJ Farms and recognized a capital gain. Assuming the gain from the sale meets the other three tests, the gain from the sale qualifies for the reduced tax rate because BJ Farms used the property predominantly (80 percent or more) in the trade or business of farming even though the company used the farmland for an incidental purpose after the harvest.

Example 3: D & D, Inc owned and operated a 30 acre farm. The farm had a waterway and riparian land that was not farmed, which took up 10 acres of the farm. Assuming the company meets the other three tests, D & D, Inc qualifies for the reduced tax rate because the property was predominantly used in the business of farming. The farm use qualifies as predominant for the entire 30 acres because the farm use was more than 50 percent, but less than 80 percent and the 33 percent (10 acres/30 acres) not used for farming was incidental.

Example 4: John B. Dairy, Inc sold 20 acres of land. The company owned the land and leased out 15 acres to a farmer who grew crops. The remaining 5 acres was made into baseball fields where the company allowed local Little League teams to use it for practices and games. Assuming John B. Dairy, Inc meets the other three tests, the 15 acres used for farming qualifies for the reduced tax rate.

(6) Relationship test. The gain from the sale of an asset does not qualify for the reduced tax rate if the asset is sold to a related taxpayer under IRC section 267 even if all of the other three tests are met.

Example 5: Green Beans Inc and Sweet Corn Inc own a farm together as a partnership. The partnership decides to sell the business to BJ Farms, (the parent company). Assume the sale meets the other three tests. The Green Beans Inc and Sweet Corn Inc capital gain does not qualify for the reduced tax rate because Green Beans Inc and Sweet Corn Inc are related to BJ Farms under IRC section 267.

(7) Termination Test. If a taxpayer sold an interest in a trade or business that is engaged in farming, the taxpayer may not be directly or indirectly engaged in that farming trade or business after the sale. The sale of the taxpayer's interests through an installment sale constitutes a substantially complete termination for purposes of ORS 317.063 and this rule. A taxpayer has substantially terminated its interests in the trade or business of farming even though the taxpayer retained a portion of the farm for personal use.

Example 6: Happy Cow Dairy Inc, (Parent Corporation) owned two subsidiaries, a dairy operation and a hop farm. The two businesses were completely separate. They had separate employees, equipment, and records. The two businesses also had different names, records, and federal identification numbers. Happy Cow Dairy Inc sold the dairy farm. After selling all of the dairy equipment and dairy cows, the company realized a capital gain of $350,000. The company decided not to sell the hop farm. The gain on the sale of the dairy operation qualifies for the reduced tax rate. Even though the company still owned the hop farm, it had sold the entire dairy business.

(8) Depreciation Recapture. IRC section 1231 gain may be treated as ordinary income under IRC sections 1245 and 1250 recapture rules. If the capital asset is subject to depreciation recapture under IRC sections 1245 or 1250, the portion of the gain that is treated as ordinary income does not qualify for the reduced tax rate.

Example 7: JD Inc sold its farm, which included three silos. All four tests were met. The silos are capital assets subject to IRC section 1245 recapture. The part of the gain from the sale of the silos that is treated as ordinary income is not eligible for the reduced tax rate. However, the part of the gain from the sale of the silos that is treated as long-term capital gain on the federal return is eligible for the reduced tax rate on the Oregon return.

(9) Capital loss. If all four tests are met and the taxpayer is reporting a capital loss, it could affect the capital gain eligible for the reduced tax rate. Compute the net capital gain or loss from all other property sales or exchanges for the year that are taxable to Oregon. If it results in a net capital loss, the amount eligible for the reduced tax rate is the qualifying farm capital gain minus the net capital loss from other property sales or exchanges that are taxable to Oregon.

Example 8: B Inc sold a farming business for a net long-term capital gain of $800,000. During the year, the company also sold other property for a net capital loss of $150,000. Assuming the sale of the farm business meets all four tests, B Inc is only eligible for the reduced tax rate on $650,000 (net farm long-term capital gain minus other net capital loss) of the taxable income.

(10) Installment Method under IRC section 453. Installment sales are eligible for the reduced tax rate if the sale meets all four tests as explained in section (2) of this rule. The amount of capital gain eligible for the reduced tax rate must be determined each year. The percentage of gain eligible for the reduced tax rate is equal to the qualifying farm long-term capital gain from the sale divided by all capital gain from the sale. Apply this percentage to the capital gain from the sale reported each year to determine the amount that qualifies for the reduced tax rate. If there is capital loss from the sale of other property as described in section (8) of this rule, during a tax year that the installment sale is reported, this may reduce the gain eligible for the reduced tax rate.

Example 9: Green Acres Inc sells its row crop farm in 2007 and meets all four tests to receive the reduced tax rate. The company elects to recognize the income from the sale using the installment method under IRC section 453. Green Acre Inc will receive half of the sale price in 2007 and one-fourth of the sale price each in 2008 and 2009 plus interest. Of the capital gain from the sale, $300,000 qualifies for the reduced tax rate and $100,000 does not. The company's percentage eligible for the reduced tax rate is $300,000 of eligible capital gain divided by $400,000 of total capital gain, or 75 percent. The buyer also paid interest to Green Acres Inc, which is reported separately on the return. In 2007, the company will claim the capital gain from the sale of $200,000. Of that amount, 75 percent or $150,000 is eligible for the reduced tax rate. In 2008 and 2009, the company will claim the farm capital gain rate for $75,000 ($100,000 x 75 percent) of capital gain from the sale reported each year.

(11) Like-kind Exchanges. Like-kind exchanges may be eligible for the reduced tax rate when the gain is recognized, assuming all four tests are met. The taxpayer must keep detailed records to show that the property would have qualified for the reduced tax rate if it had been a sale instead of an exchange.

Example 10: Dee Farms decided to exchange farmland for investment property. The exchange meets all four tests. Dee Farms deferred $400,000 of capital gain. Later, Dee Farms sells the investment property and reports capital gain of $700,000. Of this amount, $400,000 is eligible for the reduced tax rate for farm capital gain, because it would have been eligible if the company had not deferred it.

(12) Sale in more than one tax year. Prior-year sales of farm property, or a farming business sold over more than one year, may be eligible for the reduced tax rate. It can take more than one year to sell a farming business or all of a taxpayer's property used in farming because the property is sold to more than one buyer. To qualify for the reduced tax rate, the taxpayer must be actively trying to sell all farm property (or all property from a farming business) from the year of the first sale until the year of the final sale. Each sale is separately considered to see if it meets the requirements to qualify for the reduced tax rate, but all farm property or property from a farming business must be sold within a reasonable amount of time (usually no more than three tax years from the first sale to the final sale of qualifying farm property) for any of the prior year sales to qualify. The reduced tax rate on the prior year sales cannot be claimed until the taxpayer has sold all farm property or all property from a farming business. A property is "actively for sale" if the property was listed and advertised for sale for a price comparable to similar properties and the seller did not reject reasonable offers.

Example 11: Sunshine Grass Seed Inc owns 1,000 acres of farmland in four different locations. The properties are treated as one business and all of the property is actively for sale. The company sells 200 acres to a neighboring farmer in 2006. Sunshine Grass Seed Inc files its 2006 tax return but cannot claim the reduced tax rate on the gain because it is not out of the business of farming. In November 2007, the company sells the remaining 800 acres of farmland to Dees Farms (an unrelated party). Sunshine Grass Seed Inc, files its 2007 tax return and the long-term capital gain from the sales qualifies for the reduced tax rate because the property was actively for sale the entire time. Sunshine Grass Seed Inc may now amend its tax return for 2006 and claim the reduced tax rate on the qualifying capital gain from the earlier sale.

(13) If a taxpayer sells farm property and then buys other farm property, the taxpayer may qualify for the reduced tax rate. The taxpayer must meet all four tests described in section (3) of this rule with the sale of farm property before purchasing other farm property to qualify for the reduced tax rate.

Example 12: JB Farms, sold the company's farm and equipment to start a retail business. After some difficulty in getting started, the company decides to go back to farming and purchased another farm. JB Farms qualifies for the reduced tax rate because the company had completely terminated its interest in property used in farming at the time of the sale and met the other tests.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 317.063
Stats. Implemented: ORS 317.063
Hist.: REV 8-2010, f. 7-23-10, cert. ef. 7-31-10

150-317.067
Tax on Homeowner's Association Income

Homeowners associations, such as condominium management associations and residential real estate management associations, may elect to be treated as tax-exempt organizations for taxable years beginning on and after January 1, 1978. But this tax-exempt status will protect the association from tax only on its exempt function income, such as membership dues, fees, and assessments received from member-owners of residential units in the particular condominium or subdivision involved. The homeowners association taxable income will be taxed at the corporate rates provided in ORS 317.061. To qualify for the election, the association must meet the following conditions:

(1) A copy of the federal Form 1120-H filed with the Internal Revenue Service must be filed with the Oregon Department of Revenue no later than the time prescribed by law for filing the return.

(2) It must be organized and operated as provided in section 528(c) of the Internal Revenue Code.

(3) "Homeowners association taxable income" is determined pursuant to section 528(d) of the Internal Revenue Code and pertinent federal regulations. However, net capital gains shall be included in the computation of homeowners association taxable income and shall receive no special treatment.

(4) "Exempt function income" is determined pursuant to section 528(d) of the Internal Revenue Code and pertinent federal regulations.

(5) If a homeowners association that elects to be treated as a tax exempt organization has positive homeowners association taxable income, it shall be reported on an Oregon Corporation Excise Tax Return, Form 20and the association is subject to the greater of the calculated corporation excise tax or the minimum tax.

(6) If a homeowners association that elects to be treated as a tax-exempt organization does not have positive homeowners association taxable income, the association is not required to file an Oregon Corporation Excise Tax Return, Form 20 and is not subject to the minimum tax.

[Publications: Publications referenced are available from the agency pursuant to ORS 183.360(2) and 183.355(1)(b).]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.067
Hist.: 10-7-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-317.080(6)(b); RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 11-2013, f. 12-26-13, cert. ef. 1-1-14

150-317.070(1)
Imposition of the Tax: Mercantile, Manufacturing and Business Corporations

A corporation excise tax is imposed for the privilege of doing business in Oregon during the year prior to that in which the tax is due and payable. The tax is measured by the corporation's Oregon taxable income as computed in accordance with the provisions of this chapter. A foreign corporation is authorized to do business in this state if it is qualified to do business here. A domestic corporation is authorized to do business if a certificate of incorporation has been issued to it, even though the details of corporate organization have not been completed and no business has been transacted. If a corporation is subject to Oregon jurisdiction and is a part of a unitary group, as defined in ORS 317.705, the determination of the taxable income attributable to Oregon shall be made in accordance with ORS 314.605 to 314.675, 317.705 to 317.720, and the rules thereunder, although the corporation itself may be taxable only by Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.070
Hist.: 1958; 11-69; 12-70; 1-1-77; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91

150-317.080
Adoption of Federal Exempt Organizations

NOTE: Health Maintenance Organizations. With the adoption of Oregon Laws 1987, Ch. 293, Section 36, (Enrolled HB 2225), Oregon exempts the same organizations from Oregon corporation income or excise tax as tax exempt for federal tax purposes, with the exception of health maintenance organizations (HMOs). HMOs are not exempt from the Oregon Corporation income or excise tax for tax years beginning prior to January 1, 1989, if a substantial part of their activities consists of providing commercial type insurance. For tax years beginning on or after January 1, 1989, HMOs are exempt for Oregon tax purposes to the same extent they are exempt for federal tax purposes. For taxable years beginning prior to January 1, 1987, the law and corresponding rules applicable for those years shall remain in full force and effect.

Insurance Companies. For tax years beginning on or after January 1, 1987 and before January 1, 1997, corporations exempt from Oregon corporation excise or income tax include; 1) Foreign or alien insurance companies and foreign or alien interinsurance and reciprocal exchanges, upon which a tax on premiums is levied; 2) Domestic insurance companies organized after January 1, 1971, owned or controlled by a foreign insurance company or by a foreign corporation owning or controlling a foreign insurance company, upon which a tax on premiums is levied. Effective for tax years beginning on or after January 1, 1997, foreign or alien insurance companies are exempt from the corporation excise tax only with respect to the underwriting profit derived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and ORS 731.828.

Other Exempt Corporation. Oregon specifically exempts those corporations listed under ORS 317.080, including: 1) Corporations organized and operated primarily for the purpose of furnishing permanent residential, recreational and social facilities primarily for elderly persons; 2) People's utility districts established under ORS Chapter 261; 3) Charitable risk pools described in section 501(n) of the Internal Revenue Code; and 4) Qualified state tuition programs described in section 529 of the Internal Revenue Code.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.080
Hist.: RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98

150-317.080
Exemption and Return Requirements

(1) For taxable years beginning on or after January 1, 1987, corporations exempt for federal tax purposes, will no longer need to submit an affidavit or a federal determination letter to the department as previously required. This does not, however, preclude the department from requesting information regarding the activities or other information from the exempt corporation.

(2) In order to establish its exemption and thus be relieved of the duty of filing returns and paying taxes, each organization claiming exemption for Oregon purposes but which is not exempt for federal purposes must file with the department:

(a) An affidavit showing the character of the organization, the purpose for which it was organized, its actual activities, the sources and the disposition of its income, whether or not any of its income is credited to surplus or may inure to the benefit of any private stockholder or individual (see below), and in general all other facts relating to its operations which affect its right to exemption;

(b) A copy of the articles of association or incorporation;

(c) The by-laws of the organization; and

(d) The latest financial statement showing the assets, liabilities, receipts and disbursements of the organization. The articles should clearly indicate the disposition to be made of surpluses in the event of termination.

(3) When an organization has established its right to exemption and does not have unrelated business taxable income, it need not thereafter voluntarily make a return or any further showing with respect to its status unless it changes the character of its organization or operations from the purpose for which it is organized, or unless the department requests the filing of returns or the furnishing of other information.

(4) As provided in ORS 317.920, a corporation otherwise exempt from tax shall be subject to Oregon Corporation Excise Tax on its unrelated business taxable income, and shall file a return in any tax year the corporation has unrelated business taxable income.

(5) Organizations exempt under federal law, but not exempt under Oregon law, must attach a copy of the organization's federal Form 990 or 990T to the Oregon return in lieu of a federal Form 1120.

(6) Organizations which devote a substantial amount of their time or funds to promote legislation or support political candidates are not exempt within any section of ORS 317.080.

(7) The exempt status granted to organizations by the Internal Revenue Service (IRS) or the department may be reviewed at a later date. If the department finds that the exempt status was granted in error due to misstatements or fraud in the application for exemption, or a mistake on a point of law by an employee of the department or the IRS, the exemption will be retroactively revoked to the date the exemption was granted. If the department finds that the exemption was justified when granted, but that subsequent activities disqualified the organization for the exemption, the exemption shall be revoked as of the date such disqualifying activities began.

(8) If an organization's exemption is revoked by the IRS, the department shall revoke the exemption for Oregon tax purposes with the same effective date as the IRS.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.080
Hist.: 1953; 6-68;12-19-75; 12-31-82; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-317.090
Minimum Tax

(1)(a) For tax years beginning on or after January 1, 2009, the tax liability of an affiliated group of corporations filing a consolidated return may not be less than the minimum tax as defined in ORS 317.090. Only one minimum tax is charged per return, regardless of the number of corporations in the group that are doing business in Oregon.

Example 1: X Corporation and its only subsidiary, Y Corporation, are doing business in Oregon and file a consolidated Oregon Excise Tax Return showing a net loss for the 2009 tax year. The consolidated Oregon excise tax return properly shows Oregon sales for X of $500,000 and for Y of $250,000. The minimum tax for the year is $500 based on Oregon sales of $750,000.

(b) For tax years beginning on or after January 1, 2006, and before January 1, 2009 the tax liability of an affiliated group of corporations filing a consolidated return may not be less than the $10 minimum tax multiplied by the number of corporations in the group that are doing business in Oregon.

Example 2: Alpha Corporation and its only subsidiary, Beta Corporation, are doing business in Oregon and file a consolidated Oregon Excise Tax Return showing a net loss for the 2006 tax year. The Oregon minimum tax for the year is $20.

(c) For consolidated returns filed for tax years beginning before January 1, 2006, the department determines that a $10 minimum tax is due for the consolidated group and the $10 minimum tax due for each affiliate included in the return doing business in Oregon is cancelled. This determination is made under authority of ORS 305.145(3).

Example 3: On July 1, 2006, Corporation A and Affiliates filed an amended tax return for 2005. The return included three affiliates doing business in Oregon and showed a net loss for the tax year. Although ORS 317.090 provides that each of the four corporations owes $10 of minimum tax, the department will cancel the tax attributable to the affiliates and only one $10 tax is owed by Corporation A and Affiliates.

(2) For tax years beginning on or after January 1, 1999, the excise tax is measured by the corporation's Oregon taxable income as computed in accordance with the provisions of the statute, but the tax cannot be less than the specified minimum. The minimum tax is due even though the corporation had a net loss and it must be paid in full even though the taxpayer was subject to the statute for only a part of the year, except that it may be apportioned in the case of a

change of accounting periods. A corporation with no business activity in Oregon is not subject to the $10 minimum tax.

(3) For tax years beginning before January 1, 1999, the provisions of section (2) of this rule apply, except that a corporation qualified to do business in Oregon, but engaging in no business activity in the state, is subject to the $10 minimum tax.

(4) Definition of "Oregon Sales". For tax years beginning on or after January 1, 2009, the minimum excise tax is determined by referencing the taxpayer's "Oregon sales." Corporations using the apportionment method described in ORS 314.650 to 314.665 compute Oregon sales as provided under 314.665. For corporations that apportion business income using a method different from that prescribed by 314.650 to 314.665, "Oregon sales" means the numerator of the sales factor for:

(a) Carriers of freight or passengers in general, as provided in OAR 150-314.280-(G);

(b) Railroads, as provided in OAR 150-314.280-(H);

(c) Airlines, as provided in OAR 150-314.280-(I);

(d) Trucking companies, as provided in OAR 150-314.280-(J);

(e) Companies engaged in sea transportation service, as provided in OAR 150-314.280-(K);

(f) Companies involved in interstate river transportation service, as provided in OAR 150-314.280-(L);

(g) Public utilities (other than those provided for in subsections (a) through (f)), as provided in OAR 150-314.280-(E)(5), 150-314.280-(F), and ORS 314.650;

(h) Financial organizations, as defined in ORS 314.610(4), as provided in OAR 150-314.280-(N);

(i) Taxpayers with income from long-term construction contracts, as provided in OAR 150-314.615-(F);

(j) Motion picture and television film producers, as provided in OAR 150-314.615-(H);

(k) Publishers, as provided in OAR 150-314.670-(A);

(l) Interstate broadcasters, as provided in ORS 314.684;

(m) Insurers (as defined in ORS 317.010(11)), as provided in ORS 317.660(1); and

(n) Title insurers, and health care service contractors not classed as insurers under ORS 317.010(11), as provided in OAR 150-314.280-(E)(4), including gross premium receipts.

Stat. Auth.: ORS 305.100 & 317.090
Stats. Implemented: ORS 317.090
Hist.: 1953; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2006(Temp), f. 11-20-06, cert. ef. 11-21-06 thru 12-31-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 2-2010, f. & cert. ef. 2-19-10

150-317.092
Definition of "Oregon Sales" for One-time Small Sales Credit

(1) For tax years beginning on or after January 1, 2007, and before January 1, 2008 (tax year 2007), a C corporation with Oregon sales of less than $5 million is allowed a credit against Corporation Excise Tax or Corporation income tax equal to 67 percent of such tax.

(2) For a taxpayer that apportions business income for tax year 2007 using a method different from that prescribed by ORS 314.650 to 314.665, "Oregon sales" means the numerator of:

(a) The insurance sales factor provided in ORS 317.660(1) for insurers as defined in ORS 317.010(11);

(b) The sales factor, including gross premium receipts, as provided in OAR 150-314.280-(E)(2) for title insurers and health care service contractors not classed as insurers under ORS 317.010(11);

(c) The sales factor as provided in OAR 150-314.280-(G) for carriers of freight or passengers in general;

(d) The sales factor as provided OAR 150-314.280-(H) for railroads;

(e) The sales factor as provided in OAR 150-314.280-(I) for airlines;

(f) The sales factor as provided in OAR 150-314.280-(J) for trucking companies;

(g) The sales factor as provided in OAR 150-314.280-(K) for companies engaged in sea transportation service;

(h) The sales factor as provided in OAR 150-314.280-(L) for companies involved in interstate river transportation service;

(i) The sales factor as provided in OAR 150-314.280-(E)(3), OAR 150-314.280-(F), and ORS 314.650 for public utilities other than those provided for in subsections (c) through (h);

(j) The sales factor as provided in OAR 150-314.280-(N) for financial organizations, as defined in ORS 314.610(4);

(k) The sales factor as provided in OAR 150-314.615-(F) for taxpayers with income from long-term construction contracts;

(l) The sales factor as provided in OAR 150-314.615-(H) for motion picture and television film producers;

(m) The sales factor as provided in OAR 150-314.670-(A) for publishers; and

(n) The sales factor as provided in ORS 314.684 for interstate broadcasters.

Stat. Auth.: ORS 305.100, 317.092
Stats. Implemented: ORS 317.092
Hist.: REV 9-2007(Temp), f. & cert. ef. 10-5-07 thru 12-31-07; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-317.097
Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit

(1) Definitions, as used in ORS 317.097.

(a) Community Rehabilitation Program. A "community rehabilitation program" is a program sponsored by a nonprofit corporation or local government unit for the rehabilitation of low income housing.

(b) Project. A "project" is one or more units of housing that will be sold or rented to households whose incomes are less than 80 percent of the area median income.

(c) Time the qualified loan for housing construction, development, acquisition or rehabilitation is made. The "time the qualified loan for housing construction, development, acquisition or rehabilitation is made" is the date a note is signed for a loan and the interest rate becomes effective with the closing of the loan, or the date a conversion loan becomes a permanent loan. Either date may be used to determine the interest rate on nonsubsidized loans made under like terms and conditions as the qualifying affordable housing loan.

(2) If a qualifying loan is transferred by a lending institution to another entity, the transferee's credit must be computed in the same way and subject to the same limitations as the prior lending institution's credit. The transferee cannot claim a credit on the loan beyond the 20 year period that started with the date the loan was originally made.

(3) Unused credits from tax years starting before January 1, 1995 may be carried forward 15 years. Unused credits from tax years starting on or after January 1, 1995 may be carried forward 5 years.

(4) See OAR 813-110-0005 through 813-110-0040 for Housing and Community Development Department rules relating to the Oregon Affordable Housing Tax Credit Program.

Stat. Auth.: ORS 305.100 & 317.097
Stats. Implemented: ORS 317.097
Hist.: RD 1-1990, f. & cert. ef. 3-15-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10

150-317.099
Commercial Lending Institution Loans for Underground Storage Tanks or Soil Remediation

(1) ORS 317.099 was repealed December 31, 1991. On January 1, 1992, any finance charge that would have been eligible for a tax credit to a commercial lending institution under ORS 317.099 on the outstanding term of any loan made under ORS 317.099, shall cease to be eligible for a tax credit. Such finance charges accrued after December 31, 1991, shall be eligible for reimbursement by the Department of Environmental Quality, under the provisions of ORS 466.705 to 466.835.

(2) A commercial lending institution with a fiscal tax year ending after January 1, 1992, shall receive a tax credit on all eligible finance charges received or accrued before that date.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.099
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-317.111
Carryover of the Lender's Credit for Weatherization Loans

An excess Lender's Credit may be carried forward for up to 15 years. Carryovers from tax years beginning in 1977 may not be claimed on the taxpayer's 1985 or 1986 corporation excise tax returns. Carryovers from tax years beginning in 1978 may not be claimed on the taxpayer's 1986 corporation excise tax return. For purposes of computing the remaining carryover from tax years beginning in 1977 and 1978, the years in which the credit carryover was not allowed reduces the number of carryover years remaining. Credit carryovers from tax years beginning in 1979 and later may be claimed in tax years beginning in 1985 and 1986. In addition to the Lender's Credit Form (150-102-125) a separate schedule showing how the amount of unused credit carryover is computed shall be attached to the return for tax years that the unused credit carryover is being claimed.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.111
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-317.112
Lender's Credit: Loans to Wood Heat and Fuel Oil Heat Customers

(1) A credit is available to commercial lending institutions for tax years beginning on or after January 1, 1982, for low interest loans made to wood heat and fuel oil heat customers to finance energy conservation measures. To qualify, the loans must be made on or after January 1, 1982.

(2) The amount of the credit is equal to the difference between the interest charged on a qualifying loan, at an interest rate of 6 percent, and the interest that would have been charged if the loan had been issued at the lending institution's normal fixed interest rate. The fixed interest rate cannot exceed a maximum rate set by the director of the Office of Energy. The normal fixed interest rate is the rate that would have been charged on a similar loan made on the same day as the qualifying loan. The initial rate of interest charged on variable rate loans may be substituted for the fixed rate if the lending institution does not make fixed rate nonsubsidized loans. If the credit exceeds the commercial lending institution's tax liability, the balance may be carried forward for up to 15 years.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.112
Hist.: 12-6-82, 12-31-82; 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-317.100(Note)-(A); RD 12-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-317.090(Note)-(B)-(1); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-317.099(Note)-(B)-(1); RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01

150-317.112(1)
Lender's Credit: Computation

The credit is computed as follows:

Step 1: Calculate the interest that would have been charged during the tax year if the qualifying loans had been issued at the commercial lending institution's normal fixed rate of interest at the time the loans were made.

Step 2: Determine the actual interest charged on the qualifying loans during the tax year at an interest rate of 6 1⁄2 percent.

Step 3: Subtract the interest charged as determined in Step 2 from the interest calculated in Step 1. The difference is the available lender's credit.

Normal loan fees and prepayment penalties do not affect the eligibility of a low interest loan. Loan fees financed as part of the qualifying loan are includable in computing the interest that would have been charged at the lending institution's normal interest rate as well as the actual interest charged on the qualifying loan. If a qualified loan is terminated because of a prepayment or default, interest is computed from the start of the tax year through the date of termination at both the 6 1⁄2 percent rate and the normal fixed interest rate determined at the time the loan was made. The amount by which the interest charged at the normal fixed interest rate exceeds the interest charged at 6 1⁄2 percent is included in computing the available lender's credit.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.112
Hist.: 12-6-82, 12-31-82; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-317.100(Note)-(C); RD 12-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-317.090(Note)-(B)-(3); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-317.099(Note)-(B)-(3)

150-317.112(7)
Lender's Credit: Definitions

(1) Fuel oil is defined under rules adopted by the Office of Energy.

(2) "Commercial lending institution" is defined in Section 22, Chapter 894, Oregon Laws 1981 to include state and federal credit unions maintaining an office in the state. Although credit unions are included in the definition, they are exempt from the Oregon Corporate Excise Tax by ORS 317.080(12). Section 28, Chapter 894, Oregon Laws 1981 grants a credit "…against taxes otherwise due under this chapter for the taxable year." Therefore, unless a credit union loses its exemption from the Oregon Corporation Excise Tax by either paying more than 8 percent interest on share accounts or by having unrelated business taxable income, it would not be eligible for the refundable credit.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.112
Hist.: 12-31-81, Renumbered from 150-317.100(Note); 12-31-82; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-317.100(Note)-(B); RD 12-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-317.090(Note)-(B)-(2); RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-317.099(Note)-(B)-(2); REV 7-1999, f. 12-1-99, cert. ef. 12-31-99

150-317.131
Long Term Enterprise Zone Distributions

(1) Distributions from the Long Term Enterprise Zone Fund to local taxing districts under ORS 317.131 include only corporate tax liability payments received prior to the department's calculation of the distribution for the year.

(2) Any reduction of corporate tax liability of a taxpayer for a tax year, which is recognized and accepted subsequent to the deposit of that taxpayer's tax payments for the tax year into the Fund, will not be considered when determining the amount of the distribution to local taxing districts.

(3) If the department errs when calculating the correct amount of a distribution, the department may adjust the erroneous distribution and may require the return of any erroneously distributed payments made to local taxing districts.

(4) If the department requires the return of erroneously distributed payments made to local taxing districts; the department shall, if practicable, subtract the amount of the erroneously distributed payment to the local taxing district from the next distribution to the local taxing district. Otherwise, the department shall bill the local taxing district for any amount of an erroneously distributed payment that the department is unable to recover from the local taxing district by subtracting funds from the next distribution to the local taxing district.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.131
Hist.: REV 6-2014, f. 12-23-14, cert. ef. 1-1-15

150-317.147
Lender's Credit for Agriculture Workforce Housing

(1) A credit is available to commercial lending institutions that make low interest loans to finance the construction or rehabilitation of agriculture workforce housing.

(2) Qualifications for the Tax Credit:

(a) The agriculture workforce housing must be located in Oregon.

(b) The interest rate charged by the lending institution cannot exceed 13.5 percent per annum. If the interest rate exceeds 13.5 percent for a short period of time, but the annual rate for the year is 13.5 percent or less, the credit would not be lost for that year. Each year will stand alone in determining whether the credit is available for the year.

(3) Computation of the Tax Credit:

(a) For loans made in tax years beginning on or after January 1, 2002, the credit is equal to 50 percent of the interest income earned. For loans made in tax years beginning on or after January 1, 1996, and before January 1, 2002, the credit is equal to 30 percent of the interest income earned. For loans made in tax years beginning before January 1, 1996, the credit is equal to 50 percent of the interest actually received by the commercial lending institution on loans certified by the borrower to finance the construction or rehabilitation of agriculture workforce housing. Construction includes acquisition of new or used prefabricated or manufactured housing. Interest that has been accrued but not actually received may not be included in computing the credit.

(b) Interest on loans to finance the acquisition of land and existing improvements on that land does not qualify for the credit. If a loan is made to cover the acquisition and construction or rehabilitation costs, only interest on the portion of the loan attributable to the construction and rehabilitation costs qualifies for the credit.

(c) Loan fees and other charges imposed and collected by the lending institution may not be included in the computation of the credit.

(d) The tax credit must be claimed over the term of the loan or 10 tax years, whichever is shorter.

(4) If a qualifying loan is transferred by the original lender to another commercial lending institution, the transferee may not claim a credit on the loan beyond the 10-year period that started with the tax year the loan was originally made. The transferee's credit must be computed in the same way and subject to the same limitations as the original lender's credit.

(5) If a qualifying loan is transferred by the original lender to another person, the transferor may retain the right to claim the credit if it also retains the responsibility for servicing the loan.

(6) For tax years beginning on or after January 1, 2002, a lending institution that is not subject to tax under ORS Chapter 317 may sell or otherwise transfer its allowable credit to a taxpayer that is subject to taxation under ORS Chapter 317. The transferee of the credit may claim the credit for the same tax years the transferor would have been allowed to claim the credit. The transferee and the transferor must attach to the return on which the credit is claimed by the transferee, a statement that includes the following information:

(a) The transferor's name, federal employer ID number (FEIN) and Oregon business identification number (BIN);

(b) The transferee's name, FEIN and BIN;

(c) The amount of the credit transferred;

(d) The amount of any proceeds received for the transfer; and

(e) Signatures of a corporate officer of the transferor and a corporate officer of the transferee.

(7) A single unit of housing can qualify as an agriculture workforce housing project.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.147
Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-317.145(Note)-(C)-(2); RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 1-2014, f. & cert. ef. 7-31-14

150-317.151
Credit for Contributions of Computers, Scientific Equipment, and Research

(1) In General. Charitable contributions of tangible personal property shall not be eligible for the credit if the donee educational institution does not use the property primarily for the education of students in Oregon. The requirement that the property be used primarily for the education of students in Oregon is met if the donee provides the donor (taxpayer) with a written statement that the property's use is in accordance with this requirement. Such written statement shall be made available to the department upon request. For purposes of this rule "primarily" means at least 80 percent.

(2) Substantiation of Fair Market Value.

(a) When the taxpayer files its Oregon return claiming a credit under this section, a schedule shall be attached to the Oregon return listing the following information:

(A) The name and address of the donee;

(B) A description of the property contributed;

(C) The date or dates of the donation;

(D) The fair market value of the donation.

(b) Upon audit, the taxpayer may be required to provide the same substantiation of fair market value that would be necessary for a charitable contribution deduction allowable under Internal Revenue Code Section 170.

(3) Effective Date.

(a) The credit for qualified charitable contributions of tangible personal property or maintenance agreements is effective for contributions made in tax years beginning on or after January 1, 1986, and prior to January 1, 2004.

(b) The credit for qualified charitable contributions of monies made under a contract or agreement for scientific or engineering research is effective for contributions of monies made under a contract or agreement entered into in taxable years beginning on or after January 1, 1986, and prior to January 1, 2004. If the contract or agreement was entered into in a taxable year beginning prior to January 1, 2004, but the monies aren't contributed until a taxable year beginning on or after January 1, 2004, the credit shall be allowed for the taxable year the monies are contributed to the qualifying educational institution.

(4) Carryover. Credits otherwise allowable for tax years beginning on or after January 1, 1993, which are not used by the taxpayer in a particular year may be carried forward for up to five years.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.151
Hist.: 10-7-85, 12-31-85; 12-31-87; 12-31-89, Renumbered from 150-317.102(NOTE) to 150-317.102(Note)-(B); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-317.102(Note)-(B); RD 4-1997, f. 9-12-97, cert. ef. 12-31-97

150-317.153
Research Tax Credit: Notice of Election

The election to compute the credit under ORS 317.152 or ORS 317.154 shall be made on the Oregon return for the tax year in which the credit is claimed. The election can be changed on an amended return subject to the limitations provided in ORS 314.410 and ORS 314.415.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.153
Hist.: 9-20-89, 12-31-89, Renumbered from 150-317.145(Note)-(B) to 150-317.145(Note)-(B)-(1); RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-317.145(Note)-(B)-(1); RD 3-1995, f. 12-29-95, cert. ef. 12-31-95

150-317.154
Research Tax Credit: Alternative Computation

(1) The research credit based on Oregon sales is the lesser of the following:

(a) Five percent of the amount by which the qualified research expenses exceed 10 percent of Oregon sales,

(b) $10,000 times the number of percentage points by which the qualifying research expenses exceed 10 percent of Oregon sales; or

(c) The taxpayer's liability after other credits.

(2) For tax years beginning on or after January 1, 2006, the credit may not exceed $2,000,000. The limit applies to the consolidated group when a consolidated Oregon return is filed.

(3) For tax years beginning on or after January 1, 1995 and before January 1, 2006, the credit may not exceed $500,000. The limit applies to the consolidated group when a consolidated Oregon return is filed.

(4) For tax years beginning before January 1, 1995, the credit may not exceed $50,000 or one-third of the excise tax liability of the taxpayer before credits, whichever is less. These limits apply to the consolidated group when a consolidated Oregon return is filed.

(5) Credits otherwise allowable for tax years beginning before January 1, 1995 and not used in such years may not be carried forward. Credits otherwise allowable for tax years beginning on or after January 1, 1995 and not used in such years may be carried forward for up to 5 years.

Example: A corporation has 1994 Oregon sales of $40,000,000, qualified research expenses of $4,900,000 and Oregon excise tax of $264,000 before credits. The allowable 1994 credit is calculated as follows:
Credit before limitations:
Qualified research expenses — $4,900,000

Less: Oregon sales — $40,000,000 x .10
10% of Oregon sales — (4,000,000)
Excess — $900,000 x .05
Credit before limitations — $45,000
Limitations:
Qualified research expenses in
excess of 10% of Oregon sales — $900,000
Divide by Oregon sales — ÷ 40,000,000
Excess percentage points — 2.25
Multiply by $10,000 — x $10,000
$22,500
Maximum credit amount — $50,000
One-third of excise tax liability before credits ($264,000 ÷ 3) $88,000
The credit allowed is $22,500.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.154
Hist.: 12-31-93; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 5-2006, f. & cert. ef. 7-31-06

150-317.259-(A)
Bad Debt Reserve of Financial Institutions Not Qualifying as Large Banks that Have Differences in Reserve for Federal and Oregon Tax Purposes

(1) For tax years beginning on or after January 1, 1987, Oregon has adopted the federal provisions for treatment of bad debts of financial institutions provided in Sections 585(a) and 585(b) of the Internal Revenue Code (IRC). These provisions apply to financial institutions not considered large banks, as defined in IRC 585(c)(2).

(2) For Oregon tax purposes, the allowable addition to the reserve for bad debts shall be computed using the method provided in IRC 585(b), starting with the ending balance in the bad debt reserve calculated for Oregon tax purposes for the 1986 tax year.

(a) For 1987 tax years, the federal law provides that the addition to reserve for bad debts shall be the greater of the amounts computed using the percentage method in IRC 585(b)(2) or the experience method in IRC 585(b)(3), as revised in 1986.

(b) For tax years beginning on or after January 1, 1988, federal law provides that the addition to reserve for bad debts shall be no greater than the amount computed using the experience method in IRC 585(b)(2).

(c) An Oregon addition modification shall be made if the federal addition exceeds the Oregon addition to the reserve for bad debts for the tax year. An Oregon subtraction modification shall be made if the Oregon addition exceeds the federal addition to the reserve for bad debts for the tax year.

Example: Small Bank, Inc., must calculate its 1991 addition to its reserve for bad debts based on the following information: [Table not included. See ED. NOTE.]

Using the experience method, the addition to the reserves for bad debts for 1991 is computed as follows: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.259
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-317.267-(A)
Modification of Federal Taxable Income: Dividends from Certain Subsidiaries

(1) For taxable years beginning before January 1, 1986, a corporation owning 50 percent or more of the voting stock of another corporation is allowed to subtract from federal taxable income amounts included as dividends from the subsidiary. The subtraction is limited, however, to the extent that the payor corporation is subject to Oregon tax.

Example: Corporation S is a wholly-owned subsidiary of Corporation P. Corporation P does business only in Oregon, but Corporation S has activities within and without the state and an Oregon apportionment factor of 10 percent. In 1983, S pays dividends of $10,000, all of which are included in P's federal taxable income. The allowable subtraction for P is $1,000 ($10,000 x 10 percent).

(2) For tax years beginning on or after January 1, 1985, Oregon does not recognize any transaction between a corporation and a related domestic international sales corporation (DISC) or foreign sales corporation (FSC). Therefore, any dividends received in these years from a related DISC or FSC that are included in federal taxable income shall be subtracted to derive Oregon taxable income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.267
Hist.: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83, Renumbered from 150-317.267; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-317.267-(B)
Modification for Dividends Received: Tax Years 1986 and Later

(1) For dividends received in tax years beginning on or after January 1, 1986 and before January 1, 1987, a corporation is allowed to subtract from federal taxable income 85 percent of dividends received or deemed received from another corporation.

(2) For dividends received in tax years beginning on or after January 1, 1987 and ending before January 1, 1988, a corporation is allowed to subtract from federal taxable income 80 percent of dividends received or deemed received from another corporation. However, in the case of any dividend on debt-financed portfolio stock as described in section 246A of the Internal Revenue Code, the subtraction allowed must be reduced under the same conditions and in the same amount as the dividends received deduction is reduced for federal tax purposes.

(3) For dividends received or accrued after December 31, 1987, in tax years ending after December 31, 1987, a corporation is allowed to subtract from federal taxable income 80 percent of dividends received or deemed received from another corporation. Dividends deemed received includes subpart F income included in federal taxable income pursuant to IRC Section 951. In order to take the Oregon dividends received deduction, however, the taxpayer must first add back the federal dividend received deductions allowed by Internal Revenue Code (IRC) Sections 243 and 245 and the dividends eliminated under the federal consolidation rules. Exceptions to this general rule are as follows:

(a) Dividends received from corporations owned less than 20 percent by the recipient must be reduced by a 70 percent rather than 80 percent dividends received deduction for dividends received or accrued after December 31, 1987.

(b) Dividends received from a foreign sales corporation and deducted under IRC Section 245(c) are not added back. These dividends are totally excluded from Oregon taxable income.

(c) Dividends received from a related domestic international sales corporation are totally excluded from Oregon taxable income. A subtraction is allowed for these dividends to the extent they are included in federal taxable income.

(d) Dividend income included in federal taxable income pursuant to the "gross-up" provisions of IRC Section 78 is not taxable by Oregon. These dividends are subtracted in full under ORS 317.273.

(e) Dividends eliminated under IRC section 243(a)(3) are not added back to federal taxable income on the Oregon return if the recipient and the payer corporations are both members of the same unitary group filing an Oregon consolidated tax return. If they are not members of the same Oregon consolidated group, the 100 percent federal dividend deduction is added back to federal taxable income and the appropriate Oregon dividends received deduction is subtracted.

(4) Unlike the federal dividend received deduction, the Oregon deduction is permitted on dividends received or deemed received from foreign as well as domestic corporations. Income included in federal taxable income pursuant to IRC Section 951(a) qualifies for the dividend received deduction. Such income is a dividend "deemed received." Dividends from tax exempt corporations and dividends that qualify for a federal dividend deduction limited to a certain measure of income qualify for the full Oregon dividend deduction. An example of the latter is a dividend from a Federal Home Loan Bank.

(5) An Oregon dividends received deduction is not allowed with respect to "dividends" that are not treated as dividends under federal law or dividends that are not included in federal taxable income as provided in ORS 317.267(1). For tax years beginning on or after January 1, 2006, ORS 317.267(2)(b) provides that a dividend that is not treated as a dividend under IRC section 243(d) or 965(c)(3) may

not be treated as a dividend for purposes of the Oregon dividends received deduction.

Example: L corporation received $10,000 in "dividend" income from a mutual savings bank. L corporation does not own stock in the bank. The $10,000 represents interest income on funds deposited in the mutual savings bank, and not dividend income. Since these "dividends" are not treated as dividends for purposes of the federal dividends received deduction under the provisions of IRC section 243(d)(1), they are not eligible for the Oregon dividends received deduction.

(6) For tax years beginning on or after January 1, 2006, a taxpayer may not claim an Oregon dividend received deduction for a dividend if the federal dividends received deduction is not allowed because of IRC section 246(a) or (c).

(7) In the case of dividends on debt-financed portfolio stock, the percentage of the Oregon dividend received deduction will be reduced in the same manner as the federal deduction under IRC 246A.

(8) For tax years beginning before January 1, 2007, a dividends received deduction allowed under IRC section 965 for federal tax purposes is allowed in determining taxable income under ORS chapter 317 for the same tax year as the deduction is allowed for federal tax purposes. IRC section 965 provides a temporary dividends received deduction for cash dividends received from controlled foreign corporations.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.267
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 2-2003, f. & cert. ef. 7-31-03; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06

150-317.288
Modification of Federal Taxable Income: Internal Revenue Code Subpart F Income

A taxpayer that owns stock in a "Controlled Foreign Corporation," as defined in IRC Section 957, may be required to include in federal taxable income its pro rata share of the subpart F income (as defined in IRC Section 952) of the foreign corporation. If the foreign corporation is included with the taxpayer in a combined report permitted or required under ORS 314.363, any subpart F income attributable to the foreign subsidiary shall be subtracted from federal taxable income in arriving at Oregon taxable income.

NOTE: With the adoption of Oregon Laws 1984, Ch. 1, (Enrolled HB 3029), ORS 317.288 was repealed. This rule will no longer be in effect for taxable years beginning on or after January 1, 1986. For all prior years, this rule shall remain in full force and effect.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.288
Hist.: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83

150-317.307
Oregon Subtraction Where Charitable Contribution Is Reduced Under Federal Law

Under IRC section 170(d)(2)(B), a corporation's current year charitable contribution must be reduced by a corresponding increase in the corporation's NOL carryover. To derive Oregon taxable income, the amount by which a corporation reduces its charitable contribution shall be subtracted from federal taxable income.

Example: ABC corporation has current year federal taxable income (pre-NOL application) of $100,000 and NOL carry forward amounts from prior years of $120,000. The corporation has a current year charitable contribution of $15,000. Since the NOL application exceeds taxable income, ABC's otherwise deductible $10,000 charitable contribution is converted to an additional NOL carry forward under IRC section 170(d)(2)(B). The remaining $5,000 excess contribution may be carried forward for five years under IRC section 170(d)(2)(A).

For Oregon, ABC corporation reports federal taxable income (pre-NOL application) of $100,000 in the current year. The $10,000 reduction of the federal charitable contribution is shown as an "other subtraction" on the Oregon return. The remaining $5,000 excess charitable contribution is carried forward as under federal law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 315.311
Hist.: RD 6-1996, f. 12-23-96, cert. ef. 12-31-96

150-317.309
Definition of "State"

For purposes of ORS 317.309, the term "state" shall mean any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States, and any foreign country or political subdivision thereof.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.309
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85

150-317.310(2)
Bad Debt Reserve of Financial Institutions that Have Changed From Reserve Method to Specific Charge-off Method

(1) For tax years beginning on or after January 1, 1987, Oregon has adopted the federal provisions for treatment of bad debts of financial institutions provided in Section 585(c) of the Internal Revenue Code (IRC). Financial institutions considered large banks, defined in IRC 585(c)(2), must recapture the balance in their reserve for bad debts over a four-year period unless they elect the federal "cut-off" method.

(a) The recapture provisions of IRC 585(c)(3) shall be applied to the ending reserve balance calculated for Oregon tax purposes for the 1986 tax year.

(b) For each of the four recapture years, an Oregon addition modification shall be made if the Oregon reserve recaptured exceeds the federal reserve recaptured. An Oregon subtraction modification shall be made if the federal reserve recaptured exceeds the Oregon reserve recaptured.

Example: Lending Corp., a calendar year filer, has a bad debt reserve of $5,000,000 for federal and $3,000,000 for Oregon tax purposes on December 31, 1986. Lending Corp. qualifies as a large bank. It elects to recapture 10 percent of the bad debt reserve as income on its 1987 federal return. An Oregon subtraction modification of $200,000 is calculated as follows: [Table not included. See ED. NOTE.]

(c) Financially troubled banks don't have to recapture existing bad debt reserves as long as their nonperforming loans exceed seventy-five percent of the average of their equity capital for the year.

(2) Oregon also adopted the cut-off method provided under IRC 585(c)(4) for tax years beginning on or after January 1, 1987. If the financial institution elects the cut-off method, the ending balance of the reserve for bad debts for the 1986 tax year shall not be recaptured. Instead, bad debts in tax years after 1986 shall be charged to the reserve rather than deducted from income. When the entire reserve has been depleted, bad debts shall be deducted as they occur.

(a) The provisions in IRC 585(c)(4) shall be applied to the ending reserve balance calculated for Oregon tax purposes for the 1986 tax year.

(b) The ending balance of the reserve for bad debts as of December 31, 1986, may be greater for federal purposes than it is for Oregon. If so, the Oregon reserve will be depleted before the federal reserve. An Oregon subtraction modification shall be made when the Oregon deduction for bad debts exceeds the federal deduction for the tax year.

Example: Large Bank, Inc., elected the cut-off method of treating its reserve for bad debts, starting in 1987. The reserve balance on January 1, 1991, was $100,000 for federal purposes and $50,000 for Oregon purposes. During 1991, $150,000 of bad debts were written off. An Oregon subtraction modification of $50,000 is calculated as follows: [Table not included. See ED. NOTE.]

(c) The ending balance of the reserve for bad debts as of December 31, 1986, may be greater for Oregon purposes than it is for federal. If so, the federal reserve will be depleted before the Oregon reserve. An Oregon addition modification shall be made when the federal deduction for bad debts exceeds the Oregon deduction for the tax year.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.310
Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-317.314

Taxes on Net Income or Profits Imposed by any State or Foreign Country

For purposes of ORS 317.314, “net income” is income subject to taxation after allowable deductions and exemptions have been subtracted from gross or total income. This rule shall apply to all taxable years which are open to examination.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.314
Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 2-2014, f. & cert. ef. 7-31-14

150-317.329

IRC Section 338: Application to Oregon

(1) Internal Revenue Code (IRC) Section 338 applies when at least 80 percent of the voting power and total value of the stock of a target corporation is acquired by a purchasing corporation. Under the election provided by IRC 338(g), the acquiring corporation treats the purchase of the target corporation’s stock as the purchase of its assets. The target’s assets are given a stepped-up basis and the target reports gain as if its assets were sold at fair market value. The seller recognizes a gain on the sale of stock.

(2) For all Oregon apportionment computations discussed in this rule, the gross receipts from the deemed sale of assets are not included in the target’s sales factor.

(3) If the target filed a separate federal return for the period ending with the date of acquisition, the gain from the deemed sale of assets must be included in the separately filed final return of the target corporation for the period which ends on the date of acquisition.

(a) For Oregon apportionment purposes, the apportionment factors computed on the separate Oregon return for the period ending with the date of acquisition must be used.

(b) The deemed gain on sale of assets is subject to Oregon apportionment if the target is doing business in Oregon.

(c) The gain on sale of stock is taxed by Oregon to the selling corporation through apportionment if the stock is considered a business asset and the seller is doing business in Oregon.

(d) The gain on sale of stock is taxed by Oregon to the selling corporation through allocation if the stock is considered a nonbusiness asset and the seller’s commercial domicile is in Oregon.

Example: S Corporation, a calendar year filer, and its nonunitary subsidiary, T Corporation, file separate federal returns. T does business in Oregon. S does not. On July 31, 2002, P Corporation purchases all of T’s stock from S and makes an election under IRC 338. T files a separate short period Oregon return through July 31, 2002, and apportions income, including the deemed sale of assets, to Oregon using its apportionment factors for the year to date. S’s gain on the sale of T’s stock, an intangible, is not taxed by Oregon.

(4) If the acquired target corporation is the common parent of an affiliated group, the group may elect to file a consolidated federal return. The final return of the common parent is also the final return of each subsidiary, which is considered to be acquired on the same date. The deemed sale of assets for each consolidated corporation must be reported on the consolidated return for the period ending on the date of acquisition. The apportionment factors computed on the Oregon return for the period ending with the date of acquisition must be used to apportion the income including the gain from the deemed sale of assets. The property factor must reflect the corporation’s basis prior to the step-up in basis under IRC 338.

(5) If the acquired corporation was purchased from an affiliated group with which it was unitary and elects to file a consolidated federal return, it must be included in the consolidated Oregon return of the selling group through the date of acquisition. However, the deemed gain from the sale of assets must be included on a separately filed single transaction return unless an election is made under IRC 338(h)(10). (See Section 6 of this rule for further information concerning the IRC 338(h)(10) election). For Oregon purposes, the deemed gain must be attributed to Oregon using the apportionment factors from the consolidated Oregon return for the period ending with the date of acquisition.

(6) An election may be made jointly by the selling and acquiring corporations under IRC 338(h)(10). If a corporation makes the election under IRC 338(h)(10) on its federal return, that election applies to the Oregon return.

(a) If a selling corporation making the election under IRC 338(h)(10) files a consolidated Oregon return including the target corporation, that return must include the gain or loss from the deemed sale of the target’s assets in income to be apportioned. The gain or loss from the sale of the target’s stock will not be recognized. The apportionment factors for the target must be included through the date of the stock sale. The property factor must reflect the target’s basis in its assets prior to the step-up in basis under IRC 338.

(b) If a selling corporation making an election under IRC 338(h)(10) does not file a consolidated Oregon return with the target corporation, and the target corporation is doing business in Oregon, the gain or loss from the target’s deemed sale of assets must be reported on the target’s separately filed Oregon return.

(c) If the selling corporation has not made an election under IRC 338(h)(10) on its federal return, the election will not be accepted by Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.329
Hist.: RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 2-2003, f. & cert. ef. 7-31-03

150-317.349-(A)

Payments Received Under Federal Safe Harbor Lease Agreements For Transactions Entered Into in Tax Years Beginning on or After January 1, 1983

(1) Oregon law provides that safe harbor lease transactions will not be treated as a lease, or in “any other way” be recognized for Oregon tax purposes. Therefore, for safe harbor lease transactions entered into in tax years beginning on or after January 1, 1983, the following Oregon modifications are required:

(a) Seller-Lessee:

(A) A depreciation subtraction is allowable based upon the original cost of the safe harbor lease property.

(B) Lease payments made to the purchaser-lessor and deducted for federal tax purposes must be added to income.

(C) Interest payments received from the purchaser-lessor and included in income for federal tax purposes must be subtracted from income.

(b) Purchaser-Lessor:

(A) Depreciation deducted for federal tax purposes must be added to income.

(B) Lease payments received from the seller-lessee and included for federal tax purposes must be subtracted from income.

(C) Interest payments made to the seller-lessee and deducted for federal tax purposes must be added to income.

(2) Legal fees, accounting costs or similar expenses incurred or paid to third parties in connection with safe harbor leases are deductible.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.349
Hist.: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-317.349-(B)

Payments Received Under Federal Safe Harbor Lease Agreements for Transactions Entered Into in Tax Years Beginning Prior to 1983

(1) Oregon has not adopted the safe harbor lease provisions contained in the federal Economic Recovery Tax Act of 1981 (IRC 168(f)(8)). Sale and leaseback transactions must meet the prior federal sale and leaseback provisions to qualify as a sale and leaseback for Oregon corporation tax purposes. The Oregon treatment of a safe harbor lease transaction for safe harbor lease transactions entered into in tax years beginning prior to January 1, 1983 is as follows:

(a) The down payment received by the seller-lessee is not taxable as income in the year received or accrued.

(b) The down payment made by the purchaser-lessor is not deductible from income. The payment is considered a payment in lieu of federal income taxes which are not deductible under ORS Chapters 317 and 318.

(c) The purchaser-lessor is not taxable in Oregon under ORS Chapter 317 or 318 solely due to federal tax ownership under a safe harbor lease agreement.

(d) The property subject to the safe harbor lease agreement is considered property of the seller-lessee. Depreciation is allowed based upon the original cost less the down payment received.

(e) If the corporation is doing business within and without Oregon and the apportionment provisions (ORS 314.650 through 314.667) apply, the property subject to the safe harbor lease agreement is included in the property factor of the seller-lessee. Lease payments made by the seller-lessee under the agreement are not included in the computation of the property factor.

(2) Since Oregon does not recognize the transaction as a true sale and leaseback, it is necessary to reverse the effect of such treatment in preparing the Oregon tax returns of the seller-lessee, and the purchaser-lessor. Adjustments are as follows:

(a) Seller-Lessee:

(A) A depreciation deduction is allowed based upon the original cost reduced by the down payment received. The deduction is computed using the methods allowable under ORS 317.285 and 318.044.

(B) The lease payments made to the purchaser-lessor are not deductible except to the extent they exceed the principal and interest payments received from the purchaser-lessor.

(C) Interest payments received are includible in income only to the extent the principal and interest payments received exceed the lease payments made to the purchaser-lessor.

(b) Purchaser-Lessor:

(A) No depreciation deduction is allowed for the property purchased and leased under a federal safe harbor lease agreement.

(B) Lease payments received from the seller-lessee are not includible in income.

(C) The "interest" payments made are not deductible.

(3) Legal fees, accounting costs or similar expenses incurred or paid to third parties in connection with safe harbor leases are deductible.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.349
Hist.: 4-5-83(Temp); 8-1-83, Renumbered from 317.105(1); RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-317.356
Modification of Federal Taxable Income: Difference Between Oregon and Federal Bases on Assets Sold, Exchanged or Otherwise Disposed Of

(1) Oregon law and federal law differ substantially with respect to allowable methods of depreciation, depletion, or other cost recovery. Therefore, the adjusted basis of a particular asset for Oregon tax purposes will often differ from federal adjusted basis. Upon the sale, exchange, or other disposition of such an asset, federal taxable income must be increased or decreased by the difference in depreciation, depletion, etc., allowed or allowable in previous years for Oregon and federal tax purposes.

Example. B corporation purchased property in 1982 for $5,000. For federal tax purposes, B elected to expense the total cost under IRC Section 179 and, therefore, had a basis in the property of zero. For Oregon tax purposes, B had claimed $3,000 of depreciation on the property in 1982 and 1983, and had an adjusted basis of $2,000 in the property when it was sold in 1983. Federal taxable income for 1983 must be reduced by $2,000 ($5,000–3,000) in arriving at Oregon taxable income.

(2) Effective for tax years ending after December 31, 1986, for property dispositions after February 28, 1986, the provisions of section 453C of the Internal Revenue Code concerning the proportionate disallowance rule have been adopted by Oregon as part of its tie to federal accounting methods. Under the federal provisions, a taxpayer's average indebtedness is treated as an installment payment in the ratio of the face amount of installment obligations receivable to the adjusted basis in all assets.

(3) In computing Oregon taxable income, a modification shall be made to reflect the difference in deemed installment income created for federal and Oregon tax purposes by the proportionate disallowance rule. Such a difference arises when the basis of assets for federal and Oregon tax purposes is not the same. If the Oregon deemed income is greater than the federal, the difference shall be an addition. If the Oregon deemed income is less than the federal, the difference shall be a subtraction.

(4) Oregon has also adopted the repeal of IRC Section 453C through its tie to federal accounting methods. The repeal applies to dispositions in taxable years beginning after December 31, 1987.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.356
Hist.: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

150-317.362
Modification of Federal Taxable Income: Timber Cut but Unsold

(1) For federal tax purposes, a taxpayer may elect under Section 631(a) of the Internal Revenue Code to treat the cutting of timber as a sale or exchange of such timber, even if it remains unsold at the end of the tax year. For Oregon tax purposes, the gain is not included in income until the actual sale takes place.

(2) The gain from the sale or cutting of timber that is included as capital gain income for federal tax purposes under IRC 631(a) does not automatically qualify as capital gain income for Oregon tax purposes. Gain from the sale or cutting of timber not qualifying as capital assets under IRC 1221 shall not be used to offset capital losses. However, such gain may be used as an offset to ordinary losses.

(3) In order to modify federal taxable income to reverse the effects of IRC Section 631(a), the taxpayer must compare the amount of Section 631(a) gain in beginning and ending inventory. If the amount of such gain in ending inventory exceeds the amount in beginning inventory, the difference is subtracted from federal taxable income. If the amount of Section 631(a) gain in beginning inventory exceeds the amount in ending inventory, the difference must be added to federal taxable income in arriving at Oregon taxable income.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.362
Hist.: RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-317.374(2)
Depletion Allowance; Method of Computation

Except in the case of metal mines with respect to which percentage depletion is allowed, the computation of the allowance for depletion of mines, oil and gas wells, other natural deposits and timber, for a given year shall be based upon the number of units of the particular class removed during that year and the unit cost for depletion purposes of such deposits or timber. The unit cost for depletion purposes of any taxable period is to be determined by dividing the sum of the amount to be recovered by depletion of the particular class at the beginning of the taxable period and the additions at cost during the period by the sum of the units of the particular class on hand at the beginning of the taxable period and the number of units acquired during such period. As to capitalization of carrying charges (items of expenses which do not add to the value of the property, such as interest and taxes), see IRC Section 266.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.068
Hist.: 6-68, Renumbered from 150-317.290(2); RD 7-1983, f. 12-20-83, cert. ef. 12-31-83

150-317.374(3)
Depletion of Metal Mines

In the case of metal mines, a taxpayer may compute its depletion allowance based on the cost of the property, as provided in ORS 317.374(2), or by using percentage depletion. For purposes of this section, metal mines include those mines where the metal being extracted occurs in a pure state, such as gold or silver, or where it is found in combination with other substances, such as in the case of aluminum obtained from bauxite. The percentage depletion allowance is equal to 15 percent of the gross income from the property during the tax year, but shall not in any case exceed 50 percent of the net income of the taxpayer (computed without allowance for depletion) from the property. In its first return made under the tax law, the taxpayer must state, as to each property with respect to which it has any item of income or deduction (in case of metal mines), whether it elects to have the depletion allowance for each such property for the tax year computed with or without reference to percentage depletion. An election once exercised under this paragraph cannot thereafter be changed by the taxpayer, and the depletion allowance in respect to each such property will for all succeeding tax years be computed in accordance with the election so made.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.374
Hist.: 6-68; 12-31-83, Renumbered from 150-317.290(3); RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-317.476(4)
Limitation on Oregon Net Loss Deduction

(1) The Oregon net loss which is deductible in any year is the Oregon net loss of a prior year reduced by taxable income, if any, in the intervening tax year or years between the year of loss and the succeeding tax year in which the Oregon net loss deduction is claimed. Net losses occurring in tax years beginning prior to January 1, 1987, can be carried forward five tax years. Net losses occurring in tax years beginning on or after January 1, 1987, can be carried forward fifteen tax years. See the limitation on "apportioned" taxpayers in ORS 314.675. In computing the taxable income which will reduce the Oregon net loss which is carried forward, any refund of an expense used in computing the Oregon net loss which is excluded from gross income shall be added to and included in the taxable income of an intervening tax year.

(2) If a consolidated Oregon return is filed in tax years beginning on or after January 1, 1986, the separate return limitation year (SRLY) rules as defined in Treasury Regulation §1.1502-1, shall be followed. Oregon net losses incurred in tax years beginning prior to January 1, 1986, shall be considered losses from a separate return limitation year. Therefore, the Oregon net losses from those years can be deducted in tax years beginning on or after January 1, 1986, only to the extent the same corporation that incurred the loss has Oregon net income on a separate basis. This limitation does not apply to a corporation that qualifies as a common parent. The provisions of this paragraph are demonstrated by the following examples: [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.476
Hist.: 1-69, Renumbered from 150-317.297(4); 12-31-83; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-317.478
Pre-change and Built-in Losses

(1) Pre-change and built-in losses, other than capital losses, which the taxpayer elects to carry back under federal law, must be carried forward and subtracted in computing Oregon taxable income to the extent that such losses are apportioned or allocated to Oregon. All limitations imposed under ORS 317.478 apply to the loss carryforward amount. If the pre-change or built-in loss carried back for federal purposes is a capital loss, the provisions of OAR 150-317.013 apply.

(2) When the assets of a corporation are acquired by another corporation and the provisions of IRC section 382 apply, the Oregon apportionment factors of the old loss corporation for the reporting period ending on the date of ownership change are considered the Oregon apportionment factors of the new loss corporation existing at the time of the change in ownership. These apportionment factors must be used to compute the IRC section 382 limitation applicable to Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.478
Hist.: RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 5-2000, f. & cert. ef. 8-3-00

150-317.660(1)
Definition of "Premiums" in the Insurance Sales Factor

For purposes of computing the Insurance Sales Factor, the term "premiums" shall mean "premiums written" as required to be reported in the Annual Statement filed with the Department of Consumer and Business Services, Insurance Division.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.660
Hist.: REV 12-1999, f. 12-30-99, cert. ef. 12-31-99

150-317.660(2)
Insurers; Wage and Commission Factor

(1) For tax years beginning on or after January 1, 2007, ORS 317.660 provides that the apportionment factor for insurance companies consists of only the insurance sales factor.

(2) For tax years beginning prior to January 1, 2007, the wages, salaries, commissions and other compensation for personal services included in the wage and commission apportionment factor denominator for insurers are the amounts required to be included in appropriate schedules of the annual report filed with the Insurance Division of the Department of Consumer and Business Services.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.660
Hist.: REV 5-2000, f. & cert. ef. 8-3-00; REV 5-2008, f. 8-29-08

150-317.705
Applicable Date

OAR 150-317.705 to 150-317.725, concerning consolidated Oregon returns, apply to tax years beginning on or after January 1, 1986.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.705
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90

150-317.705(3)(a)
Unitary Business

(1) This rule is based partially on a model regulation adopted by the Multistate Tax Commission to promote uniform treatment of the unitary business principle by the states. Sections (3) through (10) of this rule apply to tax years beginning on or after January 1, 2007. However, the principles outlined in those sections may also be applied to years prior to 2007 to the extent that they reflect case history and the policy of the Department.

(2) The presence of all of the factors described in ORS 317.705(3) will demonstrate that a unitary business exists, but the presence of one or two such factors may also demonstrate the flow of value requisite for a unitary business determination.

(3) The Concept of a Unitary Business. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Oregon that comes from being part of a unitary business conducted both within and without Oregon is what provides the constitutional due process "definite link and minimum connection" necessary for Oregon to apportion business income of the unitary business, even if that income arises in part from activities conducted outside of Oregon. The business income of the unitary business is then apportioned to Oregon using the apportionment formula set forth in ORS 314.650. This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one business either contributes to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(4) Constitutional Requirement for a Unitary Business. The sharing or exchange of value described in section (3) that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. In Oregon, the unitary business principle will be applied to the fullest extent allowed by the U.S.

Constitution. The unitary business principle will not be applied where the result would not be allowed by the U.S. Constitution.

(5) Separate Trades or Businesses Conducted within a Single Entity. A single entity may have more than one unitary business. In such cases it is necessary to determine the business or apportionable income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned.

(6) Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a commonly controlled group of business entities.

(7) Determination of a Unitary Business. A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980): centralization of management, economies of scale, and functional integration. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one or more of the factors mentioned above.

(8) Description and Illustration of Centralization of Management, Economies of Scale, and Functional Integration.

(a) Centralization of Management. Centralization of management exists when directors, officers, and/or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

(A) Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.

(B) Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one or more significant operating aspects of one business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

(b) Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance.

(A) Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.

(B) Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale.

(c) Functional integration: Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

(A) Sales, exchanges, or transfers (collectively "sales") of products, services, and/or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and/or the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to affect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser.

(B) Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. Such activity, however, is relevant to determining the existence of economies of scale and/or centralization of management.

(C) Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

(D) Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, and/or transportation are controlled through a common network provides evidence of functional integration.

(E) Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where the products, services or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration.

(F) Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. See subsection (8)(a) for discussion of centralization of management.

(9) Indicators of a Unitary Business.

(a) Same Type of Business. Business activities that are in the same general line of business generally constitute a single unitary business, as, for example, a multistate grocery chain.

(b) Steps in a Vertical Process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices.

(c) Strong Centralized Management. Business activities which might otherwise be considered as part of more than one unitary business may constitute one unitary business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices which perform for the business activities the normal matters which a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

(10) Commonly Controlled Group of Business Entities. Separate corporations can be part of a unitary business only if they are members of a commonly controlled group.

(a) A "commonly controlled group" means any of the following:

(A) A parent corporation and any one or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if:

(i) The parent owns stock possessing more than 80 percent of the voting power of at least one corporation, and, if applicable,

(ii) Stock cumulatively possessing more than 80 percent of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subparagraph (i), or one or more other corporations that satisfy the conditions of this subparagraph.

(B) Any two or more corporations, if stock possessing more than 80 percent of the voting power of the corporations is owned, or constructively owned, by the same person.

(C) Any two or more corporations that constitute stapled entities.

(i) For purposes of this paragraph, "stapled entities" means any group of two or more corporations if more than 80 percent of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests.

(ii) Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of one of the interests the other interest or interests are also transferred or required to be transferred.

(D) Any two or more corporations, if stock possessing more than 80 percent of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of paragraph (A) of subsection (10)(d)) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren and their respective spouses.

(b)(A) If, in the application of subsection (a) of this section, a corporation is a member of more than one commonly controlled group of corporations, the corporation shall elect to be treated as a member of only the commonly controlled group (or part thereof) with respect to which it has a unitary business relationship. If the corporation has a unitary business relationship with more than one of those groups, it shall elect to be treated as a member of only one of the commonly controlled groups with respect to which it has a unitary business relationship. This election shall remain in effect until the unitary business relationship between the corporation and the rest of the members of its elected commonly controlled group is discontinued, or unless revoked with the approval of the Department of Revenue.

(B) Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of subsection (a) of this section are not met, except as follows:

(i) When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of subsection (a) of this section are again met immediately after the sale, exchange, or disposition.

(ii) The Department of Revenue may treat the commonly controlled group as remaining in place if the conditions of subsection (a) of this section are again met within a period not to exceed two years.

(c) A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of paragraph (a)(D) of this section by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subsection, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

(d) Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned.

(A) An individual constructively owns stock that is owned by any of the following:

(i) His or her spouse.

(ii) Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of 21 years.

(iii) An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.

(B) Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than 80 percent of the voting power of the corporation.

(C) In the application of paragraph (a)(D) of this section (dealing with stock possessing voting power held by members of the same family), if more than 80 percent of the stock possessing voting power of a corporation is, in the aggregate, owned by or for the benefit of members of the same family, stock owned by that corporation shall be treated as constructively owned by members of that family in the same ratio as the proportion of their respective ownership of stock possessing voting power in that corporation to all of such stock of that corporation.

(D) Except as otherwise provided, stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner.

(E) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership.

(F) In the application of paragraph (a)(D) of this section (dealing with stock possessing voting power held by members of the same family), stock held by a limited partnership is constructively owned by a limited partner to the extent of the limited partner's capital interest in the limited partnership.

(e) For purposes of the definition of a commonly controlled group, each of the following shall apply:

(A) "Corporation" means a subchapter S corporation, any other incorporated entity, or any entity defined or treated as a corporation (including but not limited to a limited liability company).

(B) "Person" means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(C) "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(D) "More than 80 percent of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(E) "Stock possessing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(i) For one year or less.

(ii) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(F) In the case of an entity treated as a corporation under paragraph (e)(A) of this section (e), "stock possessing voting power" refers to an instrument, contract, or similar document demonstrating an ownership interest in that entity that confers power in the owner to cast a vote in the selection of the management of that entity.

(G) In the general application of this section, if an entity may elect to be treated as a partnership or as a corporation under the laws of this state (or under Section 7701 of the Internal Revenue Code), and elects to be treated as a partnership, that entity shall be treated as a general partnership. If, however, contractual agreements, member agreements, or other restrictions limit the power of some or all of the members to participate in the vote of stock possessing voting power owned by that entity (similar to the restrictions of limited partners in a limited partnership), the Department of Revenue may permit or require that entity to be treated as a limited partnership.

(f) The Department of Revenue may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to, regulations that do the following:

(A) Prescribe terms and conditions relating to the election described by subsection (b), and the revocation thereof.

(B) Disregard transfers of voting power not described by paragraph (E) of subsection (e).

(C) Treat entities not described by paragraph (B) of subsection (e) as a person.

(D) Treat warrants, obligations convertible into stock, options to acquire or sell stock, and similar instruments as stock.

(E) Treat holders of a beneficial interest in, or executor or trustee powers over, stock held by an estate or trust as constructively owned by the holder.

(F) Prescribe rules relating to the treatment of partnership agreements which authorize a particular partner or partners to exercise voting power of stock held by the partnership.

(G) Treat limited partners as constructive owners of stock possessing voting power held by the limited partnership, in proportion to their interest in the partnership.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.705
Hist.: 10-7-85, 12-31-85, Renumbered from 150-317.705 to 150-317.705 (3)(a); RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08; REV 3-2009, f. & cert. ef. 7-31-09

150-317.705(3)(b)
Direct or Indirect Relationships

In determining whether a unitary business exists, all direct and indirect relationships must be considered. This is true even when the relationships extend to corporations not includable in the consolidated return. However, relationships that extend to corporations not doing business in the United States or not subject to federal income taxation may only be considered when there is an attempt to evade or avoid taxation.

Example 1: Corporation M is a U.S. company engaged in the marketing of oil and oil products. It has two wholly-owned domestic subsidiaries, Corporations E and R. Corporation E is a drilling company involved in exploration for oil. Corporation R buys the crude oil from E, refines it, and sells the refined oil to M. Although the operations of Corporations E and M are not directly related, they are part of a unitary business by virtue of their indirect relationship through R.

Example 2: Assume the same facts as in Example 1, except that the refining company, R, is jointly owned by Corporation M and another oil company (50 percent each). Although Corporation R is no longer includable in the consolidated return (due to less than 80 percent ownership), Corporations E and M are still considered part of a unitary business.

Example 3: Assume the same facts as in Example 1, except that the refining company, R, is a foreign subsidiary of Corporation M doing business only in Mexico. In determining whether Corporations E and M are part of a unitary business, the relationships and transactions with Corporation R are not considered unless they were made in an attempt to evade or avoid taxation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.705
Hist.: 10-7-85, 12-31-85, Renumbered from 150-317.705; 12-31-86; REV 10-2007, f. 12-28-07, cert. ef. 1-1-08

150-317.705(3)(c)
Corporations Doing Business Outside the United States

A corporation included in a consolidated federal return shall not be excluded from a consolidated Oregon return simply because its business operations are conducted outside the United States.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.705
Hist.: RD 5-1994, f. 12-15-94, cert. ef. 12-31-94

150-317.710(5)(a)-(A)
Consolidated Oregon Return: Format and Information Required

(1) Generally, the consolidated Oregon return shall be filed by and in the name of the common parent corporation. If the common parent corporation is not a member of the affiliated group filing the consolidated Oregon return or is not subject to Oregon taxation, the return shall be filed in the name of a member of the affiliated group doing business in Oregon as defined under ORS 317.010(4). If more than one member is doing business in Oregon, the name of the member having the greatest presence in Oregon shall be used. If the name under which a prior year's consolidated Oregon return was filed is changed, a statement shall be attached to the current year's return advising the department of the name change.

(2) If the affiliated group filing a consolidated federal return consists of more than one unitary group, each unitary group that includes an Oregon taxpayer shall file a separate consolidated Oregon return.

(3) For purposes of this section "having the greatest presence" means having the largest Oregon property value as determined under ORS 314.655.

(4) The consolidated Oregon return shall be prepared in columnar form reflecting separately, for each member of the affiliated group, and in total, the federal consolidated taxable income, the modifications required by ORS 317.259, the tax credits, and any other information requested by the department. If taxable income is determined under ORS 317.010(10)(a) to (c), the nonbusiness income or loss and apportionment formula shall also be reflected separately for each member of the affiliated group and in total.

(5) A schedule of corporations subject to Oregon's jurisdiction to tax shall be attached to the consolidated Oregon return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.710
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85, Renumbered from 150-317.710(5)(a)-(A); RD 10-1986, f. & cert. ef. 12-31-86; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89

150-317.710(5)(a)-(B)
Consolidated Oregon Return: Affiliated Group

(1) A corporation filing a consolidated federal return shall file a consolidated Oregon return. The consolidated Oregon return shall

include the same affiliated group included in the consolidated federal return, except as provided in this section.

(2) The following taxpayers included in consolidated federal returns shall not file consolidated Oregon returns:

(a) A corporation that is not a member of a unitary group (as defined under ORS 317.705(2)) with any other corporation included in the consolidated federal return;

(b) A corporation that is permitted or required under ORS 314.667 to determine its Oregon taxable income on a separate basis; or

(c) A corporation that is permitted or required by rule or statute to use different apportionment factors than are applicable to other members of the affiliated group.

(3) A newly organized member of a unitary group, included in an affiliated group filing a consolidated federal return, shall be included in the consolidated Oregon return in the taxable year the new member is organized.

(4) A newly acquired member of an affiliated group shall be excluded from the consolidated Oregon return until completion of the first full taxable year in which the new member is a unitary member of the affiliated group.

(5) However, if a newly acquired member is unitary on or near the acquisition date, it shall be included in the consolidated Oregon return. This treatment also applies to combined reporting in taxable years beginning before January 1, 1986.

(a) The newly acquired member's net income, for the period from the acquisition date to the end of the affiliated group's taxable year, shall be included in Oregon consolidated net income.

(b) The newly acquired member's property, payroll and sales, for the period from the acquisition date to the end of the affiliated group's taxable year, shall be included in the computation of the Oregon apportionment percentage. The average value of the newly acquired member's assets in the property factor shall be computed as provided in OAR 150-314.655(3). The monthly property value shall be zero for the newly acquired member for each of the months prior to acquisition.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.710
Hist.: RD 10-1986, f. & cert. ef. 12-31-86; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98

150-317.710(5)(a)-(C)
Consolidated Oregon Return: Credits

The amount of credit that may offset tax on a consolidated Oregon return is not limited to the tax attributable to the corporation earning the credit. This provision applies to credits carried forward from years in which a separate or combined report is filed to years in which a consolidated return is filed, as well as current year credits.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.710
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-317.710(5)(b)
Different Apportionment Factors

(1) An Oregon taxpayer that is permitted or required to use different apportionment factors under Oregon law cannot be included in an Oregon consolidated return with another Oregon taxpayer using the standard apportionment factor provided in ORS 314.650. This restriction only applies when both corporations using different apportionment factors are subject to Oregon tax under ORS Chapters 317 or 318. The only corporations that are permitted or required to use different apportionment factors are:

(a) Insurers required to apportion income as provided in ORS 317.660; and

(b) Taxpayers primarily engaged in utilities or telecommunications that elect to have income from business activity apportioned by applying the weightings used in ORS 314.650 (1999 Edition) for tax years beginning on or after May 1, 2003.

(2) Corporations other than those listed in subsections 1(a) and 1(b) of this rule use specific applications of the standard apportionment factor provided in ORS 314.650. The factors for each corporation in the unitary group of a consolidated Oregon return are computed as provided in:

(a) ORS 314.650 to 314.665 and the rule thereunder for corporations not described in subsections (b) through (l) of this section;

(b) ORS 314.682 through 314.686 and the rules thereunder for interstate broadcasters;

(c) OAR 150-314.280-(G) for carriers of freight or passengers in general;

(d) OAR 150-314.280-(H) for railroads;

(e) OAR 150-314.280-(I) for airlines;

(f) OAR 150-314.280-(J) for trucking companies;

(g) OAR 150-314.280-(K) for companies engaged in sea transportation service;

(h) OAR 150-314.280-(L) for companies involved in interstate river transportation service;

(i) OAR 150-314.280-(N) for financial organizations;

(j) OAR 150-314.615-(F) for long-term construction contractors;

(k) OAR 150-314.670-(A) for publishers; or

(l) OAR 150-314.615-(h) for movie and television production companies.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.710
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 5-2006, f. & cert. ef. 7-31-06; REV 4-2011, f. 12-30-11, cert. ef. 1-1-12

150-317.710(6)
Consolidated Oregon Return: Copy of Federal Return Required

(1) A complete copy of the taxpayer's federal return must be attached to the Oregon return.

(2) If an affiliated group filing a consolidated federal return is required to file more than one Oregon return under ORS 317.710(5), a copy of the consolidated federal return need not be attached to each Oregon return. Instead, one complete copy of the consolidated federal return may be attached to one of the Oregon returns filed. A statement shall be attached to the other Oregon returns advising the department that a copy of the complete consolidated federal return is being provided with the Oregon return of another taxpayer. The statement must include the corporation's name and federal identification number used on the Oregon return to which the complete copy of the consolidated federal return is attached.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.710
Hist.: RD 10-1986, f. & cert. ef. 12-31-86

150-317.710(7)
Interinsurance and Reciprocal Exchanges.

(1) Affiliated interinsurance and reciprocal exchanges may elect to file a consolidated return under ORS 317.710(7). The election shall be made by attaching a statement to the timely filed (including extensions) consolidated tax return for the tax year in question. The statement shall contain the names and identifying number of the members, and shall clearly indicate that the members are electing to file a consolidated tax return.

(2) An election, once made, shall remain in effect until revoked. Revocation of the election shall be clearly indicated on a statement attached to each timely filed (including extensions) separate excise tax return filed by the members. The statement shall also include a scheduled allocating consolidated estimated tax payment to the members.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.710
Hist.: REV 7-1998, f. 11-13-98 cert. ef. 12-31-98

150-317.713
Limitations on Deduction of Group Losses

(1) Oregon has adopted the provisions of IRC Section 1503(f) that apply to corporations filing consolidated returns and limit the use of group losses to offset income of a subsidiary paying dividends on preferred stock.

(2) The new limitations apply in tax years ending after November 17, 1989.

(3) Only the income or losses of those corporations included in the Oregon consolidated return will be included in the computation of the "group losses" and "separately computed taxable income."

(4) Oregon modifications that apply should be made prior to computing "group losses," and "separately computed taxable income."

(5) The following examples demonstrate the application of the limitation for Oregon:

Example 1: An affiliated group filing a consolidated federal return consists of Corporation P (the parent corporation) and Corporations R and S (subsidiaries of P). All three corporations are unitary and the consolidated Oregon apportionment percentage is 50 percent. Corporation S issues IRC Section 1504(a)(4) preferred stock. In 1991, Corporation P has federal income of $900 and an Oregon addition modification of $100. Corporation R has a federal loss of $1,500 with no Oregon modifications. Corporation S has federal "separately computed taxable income" of $1,000, no Oregon modifications, and pays a dividend of $900 on the preferred stock. For both federal and Oregon purposes, R's loss is a group loss. It can be offset against P's Oregon net income of $1,000 leaving a balance of $500. The $500 balance of R's loss can be offset against S's net income to the extent it was not distributed to preferred stockholders ($100). The remaining $400 cannot be deducted in 1991. Therefore, the Oregon consolidated taxable income of the group is computed as follows: [Example not included. See ED. NOTE.]

The remaining $400 of Corporation R's loss can be carried forward and deducted in future years subject to the same limitation.

Example 2: Assume the same facts as in Example 1, except that corporations R and S are unitary but P is not. Without corporation P in the consolidated Oregon return, the Oregon apportionment percentage increases to 75 percent. In this case, R's loss cannot be offset against P's income since they are not unitary. Corporation R's loss can only be offset against S's net income to the extent it was not distributed to preferred stockholders ($100). Therefore, $1,400 of the loss cannot be deducted in 1991 and the Oregon consolidated taxable income of the group would be computed as follows: [Example not included. See ED. NOTE.]

The remaining $1,400 of Corporation R's loss can be carried forward and deducted in future years subject to the same limitation.

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.713

Hist.: RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92

150-317.715(3)-(A)
Modified Federal Consolidated Taxable Income

Federal consolidated taxable income shall be modified if the affiliated group of corporations consists of more than one unitary group. The separate taxable income determined under the provisions set forth in the treasury regulations under Internal Revenue Code (IRC) Section 1502 attributable to an affiliated corporation, which does not belong to the unitary group of which the corporation subject to tax under this chapter is a member, shall be subtracted from federal consolidated taxable income.

Example: Corporations M, G and W file a consolidated federal return. Corporations M and W are engaged in a single unitary business. Corporation G's business activities are separate and unrelated. Modified federal consolidated taxable income is computed by subtracting, from federal consolidated taxable income, Corporation G's separate taxable income and by reversing the necessary adjustments pursuant to the provisions set forth in the treasury regulations under IRC Section 1502 attributable to Corporation G.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.715

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 150-317.715(2); Renumbered from 150-317.715(2)-(A), REV 2-2014, f. & cert. ef. 7-31-14

150-317.715(3)-(B)
Modified Federal Consolidated Taxable Income — Contribution Deduction for the Oregon Consolidated Group

(1) In general. The contribution deduction allowed corporations subject to taxation under Oregon Revised Statutes (ORS) Chapter 317 or 318, that file federal consolidated returns, is limited to the lesser of:

(a) The contributions made by the members of the unitary group; or

(b) 10 percent of the modified federal consolidated taxable income of the members of the unitary group.

Example 1: Corporation A files a consolidated federal return for tax year 2010. A's federal return consists of two unitary groups of corporations, one of which is required to file an Oregon return. Corporation B is a member of the unitary group of corporations required to file a 2010 Oregon return. B contributed $1,000,000 to charities. No other corporation included in A's consolidated federal return made contributions in 2010. For tax year 2010, A has federal consolidated taxable income of $20,000,000 before any contribution deduction. The unitary group required to file the Oregon return has modified federal consolidated taxable income of $500,000 before any contribution deduction.

Under Treasury Regulations adopted under section 1502 of the Internal Revenue Code (IRC), A is allowed to claim a contribution deduction of $1,000,000 (the lesser of the amount paid by all members of the federal consolidated group or 10 percent of the federal consolidated taxable income of the entire group before the contribution deduction). For Oregon purposes, however, the unitary group is allowed a contribution deduction of $50,000 (the lesser of the $1,000,000 paid by members of the unitary group or 10 percent of the $500,000 modified federal consolidated taxable income before the contribution deduction).

Example 2: Assume the same facts as in Example 1 except that the unitary group required to file an Oregon return has modified federal consolidated net loss of $100,000. This unitary group has no allowable contribution deduction even though A will be permitted to deduct the entire contribution on its 2010 consolidated federal return.

Example 3: Assume the same facts as in Example 1 except that no member of the unitary group required to file an Oregon return made any contribution and members of the nonunitary group made the $1,000,000 contribution. For federal purposes, the consolidated group is permitted to claim a deduction for the contributions made by any member of the group. However, for Oregon purposes, no deduction is allowed.

(2) Carryover of excess contributions.

(a) Any contribution not used in the tax year is carried over to the next tax year. In no case shall a contribution be carried over for more than five succeeding tax years. Any contribution not used is lost.

(b) Contribution carryovers for any consolidated return tax year shall consist of any excess contributions of the unitary group, plus any excess contributions of members of the group arising in separate return tax years of such members and which may be carried over to the taxable year pursuant to the principles of IRC section 170. However, such consolidated contribution carryovers shall not include any excess contributions apportioned to a corporation for a separate return tax year pursuant to Treasury Regulations adopted under section 1502 of the IRC.

Example 4: Assume the same facts as in Example 1 except that the unitary group has modified federal consolidated taxable income of $5,000. The allowable contribution deduction is limited to $500 (the lesser of the $1,000,000 contributed or 10 percent of the group's $5,000 modified federal consolidated taxable income). The unitary group is allowed to carry over $999,500 to the group's next tax year, 2011. None of the amount may be carried over beyond tax year 2015 (five years from the tax year in which the amount was contributed).

Example 5: Assume the same facts as in Example 4 except that in tax year 2010 A acquired Corporation C. C will be included in A's 2011 consolidated federal return and is unitary with the group required to file an Oregon return. In 2010, C had a contribution carryover of $200,000. Its income and deductions were used in computing the unitary group's 2011 Oregon consolidated taxable income. Since C is unitary with the group required to file an Oregon return, the unitary group's carryover for tax year 2011 is $1,199,500 ($999,500 plus $200,000).

(c) Excess contribution carryovers are applied to a given tax year in the same manner as provided under IRC sections 170 and 381 as they apply to the unitary group required to file an Oregon return.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.715

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; Renumbered from 150-317.715(2)-(B), REV 2-2014, f. & cert. ef. 7-31-14

150-317.715(4)(b)
Oregon Return: Apportionment Formula

(1) Each member of an affiliated group of corporations must be treated as a separate corporation for purposes of determining whether it is subject to the tax jurisdiction of Oregon. A corporation is subject to the tax jurisdiction of Oregon if it is "doing business" in

Oregon as defined under ORS 317.010(4) or has income from Oregon sources taxable under 318.020.

(2) In applying the apportionment provisions of ORS 314.280 or 314.605 to 314.667, each corporation subject to the tax jurisdiction of Oregon must be considered separately.

Example: Corporations A, B and C are members of the same unitary group and file a consolidated federal return. Corporation C is "doing business" in Oregon as defined under ORS 317.010(4) while Corporations A and B have no activities in Oregon. Since Corporation C is the only member of the affiliated group subject to the tax jurisdiction of Oregon, the Oregon amounts included in the numerator of the apportionment formula are determined by applying the provisions of 314.605 to 314.667 to the business activities of Corporation C. The denominator of the apportionment formula will include the everywhere amounts for Corporations A, B and C as determined by applying the provisions of 314.655 to 314.667. See OAR 150-314.665(6) and 150-314.665(6)(a) for an explanation regarding how ORS 317.715(3) and this rule work with the "primary business activity" provisions of 314.665(6).

(3) The factors included in the apportionment formula of an Oregon return must be computed by eliminating transactions between members of the affiliated group filing the Oregon return. See OAR 150-314.650(9) regarding transactions between members of an affiliated group filing an Oregon return and related pass-through entities such as partnerships and S corporations owned by other members of that affiliated group.

(4) For purposes of subsection (3) of this rule, "members of the affiliated group filing the Oregon return" includes any corporation that is a member of the unitary group and that is incorporated in a foreign jurisdiction listed in subsection (2)(b) of ORS 317.715.

Example: Corporations A, B and C are members of the same unitary group and file a consolidated federal return. Corporation C is "doing business" in Oregon as defined under ORS 317.010(4) while Corporations A and B have no activities in Oregon. Corporation D is a member of the unitary group and is incorporated in a foreign jurisdiction listed in subsection (2)(b) of ORS 317.715. The factors included in the apportionment formula of the Oregon return must be computed by eliminating transactions between Corporations A, B, C and D.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.715
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04); Renumbered from 150-317.715(3)(b), REV 2-2014, f. & cert. ef. 7-31-14

150-317.715(5)
Member of a Unitary Group Incorporated in a Listed Foreign Jurisdiction

The following provisions are intended as guidance for any corporation doing business in this state that is part of a unitary group that includes a member incorporated in a foreign jurisdiction listed in subsection (2)(b) of ORS 317.715.

(1) To determine the computation of income (or loss) for a unitary corporation that is incorporated in a listed foreign jurisdiction and that is not otherwise required to file a consolidated federal return, use the foreign corporation's net income (or loss) as reported on line 18, Schedule C of federal Form 5471.

(2) Unless specifically prescribed by other law, the income of the foreign corporation is not to be double taxed by this state. If any portion of the foreign corporation's income that is added to federal taxable income pursuant to subsection (2)(a) of ORS 317.715 was already included in the taxpayer's Oregon taxable income, the taxpayer is allowed a subtraction for the portion of the income that previously was included in Oregon taxable income. The taxpayer must attach a schedule to the return and explain how the income was previously included in Oregon taxable income and how the subtraction amount was determined.

(3) Unless specifically prescribed by other law, items of expense or loss of the foreign corporation are not to be double deducted by the taxpayer. If any portion of the foreign corporation's loss or expense that is required to be included in the determination of federal taxable income pursuant to subsection (2)(a) of ORS 317.715 was already included in the computation of the taxpayer's Oregon taxable income, the taxpayer must reduce the loss or expense by the amount previously included in the computation of Oregon taxable income. The taxpayer must attach a schedule to the return and explain how the loss was previously included in the computation of Oregon taxable income and how the reduction amount was determined.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to 183.360(2) and 183.355(1)(b).]
Stat. Auth.: ORS 305.100, 317.715
Stats. Implemented: ORS 317.715
Hist.: REV 2-2014, f. & cert. ef. 7-31-14

150-317.720
Computation of Taxable Income; Excess Loss Accounts

An Oregon subtraction is allowed for the amount of excess loss account included in federal taxable income under the provisions of Treasury Regulation subsection 1.1502-19 if:

(1) The losses did not offset unitary income in the year incurred; or

(2) The excess losses were attributable to losses incurred in tax years beginning prior to January 1, 1986.

Example 1: Corporation P purchased 100 percent of the stock of Corporation S for $1,000 on January 1, 1986. P and S were not unitary and S had negative earning and profits (E&P) of $1,000 in the tax year ending December 31, 1986. They filed a consolidated federal and separate Oregon returns in 1986. P and S were unitary and filed consolidated federal and Oregon returns in 1987. During 1987, S realized another negative E&P of $1,000. P sold S to an unrelated buyer for $1,000 on January 1, 1988.
P's federal adjusted basis in S: [Table not included. See ED. NOTE.]
For Oregon, the federal addition of $1,000, due to the excess loss account, can be subtracted since it is attributable to a loss that S claimed in 1986 that did not offset unitary income.

Example 2: Same facts as Example (1), except that all events took place two years earlier. The 1986 Oregon return would show a subtraction of $2,000,000 because both losses, even the 1985 loss which did offset unitary income, were incurred in tax years beginning before January 1, 1986.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.720
Hist.: RD 7-1993, f. 12-30-93, cert. ef. 12-31-93

150-317.725(1)(b)
Application for Relief

If the application of ORS 317.715 is unduly burdensome or produces an inequitable or unreasonable result, the taxpayer may request relief under this section. The request for relief must be made in writing to the Oregon Department of Revenue, Business Division. The request for relief must be filed within 180 days after the beginning of the tax year for which the relief is being requested, and must include the following information:

(1) A statement that the request for relief is made under the provisions of ORS 317.725(1)(b);

(2) A concise statement of the facts on which the request is based;

(3) A statement of the proposed solution; and

(4) A statement of the impact of the proposed solution on the tax liability of the taxpayer.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.725
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00

150-317.920
Tax Imposed on Unrelated Business Income of Certain Exempt Corporations

(1) ORS 317.920 to ORS 317.950 apply to those corporations which earn unrelated business income although normally exempt under ORS 317.080.

(2) For purposes of ORS 317.920, the term "unrelated business income" shall have the same meaning as it is given in section 512 of the Internal Revenue Code.

(3) Such income shall be reported on an Oregon Corporation Excise Tax Return, Form 20, with a full copy of the Federal Form 990T or other required federal return attached.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 317.920

Hist.: 1959; 12-31-77; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88

DIVISION 318

CORPORATION INCOME TAX ACT OF 1955: RULES

150-318.000
Incorporation by Reference of Rules of ORS Chapters 314, 316 and 317

So far as they may be pertinent, the rules approved by the Department of Revenue pertaining to ORS Chapter 314, Income Taxation generally, and to ORS Chapter 317, The Corporation Excise Tax Act of 1929, are incorporated herein by reference and made applicable to like sections of ORS Chapter 318.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 318.000
Hist.: 1955; 1-65; 1-69

150-318.010
Effective Date of Act

ORS Chapter 318 became law on August 3, 1955.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 318.010
Hist.: 1955

150-318.020(1)
Relation of Act to ORS Chapter 317

If a corporation is "doing business" in Oregon and is therefore subject to ORS Chapter 317, The Corporation Excise Tax Act of 1929, the income taxed under Chapter 317 is not subject to taxation under ORS Chapter 318. A foreign or domestic corporation which is authorized to do business within this state, having qualified with the Corporation Commissioner, which is not "doing business," but nevertheless receives income ascribable to Oregon, is subject to ORS Chapter 318. There is no provision for election as to which Act is applicable as to what income; the facts will govern in each instance.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 318.020
Hist.: 1955; 1-65

150-318.020(2)
Income Subject to Tax Under ORS Chapter 318

(1) The Oregon Corporation Income Tax is imposed on corporations with income derived from sources within this state. The term "income derived from sources within this state" means income from activities in this state that are insufficient to constitute "doing business." "Doing business" is defined in ORS 317.010(4).

(2) Oregon's jurisdiction to tax is limited by the Due Process Clause of the U.S. Constitution, which requires the existence of some minimum connection between the state and the person, property or transaction it seeks to tax. This minimum connection, making income subject to the Oregon income tax, may be satisfied by:

(a) Maintaining tangible or intangible property in Oregon;

(b) Entering into franchising or licensing agreements for use of a franchise or license in Oregon;

(c) Receiving franchise fees or royalties from Oregon sources;

(d) Selling or otherwise disposing of a franchise or license used in Oregon;

(e) Selling or otherwise transferring tangible personal property pursuant to a franchise or license to a franchisee or licensee within the state; or

(f) An isolated sale of real property in this state.

(3) A corporation with receipts from royalties or franchise fees or the sale or transfer of tangible personal property pursuant to franchise or license agreements may be subject to the Corporation Excise Tax if the corporation engages in activities that rise to the level of doing business in Oregon. Such activities include inspection of the franchisees' businesses or records and providing training in Oregon to franchisees. Such a corporation is not subject to the Corporation Income Tax.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 318.020
Hist.: 1955; 1-65; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 2-2003, f. & cert. ef. 7-31-03; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-318.060
U.S. Government Obligations

According to Title 31, United States Code, section 3124, interest and dividend income from obligations of the federal government are exempt from state income tax. Oregon Administrative Rule 150-316.680(1)(a) identifies the types of income that qualify and do not qualify for a subtraction from Oregon taxable income.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 318.060
Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

DIVISION 320

PROVISIONS APPLICABLE TO PRIVILEGE TAX

150-320.010-(A)
Privilege Tax Imposed on Music and Amusement Devices

(1) Devices subject to tax under ORS 320.010(2)(c) include carnival midway games, but do not include large carnival rides. Large carnival rides are those rides which require a skilled operator other than the customer, including, but not limited to, ferris wheels, merry-go-rounds, rock-o-planes, octopuses, etc.

(2) Presence of Coin Slots Immaterial. Any music or amusement device taxable under this chapter is subject to the priviledge tax regardless of whether it is coin-in-the-slot operated.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 320.010
Hist.: 7-1-76; 5-20-82; 9-16-82; RD 6-1990, f. 12-20-90, cert. ef. 12-31-90, Renumbered from 150-320.010

150-320.016(5)
Tax Not Refundable

A refund of amusement device tax will not be allowed if the taxpayer was responsible for the tax when it was paid.

Example 1: Bill operated a restaurant for several years until he sold the business on August 1 of the current year. The amusement device tax for a lottery machine was paid on June 30 of the current year. The new owner of the restaurant decided not to keep the lottery machine, so Bill had the lottery commission pick it up on July 31. Since Bill was responsible for paying the tax on June 30, the department may not refund any of the tax paid.

Example 2: Beth had a lottery machine in the tavern she operated for several years. She closed the tavern on October 31 of the current year, after the yearly amusement device tax was paid on June 30. The department may not refund any of the tax paid because Beth was responsible for paying the tax on June 30.

Example 3: Joe has a lottery machine in his bowling alley. The amusement device tax was paid on June 30 of the current year and Joe declared bankruptcy two months later. Since Joe was responsible for paying the tax on June 30, the department may not refund any of the tax paid.

Example 4: The amusement device tax for the lottery machine at Don's gas station was paid on June 30 of the current year. In July, a fire destroyed the gas station, the store and the machine. Don was responsible for paying the tax on June 30, so the department may not refund any of the tax paid.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 320.016
Hist: REV 10-2000, f. 12-29-00, cert. ef. 12-31-00

150-320.080
Waiver of Penalty

The provisions of OAR 150-305.145 shall be followed to determine when good and sufficient cause exists to consider a waiver of penalty charges for violations of the Privilege Tax law.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 320.080
Hist.: RD 7-1985, f. 12-26-85, cert. ef. 12-31-85

150-320.305
State Lodging Tax

(1) Definitions. For purposes of ORS 320.305 and 320.308 and the rules thereunder:

(a) "Nonprofit facility" means a lodging facility that is owned by an IRC 501(c) exempt organization or an organization described in ORS 65.001(31) and that is not operated for profit.

(b) "Transient lodging provider" includes a person who operates a facility, whether in the capacity of owner, managing agent, lessee, sub-lessee, mortgagee in possession, licensee, concessionaire, or any other capacity.

(2) Public and Private Providers Must Collect the Tax. The state lodging tax applies to rents charged for dwelling units, recreational vehicle spaces, and tent spaces provided by public and private persons. It applies to dwelling units and recreational vehicle and tent spaces offered to the general public by state and local parks departments. It also applies to dwelling units and spaces offered for rent to the general public on federal lands operated by a concessionaire on a contract basis with a federal agency, such as the U. S. Forest Service, Bureau of Land Management, and the National Parks Service.

(3) Services Included in the Fee for Lodging. If a separate fee is charged for a service and the service is optional, that fee is not subject to the state lodging tax. Examples of optional services include, but are not limited to: pay-per-view movies, room service, use of an honor bar or restaurant meals charged to the room. If a separate fee is charged for a service and the service is not optional, or if the value of a service is included in the normal lodging rate, the amount allocated to the service is subject to the state lodging tax. Examples of non-optional services include, but are not limited to: cleaning service, free breakfast, pet charges, free transportation to the airport and providing an extra bed. If the provider offers a lodging package that includes something that is not associated with the actual lodging or is provided by a third party, only the regular lodging rate that would have been charged absent the package item is subject to the state lodging tax. Examples of lodging packages include, but are not limited to: a package consisting of a night of lodging and a round of golf for two, or a romance package that includes a night of lodging, a bottle of wine and dinner at a local restaurant. Any allocation made for the state lodging tax should be consistent with the allocation for a local lodging tax.

Example 1: The ABC Bed and Breakfast charges $100 per night for a room. Guests are provided a breakfast that is included in the per-night fee. Guests may also have lunch or dinner at ABC and may charge the cost of these meals to their room. ABC will collect tax on $100 per night because the breakfast is included in the room fee. The tax does not apply to any charges for optional meals purchased by ABC's guests.

Example 2: The High Mountain Resort offers winter lodging packages for customers. Customers can purchase a weekend package that includes two nights lodging and two ski lift tickets for a nearby ski resort for $250. Their regular charge for weekend lodging during the winter for a two night stay is $200. The state lodging tax will be collected on $200 because that represents the charge for providing lodging.

Example 3: The Highlife Hotel charges a standard room rate based on single occupancy. The Young family has two children and a dog. They rent a room for one night. The basic room rate is $80 per night. There is a $10 charge for a second adult. There is no charge for the children. The Youngs request a crib that costs an additional $10. There is also a $10 charge for the family dog. The state lodging tax applies to all of the additional fees as well as the standard room rate. The total amount subject to tax is $110.

(4) Use of a Managing Agent. If a transient lodging provider uses a managing agent that is not an employee, the managing agent is considered the provider for the purposes of the tax and has the same duties and liabilities as the operator. Compliance with the provisions of the state lodging tax by either the lodging provider or the managing agent is considered compliance by both.

(5) Registration of Providers. A transient lodging provider must register with the department on forms provided by the department.

(6) Penalty Imposed. The person submitting the return required by ORS 320.315 must sign the return and is subject to the penalty for false swearing under ORS 162.075, which is a Class A misdemeanor.

Stat. Auth.: ORS 305.100 & 320.315
Stats. Implemented: ORS 320.305
Hist.: REV 3-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; REV 3-2004, f. & cert. ef. 6-25-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2008, f. & cert. ef. 9-23-08

150-320.308
State Lodging Tax Exemptions

(1) The following are exempt from the state lodging tax:

(a) Health care facilities certified, licensed or registered by the Department of Human Services.

(b) Drug and alcohol abuse and mental health treatment facilities.

(c) All dwelling units during the time a federal instrumentality pays for use of the units.

Example 1: The Red Cross (RC) contracts with several area motels to provide temporary emergency housing for victims of disasters. Because RC is a federal instrumentality, these units are not subject to the state lodging tax.

(d) Dwelling units at a nonprofit facility.

Example 2: A nonprofit church camp is organized to serve the congregations of the Southern Willamette Valley. This camp is solely for the use of these congregations and is not rented to the general public for profit. The church camp is not subject to the state lodging tax.

(e) Dwelling units occupied by:

(A) The same person for a consecutive period of 30 days or more during the year. "Person" means either the occupant of the dwelling unit or the one who pays for the transient lodging. After 30 consecutive days, the person is considered a tenant and is no longer considered an occupant of transient lodging. In this case, the 30 days must be consecutive.

Example 3: A major airline has an annual contract with a hotel near the airport. These dwelling units are used by out of town airline employees. Because the airline contracts and pays for the units for a consecutive period of more than 30 days per year, these units are not subject to the state lodging tax.

(B) A person who pays for lodging on a monthly basis, regardless of the number of days in such month.

(C) Federal employees and employees of federal instrumentalities, (i.e.: American Red Cross), on official business. (D) Persons with diplomatic immunity.

(f) Dwelling units used by the general public for less than 30 days per year. This refers to a total of 30 days over the course of the calendar year; the 30 days need not be consecutive. Even if a dwelling unit becomes temporarily exempt under section (5), that period of usage applies toward the 30 day requirement of this subsection.

Example 4: Ralph owns a hunting lodge in the mountains. He rents the lodge out to the general public for three weeks a year during the hunting season. Because Ralph rents the lodge out for fewer than 30 days per year, he is not required to collect the state lodging tax.

Example 5: Dave rents his vacation home to the Wright family for 45 consecutive days in May and June. This rental period is not subject to the state lodging tax as it is rented to the same person for more than 30 days. In July of that year Dave rents the same vacation home for 10 days to the Jacobson family. Because Dave rented his vacation home for more than 30 days over the course of the calendar year, a total of 55 days (45 plus 10), he is subject to the state lodging tax and must collect and pay the tax on the 10 day stay of the Jacobson family.

(2) If a member or employee of a non-profit organization stays at a facility that is subject to the state lodging tax, they are not exempt from the lodging tax and are required to pay the tax.

(3) Employees of state and local governments of Oregon or any other state are subject to the Oregon state lodging tax.

Stat. Auth.: ORS 305.100 & 320.308
Stats. Implemented: ORS 320.308
Hist.: REV 5-2008, f. 8-29-08, cert.ef. 8-31-08

DIVISION 321

TIMBER TAXES

150-321.005(9)
Establishing Legal Taxpayer for FPHT

(1) It is the policy of the department to use the following sequential criteria to establish the identity of the taxpayer responsible for the Forest Products Harvest Tax (FPHT):

(a) The party holding title to timber as evidenced in a written agreement.

(b) If the element of (a) is not present, the party indicated on the "Notification of Operations" as the timber owner.

(c) If the elements of (a) and (b) are not present, then the party receiving payment for logs delivered to a conversion center.

(d) If the elements of (a), (b), and (c) are not present, then the owner of land from which harvest occurred is the responsible taxpayer.

(2) The following examples of transactions are a guide in determining the responsible taxpayer: [Example not included. See ED. NOTE.]

(3) The department will consider the following elements when it is necessary to interpret a written agreement in order to establish identity of the taxpayer:

(a) Type of agreement — i.e., a contract for the performance of services vs. a contract that transfers the ownership of property.

(b) The intent of the agreement.

(c) Which party enjoys the "benefit of ownership"?

(d) Which party bears the loss in a catastrophic event?

(e) The timing of and manner of payment.

(4) Whenever an agreement is so ambiguous that identity of the taxpayer cannot be reasonably determined, the last party known to hold title to timber or logs will be deemed the taxpayer.

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.005

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 6-2009, f. & cert. ef. 7-31-09

150-321.005(12)
Timber Subject to the Forest Products Harvest Tax: Measurement Standards

(1) Timber subject to the Forest Products Harvest Tax is the following:

(a) All logs which can be measured in board feet and meet the requirements of utility cull or better.

(A) Logs must be measured in western Oregon by the current edition of Official Rules for the following Log Scaling and Grading Bureaus: Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill, developed by the Northwest Log Rules Advisory Group (NWLRAG). All sections of the publication are recognized including the Appendix.

(B) Logs must be measured in eastern Oregon by the Scribner Decimal "C" Eastside Short Log Rule, using the NWLRAG Eastside Log Scaling Handbook, First Edition 2003.

(b) Logs chipped in the woods, except chips produced from material not meeting log merchantability standards in subsection (a) above and used as hog fuel.

(c) Loads of logs measured in tons and sold by the weight that contain utility grade and better logs. Logs must be reported on the timber tax return by thousand board feet (MBF). Logs must be converted from tons to MBF using conversion factors established by the Department of Revenue. These conversion factors are listed on the tax forms and instructions sent out annually by the department:

(A) When less than 10 percent of the load's log count comes from logs that have an 8-inch or larger scaling diameter, the "Chip Log" conversion factor will be used for converting tons to MBF for tax reporting.

(B) When 10 percent or more of the load's log count comes from logs that have an 8-inch or larger scaling diameter, the "Small Saw Logs" conversion factor will be used for converting tons to MBF for tax reporting.

(2) Timber not subject to Forest Products Harvest Tax is secondary products, other than chips, manufactured in the woods and produced from logs normally left in the forest or burned as slash. Examples are shake or shingle bolts, fence posts, firewood, and arrow bolts.

(3) When timber is harvested from the eastside, but scaled using westside log scaling rule, the volume must be adjusted to reflect the eastside log scaling rule volume. Taxpayers may use their own conversion factors if they are supported by statistically sound sample data; otherwise, the westside volume must be multiplied by 1.28 to get the equivalent eastside scaled volume.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.005

Hist.: 10-7-85, 12-31-85; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-321-005, REV 2-2005, f. 6-27-05, cert. ef 6-30-05

150-321.045
Estimated Tax Payments for FPHT

(1) Any taxpayer required to report and pay estimated tax as determined by ORS 321.045(4) must file a return and pay a tax of at least 25 percent of the estimated liability for the calendar year for which the report is made.

(2) The provisions of ORS 321.045(5) are not elections or alternate methods of determining the amount of estimated tax liability, but rather standards against which estimated payments are tested for adequacy with respect to application of penalty in the form of interest.

(3) A taxpayer not required to file a return or to pay a tax for the prior calendar year is not relieved of the responsibility to pay an estimated tax. Such taxpayers must make payment equal to 100 percent of the actual liability on the timber harvested during the calendar quarter for which the report is made or at least 20 percent of the liability due for the calendar year for which the report is made.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 312.045

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 6-2003, f. & cert. ef. 12-31-03

150-321.045(2)
Mailing Forest Product Harvest Tax Returns

(1) Whenever tax returns are mailed by the department less than ten (10) business days prior to the last day of January, for the preceding reporting period, the department shall waive penalty on the amount of tax due provided the tax is paid within twenty (20) calendar days of the mailing date of the return.

Example 1: Returns are mailed January 18, ten business days prior to the last day of the month, so the due date of the tax payment and return is January 31.

Example 2: Returns are mailed January 19. This is less than ten business days from the last day of month, so the deadline for filing and paying becomes February 7.

(2) Taxpayers may request an extension of time to file returns. All requests shall be:

(a) Submitted to the department in writing stating the reason for the request.

(b) Postmarked no later than the due date of the return.

(3) The department may grant up to thirty days from the due date in which to file the return. Extensions only affect the filing of the return and do not extend the time in which the tax must be paid.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.045

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94

150-321.207(1)
Forestland Valuation Rule

(1) Purpose: The purpose of this rule is to describe the modeling process used to annually develop preliminary forestland values and to clarify the role of the models in the establishment of the final certified forestland values (ORS 321.216).

(2) General Concepts:

(a) Values to be developed by this rule are the values of bare forestland.

(b) Models will be developed to determine the statistical relationship between market sales of highest and best use forestland and reasonable indicators of value related to the forest industry in Oregon.

(c) The relationship between market sales and the indicators that best reflect the changes in forestland value over time will be used to establish the preliminary values.

(d) Separate models will be developed for Eastern Oregon and Western Oregon.

(3) Forestland Sales Data:

(a) The department will collect and verify forestland sales data. Only sales with the following characteristics will be considered:

(A) The current or immediate future use of the land is the growing and harvesting of timber;

(B) The improvement values and other nonforestland values can be accurately extracted from the sale price;

(C) The transaction is at arm's-length;

(D) The purchase consideration is cash or a financing method standard to the real estate market;

(E) The allocated bare land value is greater than $0, except for the FX productivity class in Western Oregon; and

(F) For Western Oregon sales, the value relationship between acres of each productivity class occurring on the property and sales price is identifiable.

(b) The department will compile the sales data in a forestland sales database.

(c) The department will analyze fiscal year (July 1 to June 30) data to determine a bare land value for each productivity class in Western Oregon and one value for Eastern Oregon. In doing so, the department will:

(A) Exclude individual forestland sales data that indicates values more than two standard deviations from the arithmetic mean of the forestland values for each Western Oregon productivity class or the arithmetic mean of all of the value of sales in Eastern Oregon. The department will apply this exclusion only once, either to all sales data within a productivity class on a fiscal year basis or on all sales over all years (1993 to current). If a sale is excluded for three consecutive appraisal cycles, it will be permanently excluded.

(B) Calculate the fiscal year forestland value for each productivity class as the arithmetic mean of individual sales data occurring during the fiscal year for classes FA-FX in Western Oregon and for Eastern Oregon as a whole. Only those sales remaining after elimination of any outlying sales as provided in paragraph (3)(c)(A) of this rule will be used to create the average.

(C) Replace fiscal year forestland value data that is unavailable for any of the Western Oregon classes or Eastern Oregon values due to lack of sales or after the application of paragraph (3)(c)(A). The missing data will be replaced as follows:

(i) If the missing data occurs for the first or last fiscal year, then the values will be replaced by the arithmetic average of the two closest available years for the same class.

(ii) If the missing data occurs in the intervening years, then the missing data will be replaced with the arithmetic average of the preceding and following years of the missing data for the same class.

(D) Develop acreage weighted average forestland value for Western Oregon (WAVWOR) from sales data for the current appraisal year. The acreage weights used in the WAVWOR calculation are: [Table not included. See ED. NOTE.]

(E) Develop average forestland value for Eastern Oregon.

(4) Forestland Models:

(a) Generally:

(A) The modeling process is intended to find statistical relationships between the WAVWORs for Western Oregon or the average forestland value for Eastern Oregon for the period 1993 to present and leading or coincident indicators of forestland value (such as log price trends, stumpage price trends, lumber price trends, and other indicators to be determined by the Department of Revenue).

(B) Indicators of forestland value suitable for use as inputs in the models to obtain forestland values must be:

(i) Developed based on calculation methods and assumptions that are consistent over time,

(ii) Commonly used by the forest industry as indicators of the economic potential for the production of forest products,

(iii) Readily available and verifiable, and

(iv) Relevant to the operation of the forest products industry in Oregon.

(C) The models will be based on statistically significant structural relationships between historical forestland values and leading or coincident indicators of forestland value. If such a structural model cannot be found, then appropriate time series models may be substituted for the structural models.

(D) The relationships between economic variables in the models may not be contradicted by generally accepted economic theories.

(E) The models may be amended and new models may be added in the future if a more statistically significant correlation becomes evident after the addition of subsequent years' sales data.

(F) The models will be re-estimated in each future year after the addition of the subsequent year's sales data. Re-estimation may include changes to the specification of the error or lag structure.

(G) Forecasts of forestland value will be based on a single model and not the average forecasts of several models.

(b) Model Selection Criteria:

(A) Tentative models will be estimated with stumpage, delivered log prices, dimension lumber prices, or other relevant market data at lags of zero to four years to determine the best explanatory variable for inclusion in the final model.

(B) In determining the explanatory variables to be included in the final model, both in- and out-of-sample forecasts will be compared as well as the ability to forecast turning points in forestland values.

(C) The model that displays the best correlation between the WAVWORs or average forestland value for Eastern Oregon over time and the trends in the indicators will be selected to determine the annual average forestland values (AAFV). "Best" means that the resulting statistical analysis shows major turning points in values while maintaining a close statistical relationship between the forestland values and the indicators.

(5) Determination of Preliminary Forestland Values:

(a) Western Oregon Model:

(A) The selected Western Oregon model will determine AAFV to be used as the basis for the preliminary values.

(B) Western Forestland Class Spread (WFCS) is the percentage of initial value by productivity class, FA through FX, as it relates to the acreage weighted average of these values. This spread is shown below: [Table not included. See ED. NOTE.]

(C) The WFCS will be used to transform AAFV into preliminary forestland class, FA through FX, values. This will be accomplished by multiplying the AAFV by the WFCS percentage for each individual productivity class.

(b) Eastern Oregon Model: The selected Eastern Oregon model will determine the AAFV to be used as the preliminary value for Eastern Oregon.

(6) Response to Preliminary Values:

(a) Data pertinent to the forestland valuation process that was not evaluated previously may be collected during a review by the Forestland Value Advisory Committee (ORS 321.213) or through written comments submitted during the public hearing on proposed specially assessed forestland values (ORS 321.210). The pertinent data that meets the standards in subsection 3(a) of this rule will be added to the forestland sales database.

(b) The forestland database will be re-analyzed as in subsection 3(c). This includes screening of any outlying sales data as provided in paragraph (3)(c)(A).

(c) Models will be re-evaluated considering the new forestland sales data and pertinent input on indicators that have met the standards of section (3).

(d) The process in sections (4) and (5) will be used to create revised preliminary values.

(7) Final Values: The Department of Revenue will use the revised preliminary values and any other information provided by additional research by the agency, the Forestland Value Advisory Committee, submitted written comments, or the hearing process to determine the final values to be certified under ORS 321.216.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.257

Hist.: REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.257(3)
Forestland Classification

The forestland classification for western Oregon is as follows: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.257(3)
Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150-321.353(1), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-321.348(2)
Redetermination of Forestland Land Classes

(1) The department will change forestland land classes described under ORS 321.348(1) upon the request of an owner of forestland if the department's investigation reveals that the land class is now inaccurate.

(2) If an owner of forestland believes his or her property is not classed correctly, the owner may request a review by the department.

(a) The request must be submitted to the department in writing stating the basis of the request. Information that may be submitted as a basis for the request includes, but is not limited to:

(A) A third party evaluation;

(B) Soil surveys;

(C) Aerial photos or contour maps;

(D) Narrative that describes geographical characteristics that influence site class.

(b) The request must identify the property, including:

(A) County;

(B) Property tax account number;

(C) Legal description;

(D) Total forestland acres; and

(E) Physical location and number of forestland acres to be reviewed.

(3) The department must receive requests by April 1 in order to have a redetermination of land classes reflected on the tax roll for the tax year beginning the following July 1. If the department receives the request after April 1, any resulting redetermination will take effect with respect to the tax year commencing July 1 of the following calendar year.

(4) The department will review the information submitted, other reference materials (contour maps, aerial photos, soil surveys, land class cards, or site tree data), and may conduct a field inspection of the property.

(5) The department will send written notice of its decision to the owner. Any redetermination of land class will be immediately certified to the county assessor. This will be done prior to July 15 of the tax year for which the review decision first applies.

(6) Pursuant to ORS 305.275, the owner may appeal the department's determination described in section (5) to the Magistrate Division of the Oregon Tax Court. This appeal must be made within 90 days of the date of the written notice.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.348
Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.349
Requirements to Qualify Certain Forestland for Special Assessment at Farm Use Values Under ORS 308A.092

(1) For forestland to qualify for special farm use assessment valuation under ORS 308A.092, the following conditions must be met:

(a) The owner must request the land be changed from a farm use to forestland designation by filing an application under ORS 308A.724 with the county assessor;

(b) Trees must have been planted after October 15, 1983;

(c) The owner must state the average age of timber upon the land involved on the application;

(d) The average age of the timber on the land must be less than 40 years;

(e) The land must have been specially assessed under ORS 308A.092 for at least 10 consecutive years before the request for special assessment as forestland;

(f) The owner of land applying for this special assessment may not own more than 2,000 acres of forestland in Western Oregon.

(2) Application forms for this special assessment program shall must be designed by the Department of Revenue. A copy of the prescribed form shall be distributed to each county assessor for in-county duplication as needed.

(3) Planting defined — planting is defined as the setting of young plants or seeds in the ground. Timber stands established naturally do not qualify as "planted."

(4) The time for filing an application for this special assessment is governed by ORS 308A.077.

(5) The farm use value for the land must be based on land class irrespective of any vegetation cover.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.349
Hist.: RD 9-1983, f. 12-20-83, cert. ef. 12-31-83; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00

150-321.354
Common Ownership

Definitions:

(1) "Person" means an individual, a public or private corporation, a limited liability company, a limited liability partnership, an unincorporated association, a partnership, a government or a governmental instrumentality.

(2) "Majority interest" means an interest of greater than 50 percent.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.354
Hist.: Renumbered from 150-Ch. 1078 Sec. 2 & 35 1999 by REV 6-2003, f. & cert. ef. 12-31-03

150-321.358(3)(b)-(A)
Date of Acquisition

In answering the question on the application for designation as forestland concerning date of acquisition, the applicant must list the exact date of acquisition if the forestland was acquired within the five year period immediately preceding the date of the application. If the forestland was acquired more than five years before the date of the application, that fact must be stated, but dates are not required.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.358
Hist.: 2-68; 3-70; 3-16-78, Renumbered from 150-321.358(2)(b) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.358(4)
Minimum Stocking and Acreage Requirements for Designation as Forestland in Western Oregon

(1) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(2) If the land does not meet the minimum requirements of section (1) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces.)

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to fulfilling planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

(3) To qualify, the area to be designated must be at least two contiguous acres in one ownership.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.358
Hist.: 12-6-82, 12-31-82; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.358(2), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.358(4)(b)
Acceptable Uses of Western Oregon Forestland

Certain lands do not support sufficient minimum stocking of trees to qualify for designation as forestland. However, when the use of these lands supports desirable forestry management practices on surrounding lands to promote the state policy of encouraging forestry, they may be designated as forestland.

(1) Rock Pits. Forest roads, except principal exterior access roads, are recognized as forestland under ORS 308.236. Fills, ballast, bridges, culverts, drains, and surfacing are included in the definition of forest roads. Since rock is necessary to maintain or improve the usefulness of these roads, rock pits and adjacent rock storage areas are an acceptable use and are eligible for designation as forestland under the following conditions:

(a) The rock pit comprises less than 5 percent of the total forestland of the owner in the area served by the pit.

(b) The rock from the pit is used on land defined as forestland under ORS 321.257(2).

(c) The rock produced from the pit is not commercially sold, but is used on forestland of the owner of the pit, or traded to other forestland owners in the area for in-kind products to be used at economically distant locations.

(d) The forestland owner maintains appropriate records to be available at the request of the Assessor to substantiate forest management use of rock pits and other similar items.

(2) Easements. Some lands are encumbered by easements for road or transmission line rights-of-way which prohibit establishment of commercial forests. Such lands may be valued and assessed as forestland when:

(a) Application for designation as forestland has been made.

(b) The lands are adjacent to, and an integral part of, the forest property of the owner.

(c) The lands would otherwise qualify for designation as forestland, if sufficient stocking of trees was permitted.

(d) Not more than 20 percent of the forestland of the owner is encumbered by easements.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.358
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; Renumbered from 150-321.358(3)(b) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.358(5)
Notification by Assessor of Denial of Application

The assessor will send the written notice denying the application, in whole or in part, for designation of forestland to the applicant by certified mail.

Stat. Auth.: ORS 305.100
Stat. Implemented: ORS 321.358
Hist.: 2-68; 3-70; 3-16-78; Renumbered from 150-321.358(4) by REV 6-2003, f. & cert. ef. 12-31-03

150-321.550
Procedure to Ensure Timber Tax Return Filing

(1) As used in this rule, "owner" shall have the meaning given in ORS 321.005.

(2) The Department of Revenue shall mail timber tax returns to timber owners as identified on Notification of Operations received from the Department of Forestry. It is the responsibility of the timber owner to assure that the correct timber owner is listed on the notification.

(3) The Department of Revenue shall document by tax program and reporting period:

(a) Which taxpayers were sent timber tax returns.

(b) Receipt of tax returns filed.

(4) Taxpayers who fail to file a timber tax return will be mailed a Notice of Failure to File which will include:

(a) Timber tax program(s) for which taxpayer has failed to file.

(b) Statement that tax return is due even if no harvest occurred.

(c) Explanation of delinquent return penalties.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.550
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-321.550(1)
Notice of Intent to Harvest

(1) The owner of timber before it is cut, severed or removed, is required to give notice of intent to harvest.

(2) Notice is given to the Oregon State Department of Forestry which then issues a "Notification of Operations" — commonly called a "logging permit."

(3) Whenever title to timber is transferred to a new owner prior to being cut, severed or removed, the new owner is required to give notice of intent to harvest.

Example 1: Landowner "A" logs timber on the owner's property and decks the logs at roadside. Trucker "B" buys "A"'s logs for $10,000 then hauls and sells the logs to a mill.

"B" acquired the title to logs still on "A"'s property prior to removal, therefore "B" must give notice of intent to harvest.

Example 2: Owner "A" sells standing timber to "B" on a recovery basis. "B" agrees to pay "A" $125/Net MBF for all timber removed. In the contract for the sale of the timber "A" agrees to pay any tax due as the result of the harvest.

"B" acquired title to the timber and must give notice of intent to harvest before cutting, severing or removing the timber. The fact that "A" agreed to pay the taxes has no bearing on who must give notice.

(4) Once made, the notification expires on the last day of December in the year taken. Any continuation of harvest in a new calendar year requires renewal of the notification.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.550
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-321.550(3)(a)
Penalty for Failure to Obtain Notification of Operations

(1) The penalty shall be applied for each violation occurring.

(2) The penalty shall be assessed against the owner of the timber at the time the return is filed.

(3) No violation occurs if the volume cut is less than 5000 board feet.

(4) A violation occurs if separate notice is not given for cutting operations on private lands when:

(a) The operations are on noncontiguous parcels under the same ownership or;

(b) The operations are on parcels under different ownership or;

(c) The operations are greater than one mile apart regardless of ownership or;

(d) The operations are conducted by different loggers.

(5) Each sale harvested from public lands shall be considered a single cutting operation.

(6) The department shall not impose a penalty under this section without first having notified an owner by letter, sent to the most current known address, of a violation. Subsequent violations occurring after the date the notice has been sent by the department will be subject to the penalty provided under this section.

(7) The penalty provided under this section shall first apply to violations occurring on or after January 1, 1990.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.550
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89

150-321.560(2)
Prescribed Forms for Reporting Timber Harvest

(1) Owners must file a harvest return on forms prescribed by the department.

(2) Owners may report on magnetic tape or their own forms provided they meet the prescribed format, and approval is obtained from the department prior to filing.

(3) The department may reject and return to the taxpayer forms which do not meet the requirements of this rule.

(4) A taxpayer shall refile on prescribed forms if the original filing was rejected and returned by the department. A taxpayer is considered not to have filed a tax return until an approved form is filed.

(5) The taxpayer may be assessed penalty for failure to file a tax return as provided under ORS 321.560(2) and (3).

(6) If the department receives payment with a form which does not meet the requirements of this rule, the payment shall be banked and credited to the taxpayer's account for the timber tax program indicated on the taxpayer's remittance or submitted form.

(7) Effective Date: The provisions set forth in this rule shall apply to tax returns required to be filed by or after January 31, 1988.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.560
Hist.: RD 16-1987, f. 12-10-87, cert. ef. 12-31-87

150-321.609(1)
Check Scaling at the Point of First Measurement

(1) The department must be given access to any location where timber is first measured at any time the site is open for business in order to inspect or check scale the grading and measuring practices for timber subject to ORS 321.005 to 321.185, 321.560 to 321.600 and 321.700 to 321.754.

(2) Scalers or companies controlling the sites must make all pertinent information for the check scale available to the department.

Stat. Auth.: ORS 305.100 & 321.609
Stats. Implemented: ORS 321.609
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.609(1)-(A)
Measuring Harvested Timber

(1) Definitions for purposes of this rule:

(a) "Check Scaling" is the procedure for verifying that an entity's scaling practices comply with the Official Log Scaling Rules.

(b) "Grading" means determining the quality of logs, considering such factors as gross diameter, length of log, surface characteristics, annual ring count, slope of grain and other factors as reflected in the Official Log Scaling Rules.

(c) "Harvest Unit" is a contiguous geographical area from which timber is harvested that has the following characteristics:

(A) The unit is entirely within one county;

(B) The unit is not larger than 320 acres;

(C) The unit is under one ownership;

(D) The unit is limited to harvest by one method (e.g., clearcut, thinning); and

(E) Operations within a harvest unit may not be farther than one mile apart.

(F) The department may grant exceptions to these criteria upon written request.

(d) "Measuring" means the determination of the quantity and quality of logs. Measuring must happen at the time of transfer of ownership of the logs and is the responsibility of the timber owner.

(e) "Official Log Scaling Rules" are those rules developed by the Northwest Log Rules Advisory Group as reflected in the most current edition of Official Rules for the following Log Scaling and Grading Bureaus: Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill.

(f) "Sample Scaling" means to measure a portion of a weighed log inventory and apply the statistical information of the selection to the entire inventory.

(g) "Scaling" means the measurement of the gross and net volume of logs as determined by using the Official Log Scaling Rules.

(2) Measurement of scaled logs must:

(a) Be done using the Official Log Scaling Rules and must be determined by one of the following persons:

(A) Scalers of third party scaling organizations that:

(i) Assure its scalers produce consistent scaling results;

(ii) Assure its scalers will exercise independent judgment;

(iii) Have a training and certification program for its scalers;

(iv) Check scale a minimum of eight loads every two months for each employee scaling and grading logs subject to timber taxes under ORS 321.005–185, 321.700–754, and 321.805–855 within a 5 percent tolerance of the log volumes; and

(v) Make check-scale records available to the department upon request.

(B) Scalers employed by companies who are check scaled by a third-party scaling organization, or company check scalers employed by a company that:

(i) Meets all the requirements listed in paragraph (2)(a)(A) of this rule; and

(ii) Provides a rescale and training in the event of an unsatisfactory check scale;

(iii) Provides total volume by grade and species by harvest unit for the period between an unsatisfactory check scale and the next satisfactory check scale at the request of the department; and

(iv) Allows the department to independently check scale.

(C) Scalers employed by companies with less than four scalers who each scale less than 50 thousand board feet per week if approved by the department. The company must:

(i) Make a written request to the department which includes:

(I) Name, duties and experience of the scaler;

(II) Type of logs scaled;

(III) Scaling instructions;

(IV) A description of the scaling location;

(V) An explanation of how the scaling information is secured to prevent loss or tampering of information; and

(VI) Provisions for check scaling.

(ii) If requested by the department, provide training specific to the type of logs delivered to the scaling point.

(D) Check scalers who meet the following qualifications:

(i) Be a qualified scaler with five plus years experience scaling logs;

(ii) Participate in an effective training and certification program that is recognized by one of the bureaus that is a member of the Northwest Log Rules Advisory Group;

(iii) Demonstrate proficiency with the Official Log Scaling Rules; and

(iv) Makes record of qualifications, training and certification available upon request.

(b) Be recorded on original scaling and grading load tickets that contain the following information:

(A) Name of log seller (taxpayer);

(B) Date of measurement;

(C) Name of log purchaser;

(D) Log brand;

(E) Log species;

(F) Log Grade;

(G) Number of logs;

(H) Gross log measurements, deductions and net volume; and

(I) Trip ticket number.

(3) Measurement of weighed logs must:

(a) Be done by an employee of a delivery facility who has been instructed on the proper use of the equipment listed in subsection (3)(b) of this rule.

(b) Use weigh instruments or devices that are tested, certified or licensed by the Oregon State Department of Agriculture under ORS 618.020, 618.016, 618.121 and 618.151.

(c) Be recorded on original load tickets which contain the following information:

(A) Name of log seller (taxpayer);

(B) Name of log purchaser;

(C) State Forestry (harvest) permit number;

(D) Trip ticket (or woods trip receipt number);

(E) Date of measurement;

(F) Location of measurement;

(G) Scaling organization or company doing the weighing;

(H) Weight ticket number;

(I) Gross, tare and net weights.

(4) A taxpayer may use "sample scaling" to determine the volume and grade of logs harvested.

(a) Sample scaling must be done on a harvest unit basis and the following criteria must be met:

(A) Must meet the criteria of section (2) of this rule;

(B) The number of loads scaled (the sample intensity) must ensure that 95 percent of the time the average volume of a scaled load falls within 5 percent of the average volume of all sampled loads for the harvest unit.

(C) Samples must be selected through a random, unbiased method.

(D) Samples must be taken over the entire period of harvest.

(E) Once a load has been selected for the sample, it cannot be removed.

(b) Sampling methodology that does not meet the criteria of subsection (4)(a) of this rule may be used if submitted in writing and approved by the department prior to use.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.609
Hist.: REV 2-2005, f. 6-27-05, cert. ef 6-30-05

150-321.609(2)-(A)
Timber Harvest Records

Every owner must keep records of harvested timber that is subject to the Small Tract Forestland Severance Tax and the Forest Products Harvest Tax. These records must be retained as described in OAR 150-321.609(2)-(D). Timber harvest records required to be retained include:

(1) Contractual or financial agreements relative to the ownership and harvest of timber.

(2) Location of the harvest unit, including a map of the unit.

(3) The quantity of harvested timber.

(4) Log brands used by location and date.

(5) Log load trip tickets by harvest unit by accounting period.

(6) Original records of scaling, measuring, and grading of forest products harvested.

(7) Any other bills, receipts, invoices, data processing tapes, or other documents of original entry supporting the entries in the books of account, as well as all schedules and work papers used in the preparation of the tax returns.

Stat. Auth.: ORS 305.100 & 321.609
Stats. Implemented: ORS 321.609
Hist.: 12-31-77, 12-31-79, Renumbered from 150-321.342; 12-31-80, Renumbered from 150-321.342(2)-(A); RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.609(2)-(B)
Use of Microfilm and Microfiche Records

Microfilm and microfiche records of original records and supporting data are acceptable provided the following conditions are met:

(1) Microfilm and microfiche show beginning and ending numbers and be indexed, cross referenced and labeled as to contents.

(2) The microfilm or microfiche contain the complete original records and identification can be made in respect to time of harvest and harvest area.

(3) Proper facilities including modern projectors for viewing and copying are provided during regular business hours for the ready inspection and location of the particular records. Otherwise, the microfilm or microfiche shall be made available at the Department's facilities for inspection.

(4) The taxpayer agrees to provide access to any information contained on the film or fiche which may be required for purposes of verification of the tax liability.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.609
Hist.: 12-31-77, 12-31-79, Renumbered from 150-321.342; TC 7-1980, f. 11-28-80, cert. ef. 12-31-80; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88, Renumbered from 150-321.342(2)-(B)

150-321.609(2)-(C)
Records Kept by Automated Data Processing

(1) The Department of Revenue will accept records kept by automated data processing systems if:

(a) Supporting source documents are identified and kept on file so that a complete audit of the automated data processing records can be performed.

(b) Computer programs, program documentation, and program flow charts showing embedded formulas and the resulting computations are available for examination by the department.

(2) The department may verify the accuracy of any automated data processing programs used for computing log grading and scaling volumes for timber subject to ORS 321.005 to 321.185, 321.560 to 321.600 and 321.700 to 321.754.

(3) The department may perform tests to verify the accuracy of automated data processing programs using the equipment used to supply the service.

(a) Tests will consist of mock scale tickets prepared by the department with a maximum of 500 logs for each scaling method.

(b) Test printouts will be in scale ticket form, individual log detail form and in load summary form as produced for the timber owner.

(c) The test data must be run and the information sent to the department within thirty days after the date that the department sends the mock scale tickets.

(d) All testing will be at the expense of the party using automated data processing for log grading and scaling.

(4) Automated data processing records are to be retained as prescribed in OAR 150-321.609(2)-(D).

Stat. Auth.: ORS 305.100 & 321.609
Stats. Implemented: ORS 321.609
Hist.: 12-31-77, 12-31-79, Renumbered from 150-321.342; TC 7-1980, f. 11-28-80, cert. ef. 12-31-80; RD 8-1988, f. 12-19-88, cert. ef. 12-31-88, Renumbered from 150-321.243(2)-(C); RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.609(2)-(D)
Preservation of Records and Their Reproductions

All records or reproductions of records pertaining to scaling, measuring, grading and reporting of a timber harvest(s) subject to the Small Tract Forestland Severance Tax and the Forest Products Harvest Tax must be maintained for inspection. These records must be maintained for six years from the completion of a harvest or until final resolution of an appeal from an assessment relating to such harvest, whichever is later.

Stat. Auth.: ORS 305.100 & 321.609
Stats. Implemented: ORS 321.609
Hist.: 12-31-77, 12-31-79, Renumbered from 150-321.342to 150-321.342(2)-(D); 12-31-80, Renumbered from 150-321.342(2)-(D); RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.684-(A)
Requests for Confidential Information

(1) Request for information under ORS 321.684(1)(a) must:

(a) Be made in writing.

(b) Identify the type of return or report and the year or years requested.

(c) Include formal authorization if the request is from a representative of the taxpayer.

(2) Request for information under ORS 321.684(2) must:

(a) Be made in writing including a statement:

(A) Describing the records and information in detail reasonably sufficient to enable the department to identify and locate the information.

(B) Agreeing that the information requested will not be divulged or used for any purpose other than that authorized in ORS 321.684.

(b) Describe the intended use of the reports or returns requested.

(3) Requests for information made under ORS 321.684(2)(b) through (f) will be provided only upon receipt of a statement certifying that requestor has read and had explained to them the provisions of ORS 321.682 and is aware of the penalty provisions imposed under ORS 321.686.

(4) Charges for copies of records requested under this rule will be handled as set out in OAR 150-192.440.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.684
Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96

150-321.684(1)
Information Which May Be Furnished

A taxpayer or authorized representative will be permitted to inspect any return or report filed by the taxpayer in connection with the return.

(1) Information can be provided by telephone by an employee of the department regarding a pending refund claim, an audit report, the status of an account, a general inquiry from a taxpayer, or a request from the department, if the caller clearly establishes identification as the taxpayer or an authorized representative of the taxpayer. If a caller cannot establish a right to information, the information shall not be provided except upon receipt of a written request, and the information shall then only be provided by mail addressed to the taxpayer or other persons who have filed with the department, a general power of attorney, a special power of attorney that authorizes the disclosure of information related to the tax period or periods and tax programs, or the Department of Revenue's form titled "Authorization to Represent the Taxpayer."

(2) An "authorized representative" as used in this rule is a person designated in a written authorization executed by a taxpayer, to receive tax information on behalf of the taxpayer. The department must receive the authorization before tax information will be released to the representative.

(3) A person who is "recognized" as being authorized under ORS 305.230 to represent a taxpayer in a proceeding before a tax court magistrate or in a conference before the department may receive confidential information related to the taxpayer and to the proceeding or conference, unless otherwise prohibited by an Internal Revenue Service agreement. A person shall be "recognized" as being authorized to represent the taxpayer upon:

(a) The filing with the tax magistrate division or with the department of a document apparently signed by the taxpayer clearly authorizing such representation; or

(b) The filing with the tax magistrate division of a document signed by the representative that clearly states that the representative is authorized to represent the taxpayer with respect to the particular proceeding, and to receive from the department confidential records of the taxpayer relating to the proceeding, provided that such a statement also is in accordance with a rule of the tax magistrate division that is consistent with this rule; or

(c) The issuance by a tax court magistrate of an order declaring that such representation is authorized.

(4) In case of audit or compliance activity, a written authorization is required unless it appears to the satisfaction of the department that the representative does in fact have authority to represent the taxpayer.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.684
Hist.: REV 9-1998, f. 12-11-98, cert. ef. 12-31-98; REV 12-1998, f. 12-29-98, cert. ef. 12-31-98

150-321.700(1)
Common Ownership

(1) For purposes of ORS 321.700(1), "Direct ownership" means ownership of forestland by one or more individuals or control of property rights in forestland granted under a real estate contract, trust or other written agreement.

(2) "Majority interest" means an interest greater than 50 percent.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.700(1)
Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from OL 2003, Ch 454, Sec. 1(1) by REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.700(12)
Establishing the Identity of the Taxpayer for Severance Tax

For purposes of establishing the identity of the taxpayer for the severance tax, OAR 150-321.005(9) applies.

Stat. Auth.: ORS 305.100 & 321.609
Stats. Implemented: ORS 321.700
Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-Oregon Laws 2003, Ch. 454, Section 1(12), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-321.700(13)
Timber Subject to the Small Tract Forestland Severance Tax

(1) Timber subject to the Small Tract Forestland Severance Tax is the following:

(a) All logs that can be measured in board feet and meet the requirements of sawmill grades or better.

(A) Logs must be measured in western Oregon by the current edition of Official Rules for the following Log Scaling and Grading Bureaus: Columbia River, Northern California, Pacific Rim, Southern Oregon, Yamhill, developed by the Northwest Log Rules Advisory Group (NWLRAG). All sections of the publication are recognized including the Appendix.

(B) Logs must be measured in eastern Oregon by the Scribner Decimal "C" Eastside Short Log Rule, using the NWLRAG Eastside Log Scaling Handbook, First Edition 2003.

(b) Logs measured in tons and sold by the weight when they meet the conditions of (A) or (B) below. Logs must be reported on the timber tax return by thousand board feet (MBF). Logs must be converted from tons to MBF using conversion factors established by the Department of Revenue. These conversion factors are listed on the tax forms & instructions sent out annually by the department.

(A) The loads of logs contain a minimum of 20 percent of the log count at 5-inch, 6-inch and 7-inch scaling diameter. The "Chip Logs" conversion factor will be used to convert this type of load from tons to thousand board feet (MBF) for tax reporting.

(B) Loads of logs in which all logs measure 5-inch scaling diameter and larger, or the load contains three or more logs with 8-inch or larger scaling diameter. The "Small Saw Logs" conversion factor will be used to convert this type of load from tons to MBF for tax reporting.

(c) Logs chipped in the woods, except chips produced from material not meeting log merchantability standards in subsection (a) above and used as hog fuel.

(2) Timber not subject to Small Tract Forestland Severance Tax is secondary products, other than chips, manufactured in the woods and produced from logs normally left in the forest or burned as slash. Examples are shake or shingle bolts, fence posts, firewood and arrow bolts.

(3) When timber is harvested from the eastside, but scaled using westside log scaling rule, the volume must be adjusted to reflect the eastside log scaling rule volume. Taxpayers may use their own conversion factors if they are supported by statistically sound sample data; otherwise, the westside volume must be multiplied by 1.28 to get the equivalent eastside scaled volume.

Stat. Auth.: ORS 305.100, 321.609 & 321.700
Stats. Implemented: ORS 321.700
Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-Oregon Laws 2003, Ch. 454, Section 1(13), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 2-2005, f. 6-27-05, cert. ef 6-30-05

150-321.706
Definition of Owner for Small Tract Forestland Purposes

"Owner" as used in ORS 321.706 to 321.716 means one or more individuals, a public or private corporation, a limited liability company, a limited liability partnership, an unincorporated association, a partnership, an estate, a trust, a government, a governmental instrumentality, or any combination of these or similar entities.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.706
Hist: REV 8-2004, f. & cert. ef. 9-15-04

150-321.706(2)
Required Signatures for Small Tract Forestland Application

(1) Small Tract Forestland applications must be signed by all owners, as defined by OAR 150-321.706, that hold the land that is the subject of the application in common ownership, as defined in ORS 321.700(1).

(2) Acceptable signatures of the forestland owner(s) are as follows:

(a) For an individual, every person with an ownership interest must sign. If applicable, a person with legal guardianship or power of attorney to represent an individual may sign.

(b) For a partnership, a general partner designated by the partnership as authorized to represent the partnership.

(c) For an S corporation, a shareholder designated by the S corporation as authorized to represent the S corporation.

(d) For an estate or trust, the trustee, executor, or other authorized representative.

(e) For a C corporation, an officer of the corporation authorized to represent the C corporation.

(f) For a limited liability company (LLC) or limited liability partnership (LLP), a member designated by the LLC or LLP as authorized to represent the LLC or LLP.

(3) A contract purchaser(s) may sign if they have authority to make the application under the terms of the purchase contract.

Stat. Auth.: ORS 305.100, 321.609
Stats. Implemented: ORS 321.706(2)
Hist.: REV 4-2004, f. 7-30-04 cert. ef. 7-31-04; REV 7-2005, f. 12-30-05, cert. ef. 1-1-06

150-321.706(4)
Powers Delegated to County Assessor

Pursuant to ORS 321.706(4) the department delegates to the county assessor the authority to:

(1) Require any person to furnish any information the assessor deems necessary to determine whether forestland is qualified for small tract forestland designation.

(2) Enter upon and inspect the land included in a small tract forestland application and any contiguous parcels under common ownership as identified in ORS 321.700(3).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.706
Hist.: REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.706(7)
Definition of Taxpayer for Appeal of Small Tract Forestland Application Denial

"Taxpayer," as used in ORS 321.706(7), means an owner of forestland that is the subject of an application for qualification as small tract forestland.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.706(7)
Hist.: REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.709(1)(b)
Contiguous Parcels Held in Common Ownership

The following examples illustrate when contiguous parcels under common ownership must be included in an application for small tract forestland assessment as required by ORS 321.709(1)(b). For purposes of this rule, all parcels are designated forestland or highest and best use forestland.

(1) Example 1: Parcel # 1 is owned by three individuals, Bob, John and Greg. Parcel # 2 is contiguous to Parcel # 1 and is owned by husband and wife (Bob and Julie). Parcel # 3 is contiguous to Parcel # 2 and is owned by Julie. Parcels # 1 and # 3 are not contiguous.

(a) Parcel # 1 is the subject of an application for small tract forestland. Parcel # 2 must be included in the application as a contiguous parcel, since Bob has an ownership interest as an individual in both parcels. Parcel # 3 is not required to be included in the application, since Julie does not have an ownership interest as an individual in Parcel # 1.

(b) Parcel # 2 is the subject of an application for small tract forestland. Parcel # 1 must be included in the application as a contiguous parcel, since Bob has an ownership interest as an individual in Parcels # 1 and # 2. Parcel # 3 must also be included in the application as a contiguous parcel, since Julie has an ownership interest as an individual in Parcels # 2 and # 3.

(c) Parcel # 3 is the subject of an application for small tract forestland. Parcel # 2 must be included in the application as a contiguous parcel, since Julie has an ownership interest as an individual in Parcels # 2 and # 3. Parcel # 1 is not required to be included in the application, since Julie does not have an ownership interest as an individual in Parcel # 1.

(2) Example 2: Parcel # 4 is owned by a partnership, 3 J's Partnership. The three partners, Bob, John and Greg, each have a 1/3 ownership interest. Parcel # 5 is contiguous to Parcel # 4 and is owned by husband and wife (Bob and Julie). Parcel # 6 is contiguous to Parcel # 5 and is owned by Bob. Parcels # 6 and # 4 are not contiguous.

(a) Parcel # 4 is the subject of an application for small tract forestland. Parcels # 5 and # 6 are not required to be included in the application, since Bob does not own a majority interest in 3 J's Partnership.

(b) Parcel # 5 is the subject of an application for small tract forestland. Parcel # 6 must be included in the application as a contiguous parcel, since Bob has an ownership interest as an individual in Parcels # 5 and # 6. Parcel # 4 is not required to be included in the application, since Bob does not own a majority interest in 3 J's Partnership.

(c) Parcel # 6 is the subject of an application for small tract forestland. Parcel # 5 must be included in the application as a contiguous parcel, since Bob has an ownership interest as an individual in Parcels # 5 and # 6. Parcel # 4 is not required to be included in the application, since Bob does not own a majority interest in 3 J's Partnership.

(3) Example 3: Parcel # 7 is owned by a corporation, Bob and Julie Inc. Bob has a 60 percent interest in the corporation. Parcel # 8 is contiguous to Parcel # 7 and is owned by a partnership, 3 J's Partnership. Bob has a 2/3 ownership interest in the partnership. John and Greg each have a 1/6 interest. Parcel # 9 is contiguous to Parcel # 8 and is owned by 2 J's LLC. Bob and Julie each have a 50 percent interest in the LLC. Parcels # 9 and # 7 are not contiguous.

(a) Parcel # 7 is the subject of an application for small tract forestland. Parcel # 8 must be included in the application as a contiguous parcel, since Bob owns a majority interest in both Bob and Julie Inc. and 3 J's Partnership. Parcel # 9 is not required to be included in the application, since Bob does not own a majority interest in 2 J's LLC.

(b) Parcel # 8 is the subject of an application for small tract forestland. Parcel # 7 must be included in the application as a contiguous parcel, since Bob owns a majority interest in both Bob and Julie Inc. and 3 J's Partnership. Parcel # 9 is not required to be included in the application, since Bob does not own a majority interest in 2 J's LLC.

(c) Parcel # 9 is the subject of an application for small tract forestland. Parcels # 7 and # 8 are not required to be included in the application, since Bob does not own a majority interest in 2 J's LLC. If Bob owned a majority interest in 2 J's LLC, Parcel # 8 and Parcel # 7 would be deemed held in common ownership and contiguous because Bob would have owned a majority interest in all three parcels.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.709 (1)(b)
Hist.: REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.709(1)(c)
Minimal Stocking and Species Requirements for Small Tract Forestland Assessment

(1) To qualify, the land must have growing upon it at least the number of established trees per acre according to OAR 629-610-0020(4)–(8) established by the state forester. Also, for the land to qualify, the established trees must be of a marketable species acceptable to the state forester as established in OAR 629-610-0050.

(2) If the land does not meet the minimum requirements of subsection (1), the owner must present to the assessor a written plan for establishing trees to meet the minimum requirements for stocking. The plan must contain and meet the following requirements:

(a) A description of the area that shows the location, number of acres, ground cover, present stocking, steepness of slope, and direction slope faces.

(b) A list of needed site preparation requirements prior to planting. An example would be brush or grass removal, rodent eradication, disease and insect problems, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least one-fifth (20 percent), but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter a minimum of one-fifth (20 percent) of the area must be planted, in addition to the previous year's requirements. At the end of the fifth year after the assessor approves designation, 100 percent of the area in the plan must be planted. Extensions to planting requirements may be granted by the assessor if a loss of planted stock occurs due to conditions beyond the control of the landowner.

Stat. Auth.: ORS 305.100, 321.609 & 321.709
Stats. Implemented: ORS 321.709
Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-Oregon Laws 2003, Ch. 454, Sec. 4 (1)(c), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-321.709(3)
Notation on Assessment and Tax Roll

The assessment and tax roll must show the notation "Small Tract Forestland — Potential Additional Tax Liability" for each parcel of land that is assessed as small tract forestland.

Stat. Auth.: ORS 305.100 & 321.609
Stats. Implemented: ORS 321.709
Hist: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-OL 2003, Ch. 454, Section 4(3), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-321.712(1)
Notification to County Assessor by Small Tract Forestland Owner

(1) ORS 321.712(1) requires a small tract forestland owner(s) to give written notice to the county assessor when:

(a) The owner acquires tax lots that are contiguous to small tract forestland they own, or

(b) The owner acquires or sells forestland that results in their owning less than 10 or more than 5,000 acres of Oregon forestland, or

(c) There is a change in use of any portion of their small tract forestland to a use that is not a forestland use.

(2) This written notification must be made within 90 days of the date of acquisition, sale or change of use.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.712(1)
Hist.: REV 4-2004, f. 7-30-04 cert. ef. 7-31-04

150-321.719(1)
Common Ownership

"Person" means an individual, a public or private corporation, a limited liability company, a limited liability partnership, an unincorporated association, a partnership, a government, or a governmental instrumentality.

Stat. Auth.: ORS 305.100 & 321.609
Stats. Implemented: ORS 321.719
Hist: Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-OL 2003, Ch. 621, Section 109(1), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-321.741(2)
Due Date for Filing Severance Tax Returns and Requesting an Extension

(1) The department will mail severance tax returns to owners of timber, as shown on the Notification of Operations (permit) issued by the Department of Forestry, from lands assessed as small tract forestland.

(a) The returns and tax are due on or before the last day of January following the year of harvest.

(b) When the department mails the returns less than ten business days prior to the last day of January, the department will not impose any penalty on the tax due provided that the taxpayer files the return and pays the tax within twenty calendar days of the mailing date of the return.

(2) The department may grant an extension of time to file a return upon receipt of a written request for extension from the taxpayer. The department may grant up to thirty days from the due date in which to file. The extension only pertains to the filing of the return and does not extend the time in which the tax must be paid. A request for extension must be:

(a) Submitted to the department in writing, stating the reason for the request and

(b) Postmarked no later than the due date of the return.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.741
Hist: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04.

150-321.751(3)
Distribution of Severance Tax Receipts for Western Oregon

Monies distributed under ORS 321.751(3) are distributed to each Western Oregon county in the same proportion that the assessed value of small tract forestland in that county bears to the total assessed value of small tract forestland in Western Oregon. The department will use the small tract forestland values reported by the county assessors or information supplied on the most recent Summary of Assessment and Levies (SAL) report to make this computation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.751
Hist: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.754(3)
Distribution of Severance Tax Receipts for Eastern Oregon

Monies distributed under ORS 321.754(3) are distributed to each Eastern Oregon county in the same proportion that the assessed value of small tract forestland in that county bears to the total assessed value of small tract forestland in Eastern Oregon. The department will use the small tract forestland values reported by the county assessors or information supplied on the most recent Summary of Assessment and Levies (SAL) report to make this computation.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.754
Hist: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.805(4)
Definition of "Sound Management Practices"

For the purpose of ORS 321.805(4), "Sound management practices," in addition to growing trees may include but are not limited to: range management, fire protection, soil erosion control, stream protection, cooperative wildlife management, and road access control.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.805
Hist.: REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.833
Common Ownership

Definitions:

(1) "Person" means an individual, a public or private corporation, a limited liability company, a limited liability partnership, an unincorporated association, a partnership, a government or a governmental instrumentality.

(2) "Majority interest" means an interest of greater than 50 percent.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.833
Hist.: Renumberd from 150-Ch. 1078 Sec. 2 & 35 1999 Session by REV 6-2003, f. & cert. ef. 12-31-03 1999 Session to OAR 150-321.812, 12/31/03; Renumbered from 150-321.812, REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-321.839
Notation on Tax Roll: "Forestland - Potential Additional Tax Liability"

The county assessor must make the notation "Forestland – Potential Additional Tax Liability" on the tax roll for each parcel of land the assessor approved as designated forestland under ORS 321.839. The notation is not made with respect to parcels classified by the county assessor as highest and best use forestland.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.839
Hist.: REV 4-2006, f. & cert .ef. 7-31-06

150-321.839(3)(b)
Date of Acquisition

In answering the question on the application for designation as forestland concerning date of acquisition, the applicant must list the exact date of acquisition if the forestland was acquired within the five year period immediately preceding the date of the application. If the forestland was acquired more than five years before the date of the application, that fact must be stated, but dates are not required.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.839
Hist.: 11-71; Renumbered from 150-321.815(2)(b) by REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-321.815(3)-(b), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-321.839(4)
Minimum Stocking and Acreage Requirements for Designation as Forestland in Eastern Oregon

(1) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(2) If the land does not meet the minimum requirements of section (1) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces.)

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

(3) Certain lands do not support sufficient stocking requirements; however, when the use of these lands supports sound management practices and the harvest of forest crops on surrounding lands, these lands may be designated as forestland. Examples of such lands include:

(a) Roads, landings, and rock pits used for forest roads that are necessary for forest management and the harvest of forest crops.

(b) Land that is subject to power transmission and distribution easements or gas line easements that are not centrally assessed under ORS 308.505–308.665 or 308.805–308.820 if the lands would otherwise qualify for designation as forestland if, but for the easement, sufficient stocking of trees would be permitted.

(4) To qualify for designation, the land must meet the minimum stocking requirements of sections (1) or (2) of this rule. However, when the circumstances listed in section (3) of this rule are present, and at least 80 percent of the total area applied for meets the minimum stocking requirements, the total area of the application will be assessed as designated forestland.

(5) To qualify, the area to be designated must be at least two contiguous acres in one ownership.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.805
Hist.: 11-71; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 15-1982, f. 12-6-82, cert. ef. 12-31-82; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.805, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04

150-321.839(5)
Notification by Assessor of Denial of Application

The assessor will send the written notice denying the application, in whole or in part, for designation of forestland to the applicant by certified mail.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 321.839
Hist.: 11-71; Renumbered from 150-321.815(4) by REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-321.815(5), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

DIVISION 323

CIGARETTE TAXES

150-323.030
Exemption of Cigarette Sales in Interstate or Foreign Commerce

The tax applies to all cigarettes sold within this state, but does not apply to sales of cigarettes which are:

(1) Shipped to a point outside this state, pursuant to a contract of sale, by delivery by the seller to such out-of-state point by means of:

(a) The United States mail; or

(b) A common carrier licensed by the Interstate Commerce Commission; or

(c) Facilities operated by the seller. Oregon distributors claiming exemption from the tax on cigarettes on the ground that shipments or deliveries were made in interstate commerce shall certify, under penalties for false swearing, the name and address of the persons receiving such shipments or deliveries in such foreign states, and that the Oregon distributors are in possession of delivery data of the following description:

(A) A waybill, bill of lading or other evidence of shipment issued by a common carrier in the case of shipments by common carrier; or

(B) an insurance receipt or registry receipt issued by the United States Postal Department, or a Post Office Department receipt in the case of shipments made by U.S. mail; or

(C) a copy of the sellers invoice covering the sale, showing delivery by the seller at a designated out-of-state address, and signed by the purchaser or the purchaser's agent in the case of shipments by facilities operated by the seller. The Department reserves the right to require such additional proof as it deems necessary in any particular case.

(2) Sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the cigarettes abroad and actually carried to a foreign destination.

(3) Sold for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States.

(4) Sold for use as ship's supplies which are to be consumed or resold on the high seas or in foreign countries. Reports of such exempt sales must be maintained as provided in OAR 150-323.340-(A). The tax applies to the transaction if the cigarettes are diverted in transit or for any other reason are not actually delivered outside the state pursuant to the contract of sale or are not shipped abroad to a foreign purchaser, regardless of documentary evidence held by the distributor. Cigarettes are not considered to be interstate commerce and therefore are not exempt under ORS 323.040 if they are received by a purchaser or agent (other than a common carrier) in this state. Failure to keep any reports, waybills, bills of lading or other documents required by this rule is justification for the Department of Revenue to impose a tax on any cigarettes claimed to be shipped out of Oregon and exempt under this rule. Any tax imposed on these grounds shall be cancelled upon actual proof to the Department that the reports, waybills, bills of lading or other documents were in fact issued and the cigarettes were in fact shipped out of Oregon and were exempt under this rule.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 323.030
Hist.: 6-66 as 150-323.040; 9-71, Renumbered; 1-73; 8-75, Renumbered from 150-323.055; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84

150-323.030-(B)
Allowance of Sales within this State of Cigarettes Stamped with other States' Indicia

(1) Generally, cigarettes sold by a wholesale cigarette distributor within this state must be stamped with an Oregon cigarette stamp. If sold to a retailer of another state, the cigarettes shall be stamped with the other state's indicia and must be transported by U. S. Mail, a licensed interstate common carrier or by the seller to a point outside this state.

(2) An exception is made for the sale to and self-service pick-up by a licensed retailer of another state who will immediately transport the cigarettes out of this state. In such an event, the distributor must, at the time of sale and shipment, obtain from the purchaser a signed, sworn statement under penalties for false swearing. The statement shall be on the invoice. The statement shall attest (a) that the purchaser is a retailer licensed to sell cigarettes in the other state, (b) that the cigarettes are being purchased for resale in the state for which the cigarettes are stamped and (c) that the purchaser will immediately transport the cigarettes out of this state to the state for which the cigarettes are stamped.

(3) The seller shall keep a copy of the invoice in the seller's possession. Failure to retain the invoice or to obtain the sworn statement shall cause the distributor to be liable for the Oregon Cigarette Tax, together with any penalty and interest accrued, on the product sold. It shall be the seller's duty to ensure the purchaser is a licensed retailer of the other state.

(4) The department reserves the right to require such additional proof as it deems necessary in any particular case.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.030
Hist.: RD 4-1994, f. 12-15-94, cert. ef. 12-31-94

150-323.105
When Distributor's License Required

A distributor's license is required for each place of business at which a person engages in the distribution of cigarettes as defined in ORS 323.015(2). A distributor's license is required for any person distributing cigarettes in Oregon, including:

(1) Every cigarette manufacturer selling cigarettes in this state to persons other than licensed distributors;

(2) Every person who imports cigarettes into this state for sale;

(3) Every person who obtains untaxed cigarettes from a cigarette manufacturer for resale; and

(4) Common carriers engaged in interstate or foreign passenger service who sell cigarettes on their facilities in Oregon, and persons authorized to sell cigarettes on the facilities of such common carriers. For the purpose of this rule "facilities of a common carrier" are limited to the mobile equipment of the carrier used for the transportation of passengers.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.105
Hist.: 6-66; 9-71; TC 9-1980, f. 11-28-80, cert. ef. 12-31-80; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 2-2014, f. & cert. ef. 7-31-14

150-323.106
Certification Applicant Will Comply with Requirements

(1) A person who files an application for a distributor's license under ORS 323.105 must include with the application a written statement certifying that the person will comply with 180.435 and 180.440 pertaining to cigarettes of certain nonparticipating manufacturers.

(2) Cigarette distributor license applications are certified under ORS 323.106 by:

(a) Hand signing the application.

(b) An electronic signature (as defined in ORS Chapter 84) associated with an application filed in electronic (as defined in ORS Chapter 84) form and successfully transmitted to the department, by the applicant.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.106
Hist.: REV 2-2014, f. & cert. ef. 7-31-14

150-323.107
When Cigarette Wholesaler's License is Required; Denial of Application

(1) Any person selling cigarettes as defined in ORS 323.010(17) must obtain a cigarette wholesaler's license. A wholesaler must obtain a license for each place of business at which the wholesaler engages in the sale of cigarettes.

(2) The Department of Revenue may deny a license application under ORS 670.280 if there is false or incomplete information on the application or if the department determines that the applicant will not comply with the provisions of 323.005 to 323.482. When deciding whether to deny a wholesaler's license, the department may consider, but is not limited to, the following factors:

(a) Whether the applicant has previously failed to pay a tobacco related tax or any other tax administered by the Oregon Department of Revenue;

(b) Whether the applicant has engaged in conduct punishable as a crime under ORS Chapter 323 or any other state's or federal tobacco laws; or

(c) Whether the applicant has violated any part of ORS Chapter 323 or any rule adopted under that chapter;

(3) If the applicant is other than an individual, the department will apply the factors described in subsection (2) both to the applicant and, if the applicant is an organization, to the individual(s) within the organization with the primary responsibility for ensuring compliance with cigarette tax laws;

(4) If the department denies a license application, the applicant has 30 calendar days from the date of denial to file an appeal in the manner provided in ORS 305.404 to 305.560.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.107
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 9-2010, f. 7-23-10, cert. ef. 7-31-10

150-323.110
Security Bond Requirements for Cigarette Distributors

(1) A purchase may not exceed a bond or other security amount if a licensee or applicant for a license elects to pay for cigarette tax stamps on deferred status. The amount of the bond or other security will be equal to the total maximum deferred payment purchase that may be made in any one calendar month.

(2) If at any time the distributor reaches its bond or security limit, the bond or security becomes ineffective, or the surety cancels the bond or security, then the distributor may only purchase stamps on a cash basis until the bond or security is renewed.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.107
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.130
Denial of a Cigarette Distributor's License

(1) Any person engaging or seeking to engage in the sale of cigarettes as a distributor as defined in ORS 323.015 must obtain a cigarette distributor's license. A distributor must obtain a license for each place of business at which the distributor engages in the sale of cigarettes.

(2) The Department of Revenue may deny a license application if there is false or incomplete information on the application or if the department determines that the applicant will not comply with the provisions of ORS 323.005 to 323.482. When deciding whether to deny a distributor's license, the department may consider, but is not limited to, the following factors:

(a) Whether the applicant has previously failed to pay a tobacco related tax or any other tax administered by the Oregon Department of Revenue;

(b) Whether the applicant has engaged in conduct punishable as a crime under ORS Chapter 323 or any other state's or federal tobacco laws; or

(c) Whether the applicant has violated any part of ORS Chapter 323 or any rule adopted under that chapter;

(3) If the applicant is other than an individual, the department will apply the factors described in subsection (1) both to the appli-

cant and, if the applicant is an organization, to the individual(s) within the organization with the primary responsibility for the payment of the cigarette taxes on behalf of the applicant;

(4) If the department denies a license application the applicant has 30 calendar days from the date of denial to file an appeal in the manner provided in ORS 305.404 to 305.560.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.107
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 9-2010, f. 7-23-10, cert. ef. 7-31-10

150-323.140
Notification of Proposed Suspension or Revocation of Cigarette Distributor or Wholesaler License; Appeal; Final Notification

The Department of Revenue may suspend or revoke a distributor or wholesaler license if the department determines that the distributor or wholesaler will not comply with the provisions of ORS 323.005 to 323.482. When deciding whether to suspend or revoke a license the department may consider, but is not limited to, the following factors:

(1) Whether the distributor has failed to pay a tobacco related tax;

(2) Whether the distributor or wholesaler has engaged in conduct punishable as a crime under ORS Chapter 323 or any other state's or federal tobacco laws; and

(3) Whether the distributor or wholesaler has violated any part of ORS Chapter 323 or any rule adopted under that chapter.2) When the department decides to suspend or revoke an existing valid distributor or wholesaler license, the department will send a notice to the distributor or wholesaler of the suspension or revocation, stating the reasons for such action. The distributor or wholesaler has 30 calendar days from the date on the notice to file an appeal under ORS 305.404 to 305.560.

(4) If a distributor or wholesaler requests a hearing within the appeal period in subsection (2), the license suspension or revocation will not become effective until a final determination of the appeal by the Tax Court or the Oregon Supreme Court.

(5) If a distributor or wholesaler does not request a hearing within the appeal period in subsection (2), suspension or revocation becomes effective on the 31st day after the date on the notice of suspension or revocation.

(6) The notices described in sections (2) and (4) will be mailed to the distributor or wholesaler by certified mail, return receipt requested, using the last known address of the distributor or wholesaler. Return of the notice as undeliverable or because the distributor or wholesaler fails or refuses to pick up or accept the notices will not extend the appeal period or delay the action specified in the final notice.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.140
Hist.: REV 8-2002, f. & cert. ef. 12-31-02; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.160(1)
Tax Stamp Units of Sale; Minimum Sales

(1) The Department of Revenue will sell cigarette tax stamps only to licensed distributors and their properly authorized employees whose signature cards are in the possession of the designated agent of the department. The department has set the minimum unit purchases for each sale as follows:

(2)(a) Heat-applied decal tax stamps for the denominated value of 20 units per pack are sold in rolls containing 30,000 stamps. The stamps are sold in full rolls only and the smallest sale unit is one roll.

(b) Heat-applied decal tax stamps for the denominated value of 25 units per pack are sold in rolls containing 7,200 stamps. The stamps are sold in full rolls only and the smallest sale unit is one roll.

(c) Heat-applied decal tax stamps for the denominated value of 20 units per pack are sold in pads containing 10 sheets of 100 stamps per sheet. The stamps are sold in full pads and the smallest sale unit is one pad of 10 sheets totaling 1,000 stamps.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.160
Hist.: 6-66; 9-71; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 11-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-323.155, REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 2-2007(Temp), f. & cert. ef. 3-21-07 thru 7-30-07; REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

150-323.160(2)
Manner of Affixing Stamps

(1) The department will sell the following cigarette tax stamp types and denominations:

(a) A heat-applied decal tax stamp with the denominated value of 20 units per pack.

(b) A heat-applied decal tax stamp with the denominated value of 25 units per pack.

(2) Stamps must be affixed to each individual package of cigarettes, as distinguished from cartons or large containers, in an aggregate denomination not less than the amount of tax upon the contents therein.

(3) Stamps must be affixed to the bottoms of such packages in a manner that is clearly visible to subsequent purchasers. No other stamp, label, decal, mark or sign shall be affixed to or displayed on the bottom of a package of cigarettes without prior written approval from the department. If packaging is different from the typical 20 or 25 cigarette packages, written department approval specifying where the stamp(s) will be affixed is required before stamps can be affixed to the packaging. Such approval will be given only to licensed cigarette agents who agree to purchase such indicia from the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.160
Hist.: REV 11-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-323.160, REV 7-2004, f. & cert. ef. 8-11-04; REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

150-323.160(3)-(A)
Definition of "Appropriate Stamp"

As required by ORS 323.160(3), an appropriate stamp must be affixed to each package of cigarettes prior to the distribution of the cigarette; for purposes of that requirement an "appropriate stamp" is considered to be more than 50 percent of a single required Oregon tax stamp.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.160
Hist.: REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04; Suspended by REV 2-2004(Temp), f. 4-30-04 cert. ef. 5-1-04 thru 9-30-04

150-323.160(3)-(B)
Responsibility for Affixing of Tax Stamps

(1) The distributor that first distributes cigarettes to anyone in the state of Oregon must affix the required tax stamps to the packs of cigarettes. This requirement applies to distributors that are physically located inside or outside of Oregon.

Example 1: If a distributor sells cigarettes to a dealer in Oregon, the distributor must affix the required tax stamps.

Example 2: If distributor A sells cigarettes to distributor B who is within Oregon, distributor A must affix the required tax stamps.

(2) If the distributor that first distributes cigarettes in Oregon fails to affix the required tax stamps, any subsequent distributor possessing unstamped cigarettes must affix the required tax stamps before distributing those cigarettes in Oregon.

(3) A distributor that fails to affix the tax stamps as required by section (1) may be subject to civil and criminal penalties as provided in ORS 323.480 to 323.482.

(4) Distributors are not required to affix tax stamps to cigarettes that are free from tax under ORS 323.040, 323.050, 323.055, or 323.060.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.160
Hist.: REV 8-2002, f. & cert. ef. 12-31-02; Renumbered from 150-323.160(2), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.170
Payment Type for Cigarette Stamps

Every licensed distributor purchasing tax stamps from the department must pay for the stamps with cash, cashiers check, or money order.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.170
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.175
Deferred Payment Purchases; Bond Requirement; Credit Authorization; Return of Bond

(1) To purchase tax stamps on a deferred payment basis a distributor must file an application with the Department of Revenue on a form prescribed by the department.

(2) A security bond must accompany the application and is to be deposited with the department as provided in ORS 323.110, or the application must be accompanied by cash or securities to be deposited with the State Treasurer as provided as provided in ORS 323.120. The amount of the bond, cash or security deposited will be the fixed amount of deferred payment purchases the distributor may make in any one calendar month.

(3) If a distributor's license is revoked by the department, or is withdrawn by the licensee, the department will direct the State Treasurer to return any security that may be held by the State Treasurer under ORS 323.120, to the former licensee after the department has determined that all liabilities owed by the distributor to the department have been paid in full.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.180
Hist.: 6-66; 9-71; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.180
Signature Cards

Before making purchases of tax indicia, the distributor shall file with the Department, on a form provided by the Department, a "cigarette tax signature card" for each designated office where the distributor may make tax indicia purchases. The distributor shall authorize in writing, on the card, those persons who may order purchases of stamps for the distributor's account at each designated office. The "cigarette tax signature card," upon authentication by the Department, shall be maintained as authority by the designated office. The distributor's authorization to the named persons shall continue in effect until written notice of revocation of the authority is delivered to the designated office in the form of a revised signature card or a letter of revocation. Signature cards will be updated periodically as determined by the Department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.180
Hist.: 6-66; 9-71; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99

150-323.190
Restoration of Deferred Payment Plan Privileges for Purchasing Cigarette Tax Stamps

When the privilege of purchasing tax stamps on the deferred payment plan has been suspended by the Department of Revenue as provided in ORS 323.190, the suspension will remain in effect until the department issues written notice that the deferred payment plan has been restored. Paying the delinquency alone will not necessarily restore the privilege of utilizing the deferred payment plan.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.190
Hist.: 6-66; 9-71; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.211
Vending Machine Visibility Requirements

Packages of cigarettes shall be placed in vending machines in such a manner that, if any package is visible while in the machine, the state cigarette tax stamp affixed thereto also shall be clearly visible. Any vending machine operator who uses a machine in which the cigarette tax stamps are not visible will be required to repurchase from the Department all cigarettes purchased from his machine by the Department's agent for inspection purposes.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.211
Hist.: 6-66; 9-71, Renumbered from 150-323.230-(B); TC 9-1980, f. 11-28-80, cert. ef. 12-31-80; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99

150-323.220-(A)
Segregation of Cigarette Inventories

(1) The following rules apply to inventories of cigarettes held by distributors:

(a) Untaxed cigarettes must be stored in an area separate from cigarettes bearing tax stamps.

(b) Cigarettes stamped with the tax stamp of another state must be stored in a separate area from cigarettes bearing an Oregon tax stamp.

(2) Any dealer who serves as the dealers own distributor or who buys directly from a manufacturer and is licensed as a distributor must maintain strict separation of the wholesale and retail stocks of cigarettes and must maintain separate records of the wholesale portion of the business and keep such records, including invoices, separate and apart for the inspection of the wholesale business by the Department of Revenue. The records must show the amount of stamps purchased, stamps affixed, records of purchases of cigarettes and of all sales, whether the dealer is also acting as a distributor or retailer or selling to another retailer.

(3) The requirement to segregate cases or cartons of cigarettes under subsections (1) and (2) of this rule is satisfied if the distributor or dealer keeps the stocks of cigarettes separated by clearly marking the cases or cartons of cigarettes indicating whether the packs of cigarettes inside are taxed or untaxed, and whether they are wholesale or retail stock.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.220
Hist.: 6-66; 9-71; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-323.220, REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

150-323.220-(B)
Cigarette Invoice Requirements

(1) Any "distributor" as defined in ORS 323.015(2) and any "dealer" as defined in 323.010(5) in this state must keep sales invoices related to cigarette transactions.

(2) The required sales invoice must contain the following:

(a) Name and address of the seller;

(b) Name and address of the purchaser;

(c) Date of the sale;

(d) Quantity and description of cigarette products;

(e) Price paid for cigarette products; and

(f) The applicable license identification number of the distributor and/or wholesaler.

(3) Records must be preserved for five years from the time to which it relates and must be made available for inspection by representatives of the department. Per ORS 323.245, failure to comply could result in forfeiture of cigarettes.

Stat. Auth.: ORS 305.100 & 323.220
Stats. Implemented: ORS 323.220
Hist.: REV 10-2012, f. 12-18-12, cert. ef. 1-1-13; REV 3-2013, f. & cert. ef. 3-28-13

150-323.225
Permit Required for Transportation of Untaxed Cigarettes Inside Oregon

(1) Transporters, as defined in ORS 323.010(9), must apply to the department for a permit to transport untaxed cigarettes on Oregon highways, roads or streets. This application must be on the form prescribed by the department and must be submitted to the department no less than one working day before the first transportation of untaxed cigarettes. The application must include:

(a) The applicant's name, address and telephone number;

(b) The beginning and ending dates of the period to be covered by the permit;

(c) The maximum number of loads or shipments the transporter may transport under the permit;

(d) The method of transportation;

(e) The location of detailed records concerning the transportation of untaxed cigarettes under the permit, including where each shipment of untaxed cigarettes was picked up and delivered; and

(f) The name and telephone number of the person the department can contact to examine the records referred to in subparagraph (e).

(2) The department will either approve or deny the application and return it to the applicant before the first shipment is made under the permit. An approved application constitutes a permit. The original or a photocopy of the permit must be carried in the vehicle transporting the untaxed cigarettes. The permit holder must notify the department of any change in the information required on the application before the first transportation of untaxed cigarettes after such information changes. A new permit must be obtained if the name of the permit holder changes.

(3) No transporter may transport untaxed cigarettes in this state without a permit from the department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.225
Hist.: 6-66; 9-71; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; REV 4-2000, f. & cert. ef. 5-1-00

150-323.320-(A)
Cigarettes Damaged in Transit

The following procedure may be used in lieu of payment of tax and claim for refund:

(1) Untaxed cigarettes damaged while being transported from the manufacturer to a bonded warehouse may be:

(a) Returned to the manufacturer without the imposition of any tax; or

(b) Accepted by a bonded warehouse for the manufacturer who must affix tax paid indicia before they may be returned to the carrier for salvage. Cigarettes damaged to the extent that indicia cannot be affixed and not returned to the manufacturer or otherwise disposed of outside of Oregon, must be accepted and retained by the warehouse until they can be destroyed in the presence of a representative of the Department.

(2) Untaxed cigarettes damaged while being transported between a bonded warehouse and a licensed distributor must be accepted by the distributor for the purpose of affixing tax paid indicia. They may be returned to the carrier for salvage purposes only after such indicia has been affixed. Cigarettes damaged to the extent that indicia cannot be affixed and not returned to the manufacturer or otherwise disposed of outside of Oregon, must be accepted and retained by the distributor until they can be destroyed in the presence of a representative of the Department.

(3) Untaxed cigarettes damaged while being transported from a point outside Oregon to a consignee, other than a bonded warehouse within Oregon, may either be returned to the consignor without the imposition of any tax, or may be accepted by the consignee for the purpose of affixing tax indicia before being returned to the carrier for salvage purposes. Cigarettes damaged to the extent that indicia cannot be affixed and which are not returned to the consignor or otherwise disposed of outside of Oregon must be accepted and retained by the consignee until they can be destroyed in the presence of a representative of the Department.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.320
Hist.: 6-66; 9-71; 12-31-80, Renumbered from 150-323.230; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84

150-323.320-(B)
Refund of Value of Unused or Mutilated, but Identifiable, Stamps

When accompanied by a properly executed claim for refund, on forms supplied by the Department, a refund equal to the denominated value, less the discount allowed, will be made on all returned, unused or mutilated, but identifiable, cigarette revenue stamps.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.320
Hist.: 12-19-75; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-323.320(1), REV 8-2008, f. 8-29-08, cert. ef. 8-31-08

150-323.320-(C)
Refund Value of Stamps on Unsalable and Misstamped Cigarette Packages and Cartons

(1) Refund provisions of the cigarette tax act apply only to duly licensed Oregon cigarette distributors. Unsalable stamped cigarettes may include product no longer approved for sale in Oregon, stale product, or product inventory of a closed business. Refund certification appointments are scheduled at the discretion of the department. Misuse of this provision may cause license revocation. Cigarette stamp refunds outside of Oregon must be certified by an appointed representative of the department. A refund equal to the face value, less the discount allowed, on identifiable stamps affixed to unsalable packages of cigarettes may be obtained as follows:

(2) Unsalable stamped cigarette packages re-stamped for sale outside Oregon. An appointment for refund certification must be made with the department. A department representative will cancel the Oregon indicia in such a manner as to permanently identify the packages. Indicia from the state into which those packages will be sold must be affixed to the packages during the certification appointment. The request for refund must be sent to the department and be accompanied by the properly executed certification completed by the department.

(3) Unsalable stamped cigarette packages to be sold outside Oregon. An appointment for refund certification must be made with the department. A department representative will cancel the Oregon indicia in such a manner as to permanently identify the packages. The request for refund must be sent to the department and be accompanied by a copy of the shipping document used to send the cigarettes to the purchasing party, and any other proof of the cigarettes not being used for smoking in the State of Oregon.

(4) Unsalable stamped cigarette packages to be destroyed. An appointment for refund certification must be made with the department. A department representative will cancel the Oregon indicia in such a manner as to permanently identify the packages. Packages of cigarettes must be destroyed during the certification appointment and in the presence of an appointed representative of the department. The request for refund must be sent to the department and be accompanied by the properly executed certification completed by the department.

(5) Unsalable stamped cigarette packages returned to the manufacturer. The claim for refund must be sent to the department on a form supplied by the department and be accompanied by a properly executed manufacturer's statement of returned cigarettes and a copy of the shipping document used to return the cigarettes to the manufacturers.

(6) Misstamped cigarette packages, where at least fifty percent of a stamp is affixed to a cigarette package. An appointment for refund certification must be made with the department. A department representative will cancel the partial indicia inadvertently affixed to packages of cigarettes in a manner as to permanently identify the packages. Indicia from the state into which those packages will be sold must be affixed to the packages during the certification appointment. The request for refund must be sent to the department and be accompanied by the properly executed certification completed by the department.

(7) Misstamped cigarette packages, where more than one stamp is affixed to a cigarette package. An appointment for refund certification must be made with the department. A department representative will cancel the duplicated indicia inadvertently affixed to packages of cigarettes in a manner as to permanently identify the packages. The request for refund must be sent to the department and be accompanied by the properly executed certification completed by the department.

(8) Misstamped, where stamps are affixed to packaging. The request for refund must be sent to the department and be accompanied by the packaging to which indicia was inadvertently affixed.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.320
Hist.: 12-19-75; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; REV 6-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-323.320(2), REV 5-2008, f. 8-29-08

150-323.325
Refund of Overpayments

Refund of overpayments on a Distributor's Cigarette Tax Account may be made when an audit determines a net overpayment has been made during the audit period, and the distributor files a claim for such refund within six months of the date the determination was made. No refund shall be allowed after three years from the date of any overpayment.

Stat. Auth.: ORS 305.100
Stat. Implemented: ORS 323.325
Hist.: 12-31-81

150-323.340
Distributor's Reports — Generally

(1) On or after January 1, 2000, every distributor shall quarterly file, on or before the 20th day of April, July, October and January, on forms prescribed by the department, reports containing such information as is required on the form including:

(a) Information as to the acquisition by the distributor of cigarettes which, at the date of receipt by the distributor, have not had the tax stamps affixed as required by ORS 323.160.

(b) Information as to the disposition by the distributor of cigarettes which are not subject to the tax imposed by this chapter. (Example: Cigarettes transported from the State of Oregon to points within another state). A separate report will be required for each state or tax exempt unit to which shipments are made.

(c) Information regarding the purchase and distribution of cigarettes, showing the number of cigarettes on hand at the beginning and end of the period, the number of cigarettes purchased during the period and the number of cigarettes distributed during the period.

(d) Information regarding the inventory of stamps, showing the number of stamps at the beginning and end of the period, the number of cigarettes purchased during the period and the number affixed during the period.

(2) Any person or firm classified as a distributor under ORS 323.015(1)(d) and 323.015(2)(a) solely by reason of operating one or more vending machines will not be required to file any reports specified in this section unless requested to do so by the department if:

(a) The distributor purchases only tax-paid cigarettes as evidenced by properly affixed indicia from distributors licensed by this state;

(b) The distributor engages solely in the activity of placing cigarettes in such vending machines;

(c) The distributor is not engaged in any other cigarette sales activity in this state; and

(d) The distributor is not otherwise a licensed distributor authorized to receive and handle untaxed cigarettes as a distributor.

(3) The distributor shall retain the detailed documents including, but not limited to, purchase invoices, sales invoices and bills of lading, used in preparing the reports required by this section. In the case of cigarettes for foreign export, copies of the Shippers Export Declaration filed with the Collector of Customs or other documentary evidence of export shall also be retained. All documents so retained shall be made available for inspection by authorized employees of the Department of Revenue.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.340
Hist.: 6-66; 9-71; REV 11-1999, f. 12-30-99, cert. ef. 12-31-99, Renumbered from 150-323.340-(A)

150-323.343
Reports of Cigarette Tax Activity in Oregon

(1) A person who engages in cigarette tax activity in this state, as defined in ORS 323.010(2) and this rule, but who is not licensed to distribute cigarettes in Oregon, must file with the Department of Revenue reports prescribed by the department on or before the 20th day of January, April, July and October. Those reports must contain the following information regarding each shipment of cigarettes that occurred during the quarter:

(a) The business name, address and identification number of the person engaging in cigarette activity;

(b) The source and destination of the shipment of cigarettes;

(c) The transporter's business name and address;

(d) The dates the cigarettes were shipped;

(e) The total number of cigarettes shipped into and the total number of cigarettes shipped out of Oregon;

(f) The number of cigarettes in the taxpayer's inventory that were located in Oregon at the beginning of the quarter and the number of cigarettes in the taxpayer's inventory that were located in Oregon at the end of the quarter; and

(g) Other information requested on the department's form.

(2) For purposes of this rule, the following are presumed not to constitute "cigarette tax activity in this state":

(a) Transporting a sealed shipment of cigarettes through Oregon in a continuous process under authority of a Motor Property Carrier and Broker Certificate of Authority issued by the Federal Motor Carrier Safety Administration; or

(b) Storing a sealed shipment of cigarettes in a public warehouse or other public storage facility that is owned by a person who is not the owner of the cigarettes and who has no intent to sell the cigarettes either within or without this state.

(3) For purposes of this rule, transferring or breaking up a shipment of cigarettes to more than one vehicle or more than one carrier or unsealing a sealed shipment of cigarettes in Oregon is presumed to show intent to sell cigarettes either within or without this state.

Example 1: AB Partnership is not licensed to distribute cigarettes in Oregon. The partnership purchases cigarettes in California and transports them by common carrier from California to Washington State. The load is sealed at the point of departure in California and is transported to Washington where it is unsealed and the contents verified with the bill of lading. AB Partnership is not required to file a report under this provision.

Example 2: Same facts as Example 1, except that the trailer containing the shipment is dropped at the carrier's terminal in Medford, Oregon where it is picked up by another driver or carrier and transported to Washington state where it is unsealed and the contents verified. No report is required under this provision.

Example 3: Same facts as Example 2, except that the shipment is unsealed at the Medford terminal and reloaded into smaller delivery vans. Part of the original shipment is sent to Washington and part is sent to Idaho. The owner of the cigarettes, AB Partnership, is required to file a report under this provision because the continuous process of transportation through the state was broken when the shipment was unsealed while in Oregon.

Stat. Auth.: ORS 305.100
Stat. Implemented: ORS 323.343
Hist.: REV 3-2002, f. 6-26-02, cert. ef. 6-30-02

150-323.365(1)
Extension of Time for Reports

The time for making or filing a cigarette tax report under this chapter may be extended for one month providing the taxpayer provides a written request for extension within or prior to the period for which an extension may be granted, and certain conditions are met, including but not limited to:

(1) Information required to complete the report is not available or is not in the proper form;

(2) Unexpected or unavoidable absence of the person responsible for preparing the report; or

(3) For other reasons beyond the taxpayer's control the report cannot be submitted timely.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.365
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85

150-323.390(1)
Collection of Unsecured, Unpaid Tax After Deficiency or Jeopardy Determination; Collection Charge; Warrants

The provisions of OAR 150-314.430(1)–(B) shall be followed to secure payment of deficiency determinations given under ORS 323.380(6) and of taxes determined under ORS 323.385. The amount of the deficiency or tax shall be the "amount assessed" referred to in OAR 150-314.430(1)–(B).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.390
Hist.: RD 8-1984, f. 12-5-84, cert. ef. 12-31-84

150-323.480(1)-(A)
Civil Penalties for Violation of Cigarette Tax Provisions

(1) The Department of Revenue may impose civil penalties on any person who violates any provision of cigarette tax law. The violations include, but are not limited to, those described under subsection (3) of this rule.

(2) The following civil penalties will be imposed on a per incident basis for the violations in subsection (3) of this rule:

Incident — Penalty not to exceed
First — Warning notice
Second — $250
Third — $500
Fourth and subsequent — $1,000

(3) The civil penalties outlined in subsection (2) of this rule may be imposed for the following violations of ORS 323.005 to 323.482:

(a) ORS 323.060: Failure by a user or consumer to pay tax;

(b) ORS 323.105: Failure by a distributor to apply for and obtain a distributor's license;

(c) ORS 323.107: Failure by a wholesaler to apply for and obtain a wholesaler's license and make, preserve and supply records;

(d) ORS 323.130: Failure to display a license at the business location for which it was issued;

(e) ORS 323.165(1): Failure to obtain written approval from the Department of Revenue before selling, exchanging, or transferring unaffixed stamps to another person;

(f) ORS 323.170: Failure by a distributor to pay for stamps as provided in ORS 323.005 to 323.482 and failure by a distributor to notify the department of the number of packages of cigarettes to which the distributor affixes a stamp;

(g) ORS 323.185(1): Failure of the distributor to make payments of amounts owing for stamps purchased on the deferred-payment basis;

(h) ORS 323.205: Failure of manufacturers selling and shipping cigarettes into this state to other than a licensed distributor to:

(A) Deliver a written statement with each sale or consignment of cigarettes;

(B) Deliver a duplicate of that statement to the Department of Revenue; and

(C) File each cancellation or modification of the written statement and any other information necessary to the reconciliation of accounts with the Department of Revenue;

(i) ORS 323.211: Failure of distributors, dealers, and other persons engaging in the sale of cigarettes through the use of a vending machine(s) to affix the statutorily required card or decal in a conspicuous place on each machine;

(j) ORS 323.215: Failure of distributors, dealers, and other persons selling cigarettes through a vending machine(s) to keep detailed records of each machine showing the location of the machine and the date the machine was placed in that location;

(k) ORS 323.220: Failure of distributors and persons dealing in, transporting or storing cigarettes in this state to:

(A) Keep on premises records, receipts, invoices, and other pertinent papers; and

(B) Refrain from destroying records if so ordered by the Department of Revenue;

(l) ORS 323.225: Failure of transporters seeking to possess or acquire untaxed cigarettes for transportation or transport upon highways, roads, or streets of this state to:

(A) Obtain and keep a permit in the transporting vehicle during the transportation of the cigarettes; and

(B) Have the required invoices or bill of lading in the transporting vehicle;

(m) ORS 323.335: Failure of:

(A) Distributors to pay tax;

(B) Taxpayers other than licensed distributors to pay tax; and

(C) Common carriers and persons authorized to sell cigarettes on the facilities of common carriers to pay tax;

(n) ORS 323.340(1): Failure of licensed distributors to file reports;

(o) ORS 323.343: Failure of any person not a distributor, who had cigarette activity in this state, to file a report;

(p) ORS 323.355: Failure of common carriers and persons authorized to sell cigarettes on the facilities of common carriers to file reports and submit payment of tax due with the reports; and

(q) ORS 323.360: Failure of a consumer or user subject to the tax resulting from a distribution of cigarettes to file reports and submit payment of the tax due with the reports.

(4) The department may consider the following factors when deciding the civil penalty under this rule:

(a) Number of previous inspections held by the Department of Revenue at the place of business;

(b) Number of previous violations of Chapter 323 provisions;

(c) Size of business; and

(d) Any other factors or information the department considers relevant to its determination.

(5) A civil penalty authorized by ORS 323.480(1) and this rule may be imposed on any person, as defined in ORS 323.010, who is responsible for complying with ORS 323.005 to 323.482.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.480
Hist.: REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04, Renumbered from 150-323.480(1); REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.480(1)-(B)
Civil Penalties for Violation of Cigarette Tax Stamping Provisions

(1) The Department of Revenue may assess a civil penalty against any person who is required to comply with ORS 323.005 to 323.482 and who:

(a) Fails to prepay cigarette taxes by purchasing stamps from the department and affixing the stamps to unstamped packages of cigarettes prior to distributing those cigarettes, as required by Oregon Laws 2003, chapter 804, section 3; or

(b) Fails to affix an appropriate stamp to each package of cigarettes prior to distribution of the cigarettes, as required by ORS 323.160(3).

(2) For purposes of ORS 323.480 and this rule, each pack of cigarettes distributed in violation of ORS 323.005 to 323.482 constitutes a separate violation and is subject to penalty as follows:

(a) Incident — Penalty not to exceed — Minimum Penalty
First — Warning notice
Second — $10 per pack — $1,000
Third — $50 per pack — $1,000
Fourth — $100 per pack — $1,000
Fifth and subsequent — $1,000 per pack — $1,000

(b) Distributors will be assessed a minimum penalty of $1,000 for the second and any subsequent incidents.

(3) The department may consider the following factors when determining the civil penalty under this rule:

(a) Number of previous inspections by the Department of Revenue held at the business;

(b) Number of previous violations of chapter 323 provisions;

(c) Size of business; and

(d) Any other information the department considers relevant to its determination.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.480
Hist.: REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.500(9)
Definition of Moist Snuff

(1) The provisions of this rule apply to distributions of tobacco products that occur after June 30, 2010.

(2) For purposes of ORS 323.500 through 323.645, "moist snuff" means:

(a) Any finely cut, ground, milled or powdered tobacco product that is not intended to be smoked or placed in the nasal cavity. It may or may not be contained within small, tea-bag like pouches. Words such as long cut, mid cut, fine cut and snus only describe minor differences of product that fit within this tobacco category.

(b) Any other products containing tobacco that are not intended to be consumed by combustion. Examples include, but are not limited to:

(A) Dissolvable tobacco, which consists of finely-processed tobacco developed in such a way as to allow the substance to dissolve on the tongue or in the mouth and includes strips, sticks, orbs, and compressed tobacco lozenges.

(B) Other chewing tobacco and other leaf tobacco products to which artificial or natural substances have been added during processing. Such substances may include but are not limited to: sweeteners, sugars, molasses, licorice, mint, eucalyptus, tobacco leaf extract, betel nut, catchu, lime, saffron, thickeners, humectants, emulsifiers, colorants, texturizers, preservatives, taste enhancers, firming agents, adhesives, and punk ash. Examples include, but are not limited to:

(i) Shredded tobacco leaves, such as those sweetened and packaged loosely in aluminum lined pouches;

(ii) Plug tobacco, such as enriched tobacco leaves flavored and sweetened with licorice and formed into bricks or flat blocks; and

(iii) Twist tobacco, such as tobacco that is spun and rolled into rope-like strands and to which tobacco leaf extract has been added.

Stat. Auth.: ORS 305.100 & 323.575
Stats. Implemented: ORS 323.500
Hist.: REV 7-2009(Temp), f. & cert. ef. 10-7-09 thru 3-31-10; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 7-2010(Temp), f. 5-27-10, cert. ef. 6-30-10 thru 12-27-10; REV 18-2010, 12-17-10, cert. ef. 1-1-11

150-323.505
Quarterly Tax Discount

Each tobacco distributor shall retain one and one-half percent of the tax due and payable each quarter as an allowance to offset the distributor's cost of recordkeeping and reporting.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.505
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85

150-323.505(2)
Determining Wholesale Sales Price

(1) In a transaction between parties who are not related or affiliated and who are presumed to have roughly equal bargaining power, the wholesale sales price is the price paid by the purchaser for the untaxed tobacco products.

(2) If a seller and purchaser are related or affiliated or presumed not to have roughly equal bargaining power, the wholesale sales price is determined based upon comparable wholesale distributors' arm's-length wholesale transactions of similar tobacco products sold to retailers that meet the requirements of section (1).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.505
Hist: REV 5-2008. f. 8-29-08, cert. ef. 8-31-08

150-323.510
Extension of Time for Filing Returns

The time for making or filing a Tobacco Tax Return as required by this chapter may be extended for one month providing the taxpayer provides a written request for extension within or prior to the period for which an extension may be granted, and certain conditions are met, including but not limited to:

(1) Information required to complete the return is not available or is not in the proper form;

(2) Unexpected or unavoidable absence of the person responsible for preparing the return; or

(3) For other reasons beyond the taxpayer's control the return cannot be submitted timely.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.510
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85

150-323.515
Exemptions Defined

The taxes imposed by the Tobacco Products Tax Act shall not apply to tobacco products which are stored in a bonded warehouse and which are nontax paid under the provisions of chapter 52 of the Internal Revenue Act of 1954, as amended, or which are sold to United States Army, Air Force, Navy, Marine Corps, or Coast Guard exchanges or commissaries and Navy or Coast Guard ship's stores, and United States Veterans Administration ship's stores maintained under federal bond.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.515
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85

150-323.520
When Tobacco Product Distributor's License Required

A distributor's license is required for each place of business at which a person engages in the distribution of tobacco products as defined in ORS 323.500. A tobacco product distributor's license is required for any person distributing tobacco products in Oregon, including:

(1) Bringing or causing to be brought, into this state, tobacco products for sale, storage, use or consumption;

(2) Making, manufacturing, or fabricating tobacco products in this state for sale, storage, use or consumption in this state;

(3) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored, used or consumed by those retail dealers in this state;

(4) Storing untaxed tobacco products in this state that are intended to be for sale, use or consumption in this state; or

(5) Selling untaxed tobacco products in this state.

(6) A person who files an application for a distributor's license under ORS 323.520 must include with the application a written statement certifying that the person will comply with ORS 180.483 and 180.486 pertaining to tobacco of certain nonparticipating manufacturers.

(7) Tobacco distributor license applications are certified under ORS 323.520 by:

(a) Hand signing the application.

(b) An electronic signature (as defined in ORS chapter 84) associated with an application filed in electronic (as defined in ORS chapter 84) form and successfully transmitted to the department, by the applicant.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.520
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 2-2014, f. & cert. ef. 7-31-14

150-323.525
Bonding Requirement

Whenever a licensee fails to furnish a tobacco tax return in two consecutive calendar quarters, or fails to pay the tobacco products tax in full in two consecutive calendar quarters, the licensee shall be required to post security in the form of a surety bond in an amount equal to twice that licensee's average quarterly tobacco tax liability.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.525
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85

150-323.530
Other Tobacco Product (OTP) Distributor License Application Denial

(1) Any person engaging or seeking to engage in the sale of other tobacco products as a distributor, as defined in ORS 323.500(6), must obtain an OTP distributor's license. A distributor must obtain a license for each place of business at which the distributor engages in the sale of other tobacco products.

(2) The Department of Revenue may deny a license application if there is false or incomplete information on the application or if the department determines that the applicant will not comply with the provisions of ORS 323.500 to 323.640. When deciding whether to issue or deny a distributor's license, the department may consider, but is not limited to, the following factors:

(a) Whether the applicant has previously failed to pay a tobacco related tax or any other tax administered by the Oregon Department of Revenue;

(b) Whether the applicant has engaged in conduct punishable as a crime under ORS Chapter 323 or any other state's or federal tobacco laws;

(c) Whether the applicant has violated any part of ORS Chapter 323 or any rule adopted under that chapter.

(3) If the applicant is other than an individual, the department will apply the factors described in subsection (1) both to the applicant and, if the applicant is an organization, to the individual(s) within the organization with the primary responsibility for the payment of the tobacco taxes on behalf of the applicant;

(4) If the department denies a license application, the distributor has 30 calendar days from the date of denial to file an appeal in the manner provided in ORS 305.404 to 305.560.

Stat. Auth.: ORS 305.100 & 323.575
Stats. Implemented: ORS 323.530
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04; REV 9-2010, f. 7-23-10, cert. ef. 7-31-10

150-323.535
Suspension or Revocation of Other Tobacco Product Distributors License; Appeal; Final Notification

(1) The Department of Revenue may suspend or revoke a distributor license if the department determines that the distributor will not comply with the provisions of ORS 323.500 to 323.640. When deciding whether to suspend or revoke a license the department may consider, but is not limited to, the following factors:

(a) Whether the distributor has failed to pay a tobacco related tax;

(b) Whether the distributor has engaged in conduct punishable as a crime under ORS Chapter 323 or any other state's or federal tobacco law; and

(c) Whether the distributor has violated any part of ORS Chapter 323 or any rule adopted under that chapter.

(2) When the department decides to suspend or revoke an existing valid license, the department will send a notice to the distributor of the suspension or revocation, stating the reasons for such action. The distributor has 30 calendar days from the date on the notice to file an appeal under ORS 305.404 to 305.560.

(3) If a distributor requests a hearing within the appeal period in subsection (2), the license suspension or revocation will not become effective until a final determination of the appeal by the Tax Court or the Oregon Supreme Court.

(4) If a distributor does not request a hearing within the appeal period in subsection (2) suspension or revocation becomes effective on the 31st day after the date on the notice of suspension or revocation.

(5) The notices described in sections (2) and (4) will be mailed to the distributor by certified mail, return receipt requested, using the last known address of the distributor. Return of the notice as undeliverable or because the distributor fails or refuses to pick up or accept the notices will not extend the appeal period or delay the action specified in the final notice.

Stat. Auth.: ORS 305.100 & 323.575
Stats. Implemented: ORS 323.535
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.540
Definitions

As used in ORS 323.540, "pertinent papers" includes invoices of purchase or sale, bills of lading, receipts, reports of tax exempt shipments, and Tobacco Tax returns.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.540
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85

150-323.560
Credit for Tobacco Tax Paid; Refund

(1) Credit for tax paid will be allowed when tobacco products are:

(a) Shipped to a point outside this state, pursuant to a contract of sale, and delivered by the seller to such out-of-state point by means of:

(A) The United States mail; or

(B) A common carrier licensed by the Federal Highway Administration; or

(C) Facilities operated by the seller.

(b) Sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the tobacco products abroad and actually carried to a foreign destination.

(c) Sold for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States.

(d) Sold for use as ship's supplies which are to be consumed or resold on the high seas or in foreign countries.

(2) Oregon distributors claiming credit for tax on tobacco products on the ground that shipments or deliveries were made in interstate commerce must certify, under penalties for false swearing, the name and address of the persons receiving such shipments or deliveries outside this state. Also, the Oregon distributors must be in possession of delivery data of the following descriptions:

(a) A waybill, bill of lading or other evidence of shipment issued by a common carrier in the case of shipments by common carrier; or

(b) An insurance receipt or registry receipt issued by the United States Postal Service; or

(c) A copy of the sellers invoice covering the sale, showing delivery by the seller at a designated out-of-state address, and signed by the purchaser or the purchaser's agent in the case of shipments by facilities operated by the seller. The department reserves the right to require such additional proof as it deems necessary in any particular case.

(3) Reports of such exempt sales must be maintained as provided in ORS 323.510. The tax applies to the transaction if the tobacco products are diverted in transit or for any other reason are not actually delivered outside the state pursuant to the contract of sale or are not shipped abroad to a foreign purchaser, regardless of documentary evidence held by the distributor.

(4) Tobacco products are not considered to be sold in interstate commerce and therefore are not exempt from tobacco tax if the product is received by a purchaser or agent (other than a common carrier) in this state.

(5) Failure to keep any reports, waybills, bills of lading, or other documents required by this rule is justification for the Department of Revenue to impose a tax on any tobacco products claimed to be shipped out of Oregon and exempt under this rule. Any tax imposed on these grounds will be cancelled upon actual proof to the department that the reports, waybills, bills of lading or other documents were in fact issued and the tobacco products were in fact shipped out of Oregon and were exempt under this rule.

(6) Credit claimed as provided in this rule will be in the form of a deduction on the next regularly scheduled quarterly tobacco tax return. Whenever a tobacco distributor ceases operation as a licensed tobacco distributor any credit accrued but not yet claimed may be deducted on the final tax return. Refund of overpayments on a distributor's tobacco tax account is allowed when an audit determines a net overpayment has been made during the audit period. Refunds are also allowed if a distributor determines a net overpayment has been made and claims the refund by filing an amended tobacco tax return for the period in which the overpayment occurred. No refund is allowed after three years from the date of any overpayment.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 323.560
Hist.: RD 6-1985, f. 12-26-85, cert. ef. 12-31-85; RD 1-1986(Temp), f. & cert. ef. 4-25-86; RD 3-1986, f. & cert. ef. 7-2-86; REV 6-2000, f. & cert. ef. 8-3-00

150-323.630-(A)
Civil Penalties for Violation of Other Tobacco Products Tax

(1) The Department of Revenue may impose civil penalties on any person who violates any provision of Other Tobacco tax law. The violations include, but are not limited to, those described under subsection (3) of this rule.

(2) The following civil penalties will be imposed on a per incident basis for the violations in subsection (3) of this rule:

Incident — Penalty not to exceed
First — Warning notice
Second — $250

Third — $500
Fourth and subsequent — $1,000

(3) The civil penalties outlined in subsection (2) of this rule may be imposed for the following violations of ORS 323.500 to 323.645:

(a) ORS 323.520: Failure by a distributor to apply for and obtain a distributor's license;

(b) ORS 323.530: Failure to display a license at the business location for which it was issued;

(c) ORS 323.538: Failure by distributor to provide a sales invoices containing the following:

(A) Name and address of the seller;

(B) Name and address of the purchaser;

(C) Quantity and product description of the tobacco products;

(D) Price paid for the tobacco products;

(E) Any discount applied in determining the price paid for the tobacco products;

(F) The applicable license identification number for the distributor;

(G) A certified statement by the distributor that all taxes due under ORS 323.500 to 323.645 have been or will be paid.

(d) ORS 323.540: Failure of distributors or any persons dealing in, transporting or storing tobacco products in this state to:

(A) Keep on premises records, receipts, and invoices of product held, purchased, manufactured, brought in or caused to be brought in from outside this state or shipped or transported to retail dealers in this state, and of all sales of tobacco products made , except to consumers; and

(B) Keep all books and records for the required five years after initial date of sale.

(4) The department may consider the following factors when deciding the civil penalty under this rule:

(a) Number of previous inspections held by the Department of Revenue at the place of business;

(b) Number of previous violations of Chapter 323 provisions;

(c) Size of business; and

(d) Any other factors or information the department considers relevant to its determination.

(5) A civil penalty authorized by ORS 323.630 and this rule may be imposed on any distributor, as defined in ORS 323.500(7), who is responsible for complying with ORS 323.500 to 323.645.

Stat. Auth.: ORS 305.100 & 323.575
Stats. Implemented: ORS 323.630
Hist: REV 2-2004(Temp), f. 4-30-04, cert. ef. 5-1-04 thru 9-30-04; REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

150-323.630-(B)
Civil Penalties for Failure to Pay Other Tobacco Products Tax

(1) The Department of Revenue may assess a civil penalty against any person who is required to comply with ORS 323.500 to 323.645 and who fails to pay the other tobacco products tax.

(2) For purposes of ORS 323.630 and this rule, each tobacco product distributed in violation of ORS 323.500 to 323.645 constitutes a separate violation and is subject to penalty as follows:

(a) Incident — Penalty not to exceed — Minimum Penalty
First — Warning notice
Second — $10 per item — $1,000
Third — $50 per item — $1,000
Fourth — $100 per item — $1,000
Fifth and subsequent — $1,000 per item — $1,000

(b) Distributors will be assessed a minimum penalty of $1,000 for the second and any subsequent incidents.

(3) The department may consider the following factors when determining the civil penalty under this rule:

(a) Number of previous violations of ORS Chapter 323 provisions;

(b) Frequency of violations and time since the last violation; and

(c) Any other information the department considers relevant to its determination.

Stat. Auth.: ORS 305.100 & 323.575
Stats. Implemented: ORS 323.630
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

DIVISION 324

OIL AND GAS TAX

150-324.050-(A)
Applicability Limited to Natural Gas Production

OAR 150-324.050-(A) to 150-324.050-(F) are applicable to natural gas production within the State of Oregon.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 324.050
Hist.: 12-31-81

150-324.050-(B)
Production Unit for Calculation and Reporting

(1) The "net gas produced and saved" from an individual well is the total gas produced and saved from that well less that gas used for purposes enumerated in ORS 324.110(3).

(2) Production of natural gas shall be measured and reported in therms. One therm equals 100,000 British Thermal Units (BTUs).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 324.050
Hist.: 12-31-81

150-324.050-(C)
Gross Sales Value Subject to Production Tax

(1) "Sales price" is the per therm price due the producer at the well head determined as follows: Sales Price (or well head price) = Commodity Price less Delivery Charge.

(2) Definitions:

(a) "Commodity Price" is the Oregon Public Utility Commissioner approved price which the using gas distribution company may pay for natural gas delivered to its lines.

(b) "Delivery Charge" is the cost of moving and processing the natural gas from the originating well headt o the lines of the using gas distribution company.

(3) Excluded from the delivery charge is any allowance for anticipated gas production tax.

(4) "Monthly unadjusted gross sales value" is the product of the therms of net gas produced and saved from a well during a month, less the therm equivalent of exempt royalty or other interest owned by municipal or political subdivisions, times the sales price.

(5) "Quarterly unadjusted gross sales value" is the sum of monthly unadjusted gross sales values for the months in the calendar quarter for which the tax is being determined.

(6) The gross sales value subject to production tax is the quarterly unadjusted gross sales value less $3,000 as provided in ORS 324.080.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 324.050
Hist.: 12-31-81; RD 6-1986, f. & cert. ef. 12-31-86

150-324.050-(D)
Purchaser's Filing Responsibility

(1) "Purchaser" means the first purchaser of the gas regardless of the physical point at which ownership changes.

(2) A purchaser of gas shall remit the tax due for the calendar quarter of purchase to the department on or before May 15, August 14, November 14 and February 14 following the end of the first through fourth quarters of the calendar year respectively.

(a) A producer or other agent may pay the production tax on behalf of any or all purchasers of the taxable natural gas.

(A) Such producer payments must identify the purchaser on whose behalf payment is being remitted and include a natural gas production tax return showing the calculation of the tax for each purchaser for whom payment is made.

(B) Responsibility for timely payment remains with the purchaser as provided in ORS 324.110.

(C) The purchaser shall be responsible for payment of interest in the event of late production taxpayment.

(b) A producer or other agent who is paying the production tax on behalf of any purchaser may also file, with the natural gas production tax return and payment, the purchaser's data report.

(A) If the producer files the purchaser's data report, the purchaser's data report need not duplicate any information contained in the producer's data report for the same calendar quarter provided that both reports pertain to the same gas.

(B) Responsibility for timely filing of the purchaser's data report remains with the purchaser as provided in ORS 324.120.

(3) A purchaser shall file with the quarterly tax payment the following reports using forms prescribed by the department:

(a) Natural gas production tax return showing calculation of tax which is being paid for the calendar quarter.

(b) Purchaser's data report for the quarter. A purchaser may file, in lieu of the department data report, a true verified copy of the regular settlement sheet in use by the purchaser if it contains all the information required in ORS 324.120.

(4) A purchaser's data report shall be made for each well which produced any gas purchased by the reporting purchaser during the quarter covered by the report.

(5) It is the responsibility of the purchaser to obtain from the producer on a timely basis the required data so that the purchaser's data report may be filed with the quarterly remittance of the production tax.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 324.050
Hist.: 12-31-81

150-324.050-(E)
Producers Filing Responsibility

(1) A producer of gas shall remit to the department on or before May 15, August 14, November 14 and February 14 following the end of the first through the fourth quarter of the calendar year respectively the tax due on any net gas produced and saved during the calendar quarter but not sold.

(2) A producer of gas shall file a natural gas production tax return with the remittance of tax due for gas produced and saved but not sold.

(3) A producer of gas shall file a producer's data report with the department on or before May 15, August 14, November 14, and February 14 following the end of the first through fourth quarters of the calendar year respectively.

(4) A producer's data report shall be made for each well in production at any time during the calendar quarter covered by the report. An explanatory statement shall be included for each well reported in production during the preceding calendar quarter and not in production during the quarter covered by the report.

(5) It is the responsibility of the producer to provide to the purchaser on a timely basis that information needed by the purchaser to prepare the report required in ORS 324.120.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 324.050
Hist.: 12-31-81

150-324.050-(F)
Credit for or Refund of Ad Valorem Taxes Paid

(1) Certain ad valorem taxes paid shall be allowed as a credit against the production tax imposed. ORS 324.090 identifies those properties whose ad valorem tax may qualify for credit. The termination point for qualifying machinery, appliances and equipment is the discharge valve at a producing well.

(2) Ad valorem taxes paid shall be prorated and claimed as credits equally over the calendar quarters of the ad valorem tax year for which returns are filed.

(3) The purchaser, the producer in the event that gas is not sold at the time of production or the producer or other agent acting on behalf of any or all purchasers may claim credit for qualifying ad valorem taxes paid on the quarterly natural gas production tax return.

(a) The credit claimed for acalendar quarter is limited to the lesser of either:

(A) The production tax duefor the quarter; or

(B) The ad valorem tax paid for the quarter of production on the qualified property used in production plus any credit carry forward in the same tax year.

(b) Claims for credit must be supported by sufficient data to identify the property upon which the advalorem tax was levied and the amount of tax on each property. Interest orother costs resulting from ad valorem tax delinquencies are not allowable credits.

(c) The department will makewhatever review is necessary to validate ad valorem tax creditsclaimed.

(d) It is the responsibilityof the producer to ensure that the entity preparing the quarterly natural gas production tax return is informed on a timely basis of the ad valorem tax credit to be claimed and that data in support of the credit claimed is available for filing with the return.

(e) Any adjustment to the amount of credit claimed will be made by refund of tax paid or collection of additional tax.

(4) Credit for ad valorem tax will not be allowed for any calendar quarter for which production tax has not been paid.

(5) Carry forward of credit or refund deficiencies, if any, resulting from insufficient production will not be allowed beyond the ad valorem tax year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 324.050
Hist.: 12-31-81

Sales Tax On Lubricating Oil and Grease

150-324.340(Note)
Application of Rules Under ORS 324.340(Note) and ORS 465.101 Through 465.131

For the purpose of ORS 324.340(Note) and 465.101 through 465.131, the administrative rules under 465.101 through 465.131, shall apply to the collection of all fees imposed by 324.340(Note), and 465.101 through 465.131.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 324.340
Hist.: RD 1-1989(T), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

DIVISION 358

150-358.505
Determining Value of Historic Property Qualified for Special Assessment

(1) For purposes of this rule,

(a) "Assessed Value" (AV) is defined in ORS 308.146.

(b) "Maximum Assessed Value" (MAV) is defined in ORS 308.146 without application of ORS 308.146(4).

(c) "Changed Property Ratio" (CPR) is the ratio described in OAR 150-308.156.

(d) "Internal ratio" (IR) is the quotient of MAV/RMV for an individual property, as if the property is not specially assessed. The ratio cannot be more than 1.0.

(e) "Maximum Specially Assessed Value" (MSAV) means maximum assessed value for property subject to special assessment.

(f) "Real Market Value" (RMV) is defined in ORS 308.205(1).

(2) This rule applies to initial and second qualifying periods beginning on or after July 1, 2010, with application being made on or after September 28, 2009.

(3) When a property is subject to historic property special assessment, the county assessor must:

(a) Include a "Historic property — potential additional tax" notation on the tax roll.

(b) Maintain the RMV and a MAV as if the property were not specially assessed. The RMV and MAV as if the property were not specially assessed must be adjusted to include any changes in value as addressed in ORS 308.146, 308.149, 308.153, 308.156, and 308.159 (commonly referred to as exception value).

(c) Calculate MSAV of the property annually while the property remains in the program.

(4) Calculate first period values for SAV, MSAV and AV.

(a) Step 1: Calculate the property's SAV to be used throughout the entire first 10 year period of historic property special assessment.

(A) The SAV equals the AV of the property in the tax year in which application is submitted pursuant to ORS 358.487.

(B) If the property is specially assessed or exempt in the tax year during which an application is made, SAV equals the RMV for that tax year multiplied by the CPR for that tax year.

(b) Step 2: Calculate MSAV for the first year of special assessment by multiplying the SAV by the IR. The MSAV is recalculated in the second and subsequent years and equals the greater of:

(A) The AV for the prior year multiplied by 103 percent; or

(B) The MSAV for the prior year

(c) Step 3: Calculate the AV, which is the lesser of the:

(A) SAV calculated in step 1;

(B) MSAV calculated in step 2; or

(C) The RMV.

Example 1: The State Historic Preservation Officer (SHPO), in January 2010, notifies the assessor that the owner of an old warehouse applied for historic property special assessment in October 2009 and qualified for that special assessment. The value of the warehouse as reflected on the 2009-10 tax roll is: RMV $400,000; MAV $302,380; AV $302,380. The first year of special assessment is 2010-11. The RMV for 2010-11 is $416,000.

(a) Step 1: Calculate the SAV. SAV = AV in the tax year the application is submitted = $302,380

(b) Step 2: Calculate MSAV for first year of special assessment.

(A) 2010-11 MAV = AV x 1.03, $302.380 x 1.03 = $311,451

(B) IR = MAV / RMV, $311,451 / $416,000 = 0.749

(C) MSAV = SAV * IR, $302,380 * 0.749 = $226,482

(c) Step 3: Calculate the AV for the current year. It is the lesser of SAV ($302,380), MSAV ($226,482) or RMV ($416,000). AV = $226,482.

Example 2: SHPO, in January 2010, notifies the assessor that the owner of an old mansion no longer used by the Elks as a clubhouse that will be first disqualified from exemption for 2010-11 applied for historic property special assessment in October 2009 and that the property is qualified for special assessment for 2010-11. The CPR for this classification of property, had it been taxable in 2009-10, was 0.656, and the property's RMV for 2009-10 was $300,000. The first year of special assessment is 2010-11. The RMV for 2010-11 is calculated at $295,000 and the countywide CPR for this property classification for 2010-11 is 0.650. Other than the disqualification from exemption and the qualification for historic special assessment, there have been no changes to the property for 2010-11.

(a) Step 1: Calculate MAV for 2010-11 pursuant to ORS 308.156 as a result of disqualification from exemption.

(A) MAV = RMV x CPR, $295,000 x 0.650 = $191,750

(b) Step 2: Calculate SAV

(A) SAV = RMV x CPR from the tax year of application, $300,000 x 0.656 = $196,800

(c) Step 3: Calculate MSAV for first year of special assessment

(A) MSAV = SAV x IR, $196,800 x ($191,750 / $295,000) = $127,920

(d) Step 4: Calculate AV

(A) AV = lesser of SAV (step 2) or MSAV (step 3) or RMV. AV = $127,920.

(5) Calculate Second period values for SAV, MSAV and AV.

(a) Step 1: Calculate SAV for the first year of a second qualifying period.

(A) The SAV equals the RMV of the property for the assessment year in which the application is made.

(B) The SAV will remain constant throughout the second ten-year period of special assessment.

(b) Step 2: Calculate the MSAV for the first year of the second qualifying period of special assessment by multiplying the SAV by the internal ratio. The MSAV is recalculated in the second and subsequent years and equals the greater of:

(A) The AV for the prior year multiplied by 103 percent; or

(B) The MSAV for the prior year

(c) Step 3: Calculate the AV, which is the lesser of the:

(A) SAV calculated in step 1;

(B) MSAV calculated in step 2; or

(C) The RMV.

Example 3: SHPO approves an application filed in March 2020 and qualifies a renovated chateau for a second 10 year period of special assessment beginning with the 2020-21 tax year. The first historic property special assessment period ended in the 2018-19 tax year. For 2020-21, the RMV is $825,000, and MAV without special assessment would be $509,850.

(a) Step 1: Calculate SAV. SAV = RMV for assessment year in which application made. SAV = $825,000

(b) Step 2: Calculate MSAV for the first year of special assessment. MSAV = SAV x IR, $825,000 x ($509,850 / $825,000) = $509,850

(c) AV = lesser of SAV (step 1), MSAV (step 2), or RMV. AV = $509,850.

(6) When a building that is certified for historic property special assessment is divided into condominium units:

(a) The original account is deleted and each condominium becomes a new account.

(b) Each new account is appraised to establish a new RMV and calculate a new MAV.

(c) SAV and MSAV of the original account are apportioned between the new accounts but the total SAV and MSAV does not change as a result of the conversion to condominiums.

(d) The initial sale of each condominium unit by the developer disqualifies that unit from special assessment.

(e) Upon disqualification, the condominium unit is immediately requalified without further application for the remaining term of the original building's current 10 year period of historic property special assessment.

(f) Upon requalification, the SAV of the condominium unit equals its RMV for the tax year in which the sale of the unit occurred multiplied by the CPR for that tax year.

(g) The MSAV for the condominium unit for the first year after initial sale are calculated as described in step 3, using the MAV and RMV of the unit to determine the IR.

(h) The AV for the condominium unit for the first year after initial sale is calculated based on the lower of the SAV, MSAV, or RMV of the unit for that year.

Example 4: An account with an old warehouse building is qualified by SHPO for historic property special assessment. Its RMV, MAV, MSAV, SAV, and AV have been calculated as described in previous examples. The building is then converted to condominium units. When the condominium conversion is complete and all approvals are in place, each condominium unit becomes a separate account. New RMV and MAV are calculated for each account. Existing SAV and MSAV of the original warehouse account are apportioned between the new accounts. Total SAV and MSAV do not change as a result of the condominium conversion.

Account (tax lot) 00100, old warehouse building, is in its fourth year of its historic property special assessment. Its most recent tax roll values are as follows: RMV = $400,000; MAV if not specially assessed = $300,000, SAV = $225,000; MSAV = $179,020; AV = $179,020. CPR for this class of property is 0.750. The warehouse has now met all requirements for condominium and the 25 units worth $1,000,000 each are certified for sale. Account 00100 is deleted and replaced with account (tax lot) 90001 through account (tax lot) 90025. All units are identical in this building and each account has an RMV of $1,000,000. Total RMV of the building is now $25,000,000 and MAV is $18,750,000. Each account has a SAV of $9,000 and a MSAV of $7,160.

Total value of the building and site as condominiums (account 00100 deleted):

RMV = unit value * number of units, $1,000,000 x 25 = $25,000,000

MAV = RMV x CPR, $25,000,000 x 0.750 = $18,750,000

Value of each unit (each new account, 90001 through 90025):

RMV = $1,000,000

MAV = RMV x CPR, $1,000,000 x 0.750 = $750,000

SAV = total building SAV apportioned by unit value, $225,000 / ($25,000,000 / $1,000,000) = $9,000

MSAV = total building MSAV apportioned by unit value, $179,020 / ($25,000,000 / $1,000,000) = $7,160

AV = $7,160

Example 5: A condominium unit in the building described in example 4 is sold by the developer for $1,000,000 on July 20, 2015. The unit is disqualified from the historic property special assessment due to the sale and then immediately requalified for the remaining term. Upon requalification, the SAV, MSAV, and AV are calculated for this unit. As of January 1, 2015 the individual unit had an RMV of $1,000,000 and an MAV of $750,000. Historic property special assessed values are reflected in an SAV of $750,000 and an MSAV of $562,500. The SAV calculated for the 2015-16 tax year will remain the same, frozen, throughout the remaining years of the building's 10 year term.

Unit values:

RMV = $1,000,000

MAV = RMV * CPR, $1,000,000 * 0.750 = $750,000

SAV = RMV * CPR, $1,000,000 * 0.750 = $750,000

MSAV = SAV * IR, $750,000 * ($750,000 / $1,000,000) = $562,500

AV = $562,500

The building was in its 4th year of its 10 year historic property special assessment term; the new SAV for the condominium unit will remain the same, $750,000, for the remaining years of the building special assessment or until the building is otherwise disqualified.

The remaining accounts in the building are not affected by this sale.

Stat. Auth.: ORS 305.100, 358.505

Stats. Implemented: ORS 358.505
Hist.: REV 11-2009, f. 12-21-09, cert. ef. 1-1-10

DIVISION 401

TELEPHONE EXCISE TAX

150-401.794
Telephone Excise Tax — Definitions and Administrative Provisions

(1) The Oregon telephone excise tax does not apply to:

(a) Federal, state and municipal government bodies or public corporations as defined in section (2).

(b) Counties and political subdivisions.

(c) Certain federally chartered corporations specifically exempt from state excise taxes by federal law.

Examples: Federal Deposit Insurance Corp., Federal Savings and Loan Insurance Corp., federal banks and banking associations created under the Farm Credit System and exempt under Title 12, U.S. Code §§2023, 2077, 2098 or 2134.

(d) Federally recognized Native-American Tribes, and tribal members who live within federally recognized Indian country and are enrolled members of the tribe with sovereignty over that Indian country.

(e) Foreign government offices and representatives that are exempt from state taxation by treaty provisions.

(f) Regional housing authorities exempt from all state taxes and assessments by ORS 307.092 (formerly 456.225).

(g) The connection between utilities that is used to provide service. This includes the connection between radio common carriers and the interexchange carrier as well as between two or more utilities.

(2) For purposes of this rule, "public corporation" means a corporation formed by a state or local government authority for the public's benefit or for a public purpose.

(3) Any other agency, organization or person claiming an exemption is required to identify the authority for its claim to a provider. If a provider is unable to determine the status of a subscriber the Department of Revenue will determine whether the subscriber is exempt.

(4) "Provider" means any corporation, individual or group of individuals providing telecommunication access to the 9-1-1- Emergency Reporting System.

(a) A radio common carrier that leases telephone exchange access lines from a wire telephone company is a provider if the carrier sells that access to its customers. Access for this purpose includes (but is not limited to) traditional telephone services ("POTS"), cellular telephone service, personal communications system service (PCS), personal communications network service (PCN), cable/broadband service, private branch exchanges (PBX), and mobile radio common carriers. A carrier that has access to the 9-1-1 Emergency Reporting System and does not resell the access is not considered to be a provider; instead it is considered to be a subscriber and must pay the tax.

(b) A cellular telephone service company is a provider that provides access to 9-1-1 services through various switching mechanisms between cellular radio sites and exchanges access services.

(5) The return required by ORS 403.200 (formerly 401.792) must be signed by the taxpayer or an authorized agent and made under penalties for false swearing. Returns received after the due date are subject to delinquency charges as provided in ORS Chapter 305, 314 and 316 the same as if the tax were a tax imposed upon or measured by net income. Returns received by mail are accepted without imposition of such charges if postmarked before midnight of the due date.

(6) Related providers may request permission from the department to file one telephone excise tax return per quarter.

(7) Except as provided in subsection (b) of this section, if a provider elects to pay the tax based on the amount actually collected as payment for exchange access services during the quarter and the provider receives only a partial payment from a subscriber:

(a) The provider must apply the payment proportionately to the Oregon telephone excise tax and to all other charges appearing on the subscriber's bill.

(b) If the provider determines that the only unpaid portion of a subscriber's bill for all telephone services is in the amount of the Oregon telephone excise tax, the provider is not required to apportion the payment and may apply the payment first to all other charges appearing on the subscriber's bill.

(8) The provider must submit with its quarterly return to the department a list of all those subscribers that refuse to pay their Oregon telephone excise tax in whole or part. Such lists must include the name, address, telephone or service number of the subscriber, and the amount of Oregon excise tax owing. Any amount so reported to the department must be written off by the provider and the collection will be enforced by the department.

(9) When a provider proceeds to write off, charge off or cancel an uncollectible account, any amount of Oregon telephone excise tax unpaid on that account must be reported to the department as provided in section (8) of this rule.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 403.205
Hist.: 2-11-82(Temp); 5-5-82; 12-31-84, Renumbered from 150-401.000 Note (Or. Laws 1981, Ch. 533) to 150-401.000 Note (Or. Laws 1981, Ch. 533)-(A); 12-31-85; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; RD 5-1995, f. 12-29-95, cert. ef. 12-31-95, Renumbered from 150-401.000 Note (Or. Laws 1981, Ch. 533); Renumbered to 150-401.794, REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

DIVISION 457

URBAN RENEWAL

150-457.430
Certification of Urban Renewal Frozen Value and Apportioning Value to Tax Code Areas

(1) "Frozen value" as used in this rule has the same meaning as in OAR 150-457.440(9).

(2) All certified statements and amendments filed under ORS 457.430 before September 29, 1991, continue to remain in effect, unless subsequently amended pursuant to this rule. The total true cash value contained in those certified statements constitutes the total assessed value for purposes of this section.

(3) The certified statement of the total assessed value of all taxable real and personal property contained in the urban renewal area (the frozen value), that is filed by the assessor pursuant to ORS 457.430 must include totals by code area and by taxing district.

(4) If an urban renewal agency wants to limit future collections for a plan by permanently increasing the plan's frozen value pursuant to ORS 457.455(2), the agency must do so by completing the portion of Department of Revenue Form UR-50 Notice to Assessor that is provided for that purpose, stating the plan name and the new frozen value amount.

(5) If an agency with an Option Three plan notifies the assessor to permanently increase the plan's frozen value under section (4) of this rule, the formal action taken by the agency to authorize the notice must not be in the form of an ordinance or an amendment to the certified statement filed under ORS 457.430.

(6) If an agency notifies the assessor to permanently increase a plan's frozen value, the assessor must amend the certified statement filed under ORS 457.430, using the frozen value stated by the agency on Form UR-50.

(7) The assessor must apportion to the tax code areas in the plan area, the total frozen value stated by the agency in its notice, in the same proportions as the most recent previously certified frozen value was distributed among the code areas.

(8) The notice described in section (4) of this rule must be submitted to the assessor by July 15 to apply to the next tax roll.

(9) If the location of property that is centrally assessed by the Department of Revenue pursuant to ORS 308.505 to 308.665 or 308.805 to 308.820 cannot be determined, the assessor must apportion the assessed value of that property among the code areas in the same proportions as the assessed value of all real property is distributed among the code areas on the last roll certified.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 457.470
Stats. Implemented: ORS 457.430
Hist.: RD 9-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1991, f. 12-30-91, cert. ef. 12-31-91; REV 11-2010, f. 7-23-10, cert. ef. 7-31-10

150-457.440(2)
Notice to Assessor of Amounts to be Raised for Urban Renewal

(1) "Frozen value," "increment value," "increment value used" and "maximum authority" as used in this rule have the same meanings as in OAR 150-457.440(9).

(2) The notice to the assessor required by ORS 457.440(2) must be made using Department of Revenue Form UR-50 Notice to Assessor.

(3) An urban renewal agency with an Option One plan may request on Form UR-50:

(a) One hundred percent of the amount available to the plan from division of tax under ORS 457.440 plus, if the amount estimated to be received from 457.440 is not sufficient to meet the budgeted obligations of the plan, a special levy in any amount up to the remainder of the plan's maximum authority, or

(b) An amount of increment value used that the agency estimates will raise some lesser amount of division of tax, as provided under ORS 457.455(1).

(4) If an agency with an Option One plan requests one hundred percent of the division of tax under subsection (3)(a) of this rule, a request for a special levy must state the dollar amount to be raised or the percentage of the remainder of the plan's maximum authority that the agency wants.

(5) If an urban renewal agency with an Option One plan requests an amount of increment value used under subsection (3)(b) of this rule, the plan may not request a special levy.

(6) An urban renewal agency with an Option Three plan may request:

(a) The amount of division of tax stated in the ordinance adopted under ORS 457.435 selecting Option Three, plus a special levy; or

(b) An amount of increment value used that the agency estimates will raise some lesser amount of division of tax as provided under ORS 457.455(1), plus a special levy.

(7) If an urban renewal agency with an Option Three plan requests an amount of increment value used, under subsection (6)(b) of this rule and a special levy:

(a) The amount of special levy requested may not exceed the amount calculated by subtracting the amount of division of tax stated in the ordinance adopted under ORS 457.435 selecting Option Three from the plan's maximum authority as limited by 457.435(3).

(b) The request for a special levy must state the dollar amount to be raised or the percentage of the amount calculated in subsection (7)(a) of this rule that the agency wants.

(8) An urban renewal agency with a plan other than an Option One plan or an Option Three plan may request:

(a) One hundred percent of the amount available to the plan from division of tax under ORS 457.440; or

(b) An amount of increment value used that the agency estimates will raise some lesser amount of division of tax, as provided under ORS 457.455(1) or 457.470.

(9) If an urban renewal agency requests a permanent increase in the amount of frozen value in the certification filed by the assessor under ORS 457.430, as provided in 457.455(2), the agency must notify the assessor of the new frozen value by completing the portion of the Form UR-50 provided for that purpose, stating the plan name and the new frozen value amount. The form must be submitted to the assessor in accordance with OAR 150-457.430.

(10) If an urban renewal agency with an Option One plan notifies the assessor to permanently increase the plan's frozen value under section (9) of this rule, the plan may never again request a special levy.

(11) If an agency with an Option Three plan notifies the assessor to permanently increase the plan's frozen value under section (9) of this rule, the formal action taken by the agency to authorize the notice must not be in the form of an ordinance or an amendment to the certified statement filed under ORS 457.430.

(12) If Portland Public School District wishes to exclude from urban renewal division of tax for the current fiscal year that portion of its permanent tax rate limitation by which that limitation was increased upon retirement of the district's gap bonds, the district must notify the assessors of each county in which division of tax is calculated using the district's permanent rate. This notification must be submitted to the assessors with Department of Revenue Form ED-50 Notice to Assessor and show both the tax rate to be excluded from division of tax and the tax rate under the district's permanent rate limitation that the district wishes to impose for district operations. The maximum rate that can be excluded from division of tax is $0.5038 per $1,000 of assessed value.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 305.100, ORS 457.470
Stats. Implemented: ORS 457.010, 457.440, 457.455, 457.470.
Hist.: REV 11-2010, f. 7-23-10, cert. ef. 7-31-10

150-457.440(9)
Urban Renewal Certification, Calculation and Distribution

(1) Definitions: For purposes of this rule:

(a) "Consolidated billing tax rate" means:

(A) For reduced rate plans, the total of all taxing district billing tax rates used to extend taxes, after any adjustments to reflect tax offsets, but does not include:

(i) Any urban renewal special levy rate;

(ii) Any local option tax rate if the tax was approved by the voters after October 6, 2001;

(iii) Any exempt bonded indebtedness tax rate (except for Portland Police and Fire Pension and Disability bonds, if so issued) approved by the voters after October 6, 2001; or

(iv) The portion of Portland Public School District's permanent rate levy described in OAR 150-457.440(2) section (13) that the district notifies the assessor to exempt from division of tax.

(B)(i) For standard rate plans, the total of all taxing district billing tax rates used to extend taxes, after any adjustments to reflect tax offsets, but does not include any urban renewal special levy rate or rates of new local option taxes.

(ii) Notwithstanding paragraph (1)(a)(B)(i), if an urban renewal agency filed an impairment certificate under ORS 457.445 with respect to a standard rate plan, the rates of new local option taxes that were identified in the impairment certificate must be included in the total.

(b) "Division of tax" means:

(A) For purposes of determining the amount of division of tax to use in tax calculation, the amount calculated by multiplying the tax rate for each taxing district levy in a code area by the increment value used in that code area and summing the product for all code areas in the plan area. Only those taxing district tax rates that are part of the consolidated billing tax rate for that plan are used for this calculation.

(B) For purposes of computing the estimate of the division of tax portion of the maximum authority for existing plans, the amount calculated by multiplying the consolidated billing tax rate for the code area by the increment value used in the code area and summing the product for all code areas in the plan. Only those taxing district tax rates that are part of the consolidated billing tax rate are used for this calculation.

(c) "Division of tax rate" means the rate determined for each taxing district levy within the consolidated billing tax rate for an urban renewal plan. This rate is calculated by dividing the division of tax amount by the taxable assessed value of any shared property for that district. This is the rate that is multiplied by the taxable assessed value of any shared property of the district to determine the amount of division of tax extended before compression on that property from that levy for that plan.

(d) "Existing plan" means an urban renewal plan that provides for a division of ad valorem property taxes as described under ORS 457.420 to 457.460, adopted by ordinance before December 6, 1996, that meets the conditions of 457.010(4).

(e) "Frozen value" means:

(A) The assessed value of the property in an urban renewal plan area at the plan's inception, as certified by the assessor under ORS 457.430 and OAR 150-457.430; or

(B) The value stated by the agency in the notice to the assessor pursuant to ORS 457.455(2).

(f) "Increment value" means the positive value obtained by subtracting the frozen value in a plan area from the total assessed value in a plan area, calculated code area by code area. Negative results are disregarded, resulting in the code area having zero increment value.

(g) "Increment value used" means:

(A) For an Option Three existing plan, that portion of the increment value in the plan area necessary to raise the amount of division of tax stated in the ordinance selecting Option Three that was adopted by the urban renewal agency under ORS 457.435, or a lesser amount of increment value specified by the agency under paragraph (B) of this subsection.

(B) For plans for which the urban renewal agency specifies, pursuant to ORS 457.455(1) or 457.470, an amount of assessed value less than the full increment amount that is available, the amount of increment value specified. The assessor must apportion to the code areas in the plan area the amount of increment specified by the agency.

(C) For all other plans "increment value used" means "increment value."

(h) "Maximum authority" means the limitation on the amount of revenue to be raised for the year for an existing plan area, as described in ORS 457.435(3). Only plans that are existing plans have a maximum authority amount. The maximum authority is adjusted each year to reflect growth in assessed value within the plan area as provided in ORS 457.435(3)(b).

(i) "New local option tax" means a local option tax described in ORS 457.445(5) that is approved by taxing district electors after January 1, 2013.

(j) "Rate computation value" means the total assessed value in an ad valorem taxing district, plus the value of Fish and Wildlife properties and of Non-Profit Housing properties, minus urban renewal increment value used.

(k) "Reduced rate plan" means any urban renewal plan that is:

(A) Adopted before December 6, 1996, designated as an existing plan, and also designated as an Option One plan;

(B) Adopted before December 6, 1996, was an existing plan designated as an Option One plan on October 6, 2001, and was substantially amended as described in ORS 457.085(2)(i)(A) or (B) on or after October 6, 2001;

(C) Adopted on or after October 6, 2001; or

(D) Adopted before December 5, 1996, and the governing body of the city or county that adopted the plan irrevocably elects to change the plan from being a standard rate plan to a reduced rate plan, pursuant to ORS 457.445(4), and provides the assessor by July 15 of the first tax year it is effective, a copy of the resolution or ordinance making the election.

(l) "Shared property" is property that is both within a taxing district that overlaps an urban renewal plan area, and within the boundaries of a municipality that activated an urban renewal agency. It also includes any area of a plan that extends beyond the boundaries of the activating municipality for that plan.

(m) "Standard rate plan" means an urban renewal plan that is not a reduced rate plan.

(2) Urban renewal agencies making use of tax increment financing must certify their tax increment financing request to the county assessor under ORS 310.060 and pursuant to OAR 150-457.440(2) by July 15 using Department of Revenue Form UR-50 Notice to Assessor for the current tax year. The assessor may, for cause, grant an extension of this date up to October 1.

(3) The assessor must separately calculate the estimated revenue to be raised from each plan area within the territory of a taxing district. To make this calculation the assessor must:

(a) Determine whether the plan is a standard rate plan or a reduced rate plan. Calculate the consolidated billing tax rate accordingly;

(b) Determine the maximum authority of an existing plan by multiplying last year's maximum authority by the percentage growth in plan increment value this year as provided in ORS 457.435(3);

(c) Determine the estimated amount to be raised by the division of tax for the plan. For each code area within the plan area, multiply the consolidated billing tax rate by the increment value used in the code area. Add the amounts of all code areas within a plan; and

(d) Determine the maximum amount of the special levy, if any, for each existing urban renewal plan by subtracting the estimated amount to be raised by the division of tax from the maximum authority of the plan. The maximum special levy cannot be less than zero.

(4) If the plan is an Option One plan:

(a) The assessor must calculate the maximum amount of urban renewal taxes to be raised through the division of tax as provided in section (3) of this rule, or a lesser amount of division of tax using the increment value used that is specified by the agency, according to the agency's certification on Form UR-50.

(b) If the agency requests one hundred percent of the division of tax and a special levy amount on Form UR-50, the assessor must calculate and extend a special levy for the amount certified, provided the total amount of the special levy plus the estimated division of tax amount is equal to or less than the maximum authority of the plan as determined under subsection (3)(b) of this rule.

(c) If the total of the special levy certified for the plan area plus the estimated division of tax amount computed for the plan by the assessor exceeds the maximum authority of the plan, the assessor must reduce the amount of the special levy until the total of the special levy and the estimated division of tax amount equals the maximum authority for the plan.

(d) If, instead of requesting one hundred percent of division of tax, an agency certifies on Form UR-50 an amount of increment value used, the assessor must not calculate a special levy for that plan.

(5) If the plan is an Option Three plan:

(a) The agency must certify on Form UR-50 the amount stated in the ordinance selecting Option Three as the amount to be collected through the division of taxes, or the amount of increment value that the agency estimates will raise some lesser amount of division of tax.

(b) If the agency certifies the amount of division of tax stated in the ordinance selecting Option Three, the assessor must calculate the amount of increment value necessary to raise the division of tax amount stated in the ordinance. The amount calculated by the assessor is the increment value used.

(c) If the agency certifies the amount of increment value that the agency estimates will raise some lesser amount of division of tax, the amount specified is the increment value used.

(d) If the agency certifies a special levy and certifies the amount of division of tax stated in the ordinance selecting Option Three, and the total special levy plus the estimated division of tax amount computed for the plan by the assessor exceeds the maximum authority of the plan, the assessor must reduce the special levy until the total of the two equals the maximum authority.

(e) If the agency certifies a special levy and certifies an amount of increment value used that the agency estimates will raise an amount of division of tax that is less than the amount stated in the ordinance selecting Option Three, and the total of the special levy plus the estimated division of tax amount computed by the assessor using that amount of increment value exceeds the total that would have been available under the plan's maximum authority had the agency certified the amount of division of tax stated in the ordinance selecting Option Three, the assessor must reduce the special levy amount so that the total of the special levy and the estimated division of tax equals the total that would have been available under the plan's maximum authority, had the agency certified the amount of division of tax stated in the ordinance selecting Option Three.

(6) If the plan is not an existing plan, the agency must certify on Form UR-50:

(a) One hundred percent of the amount of division of tax; or

(b) The amount of increment value used that the agency estimates will raise some lesser amount of division of tax, pursuant to ORS 457.455(1) or 457.470.

(7) The assessor must:

(a) Apportion the increment value used to the code areas in the plan area in the same proportions as the increment value is distributed among those code areas.

(b) If the full increment value in a code area is less than the amount of increment value used that is apportioned to the code area under subsection (7)(a) of this rule, the assessor must calculate the division of tax using the full increment value. No increment value is then used in calculating the taxes of the ad valorem taxing districts for the year.

(c) If the full increment value exceeds the amount of the increment value used, the assessor must use the remaining increment value in calculating the taxes of the ad valorem taxing districts for the current year.

(8) The assessor must:

(a) Use the rate computation value in calculating taxes for a taxing district that has an urban renewal plan area within its boundaries and whose rate is part of the consolidated billing tax rate for the plan.

(b) Calculate the urban renewal special levy tax rate for each plan area using the current year taxable value of all taxable property in the municipality that adopted the plan and any portion of the urban renewal plan area outside of the municipality. Current year taxable value includes the value of Non-profit Housing properties, Fish and Wildlife properties and urban renewal increment value.

(c) Calculate urban renewal special levy tax rates on a plan area by plan area basis. If one plan area of an agency extends beyond the boundary limits of the activating municipality, only the special levy rate for that plan area is extended beyond the boundaries of the municipality.

(d) Unless otherwise specifically provided by law, no tax offset applies to the special levy rate.

(9) The assessor must determine the tax rate for each code area for each tax levy that an ad valorem district certifies as follows:

(a) Determine the rate certified by the district for tax rate levies or calculate a tax rate for dollar amount levies;

(b) Subtract any offsets as applicable; and

(c) Subtract any division of tax rate for that district applicable to that code area from the result of subsection (9)(b) of this rule.

(10) The assessor must calculate a total division of tax rate for each code area. This is the total of the division of tax rates from all of the levies from all taxing districts with shared property in that code area, if such rates are in the consolidated billing tax rate.

(11) The division of tax rate may have two components. One is the total of rates derived from any local option tax levies. The other component is the total of rates derived from any other levies. The assessor must treat the amount of taxes derived from each of the two total rates separately for purposes of determining compliance with the limitations of section 11(b) Article XI of the Oregon Constitution.

(12) The assessor must calculate the amount of tax on each account that is distributed to each urban renewal agency as follows:

(a) For each property within a shared property area the assessor must calculate the division of tax amount extended by multiplying the taxable assessed value of the account by the division of tax rate for each plan area.

(b) For each property within a shared property area that has an urban renewal special levy, the assessor must calculate the amount extended for the special levy by multiplying the taxable assessed value of the account by the rate calculated for each urban renewal special levy.

(c) If taxes exceed the limitations in either category of section 11(b) Article XI of the Oregon Constitution, the assessor must reduce the taxes to the category limit. The division of tax portion derived from local option levies must be reduced proportionately with all other similarly categorized local option levies before any other taxes in the category are reduced.

(13) The special levy and the division of tax must be imposed on all taxable property in the municipality that activated the urban renewal agency and any portion of the urban renewal plan area outside of the municipality that is shared property for that plan.

(14) The tax statement must display at a minimum for each agency, under the applicable limitation category, the total combined dollar amount imposed for the urban renewal special levy and the division of tax for that account.

(15) In preparing the percentage distribution schedule under ORS 311.390, the tax collector must use the dollar amount generated for urban renewal division of tax and the dollar amount imposed for urban renewal special levy for each urban renewal agency.

[ED. NOTE: Forms and Publications referenced are available from the agency.]
Stat. Auth.: ORS 305.100 & 457.470
Stats. Implemented: ORS 457.440, 457.445 & 457.470
Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 1-2002, f. & cert. ef. 5-23-02; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08; REV 11-2010, f. 7-23-10, cert. ef. 7-31-10; REV 5-2013(Temp), f. 7-1-13, cert. ef. 7-15-13 thru 1-1-14; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14

150-457.440(9)-(A)
Minimum Public Information on Division of Tax

(1) The assessor of a county in which any taxing district has urban renewal excess value must make available to the public information concerning the urban renewal division of tax amounts. The information must be readily accessible to the public in either print or electronic form.

(a) The content must include:

(A) The name of the county;

(B) The number of urban renewal agencies in the county;

(C) The total dollar amount of taxes imposed by all taxing districts that was allocated to all of the urban renewal agencies in the county for the tax year immediately prior to the current tax year; and

(D) The total dollar amount of taxes imposed for the urban renewal agencies in the county as special levies, if any, for the tax year immediately prior to the current tax year.

(b) The following example meets the information requirements:

Example: Some of the taxes imposed for the taxing districts in County X were allocated to two urban renewal agencies. For tax year 2000-2001, $3,820,268 out of a total $229,299,593 taxes imposed by all taxing districts in the county were allocated to the urban renewal agencies. In addition, $1,254,320 was imposed for the urban renewal agencies as special levies.

(2) The county must also describe where additional information about urban renewal may be obtained.

Example: Anyone interested in obtaining more information about the amount of money distributed to urban renewal may contact the assessor's office at (telephone number) or through e-mail at (e-mail address) or (urban renewal agency name) at (telephone number) or (e-mail address).

(3) Nothing in this rule prohibits a county from making available to the public more information about urban renewal.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 457.440
Hist.: REV 3-2001, f. 7-31-01, cert. ef. 8-1-01

150-457.440(9)-(B)
Calculation of Urban Renewal with City Rate Phase-in

(1) Applicability: This rule must be used in conjunction with OAR 150-457.440(9) when an urban renewal agency sponsored by a city has certified a request for tax increment financing to the assessor under ORS 457.440 and the city has adopted an annexation ordinance under ORS 222.111 with a rate phase-in provision that is applicable to the city's taxes for the tax year.

(2) When the conditions described in section (1) are present, the assessor must modify the calculations under OAR 150-457.440(9) as follows, or by using a method allowed under section (3):

(a) The division of tax rate derived from the city's taxes must be calculated separately for the area of the city that is subject to rate phase-in and for the area of the city not subject to rate phase-in. This is relevant for determining proper division of tax rates to use by code area under OAR 150-457.440(9) subsection (1)(c) and sections (9), (10), (11), and (12).

(A) Calculate the division of tax rate applicable to the shared property that is not subject to rate phase-in by dividing the total division of tax amount from city taxes by the sum of:

(i) The taxable assessed value of the shared property that is not in the phase-in area, and

(ii) The product of the taxable assessed value of the shared property that is in the phase-in area multiplied by the phase-in percentage.

(B) Calculate the division of tax rate applicable to the shared property that is subject to rate phase-in by multiplying the phase-in percentage by the division of tax rate from paragraph (A) of subsection (2)(a).

(b) Division of tax rates derived from taxes of taxing districts other than the city with rate phase-in remain calculated in accordance with OAR 150-457.440(9) and without modification due to the city tax phase-in.

(3) A county may use a different calculation method if approved by the Department of Revenue, it provides an equivalent phase-in of the division of tax rate derived from the city taxes, and the taxes to be raised for the urban renewal agency and city remain comparable to the calculations under section (2).

Stat. Auth.: ORS 305.100 & 457.470
Stats. Implemented: ORS 457.440
Hist.: REV 7-2014, f. 12-23-14, cert. ef. 1-1-15

150-457.450
Distribution of Remaining Tax Increment Funds

(1) For purposes of this rule "taxing district" includes only those districts that have ad valorem taxes divided with an urban renewal agency pursuant to ORS 457.440.

(2) An urban renewal agency must give the notice required by ORS 457.450(2) to each county assessor that had calculated division of tax amounts for the agency. As soon as practicable, each assessor that is notified will:

(a) Discontinue calculating division of tax and urban renewal special levy amounts under ORS 457.440 and 457.435 for the plan area; and

(b) Notify the county treasurer in writing to discontinue any future distributions to the agency for this plan from any division of tax or urban renewal special levy.

(3) When unexpended moneys in the agency special fund for a plan must be turned over to the county treasurer under ORS 457.450(3), the agency must apportion the moneys between each county that had calculated division of tax amounts for the agency in proportion to the amount received from each county for the plan in the last fiscal year before the notice required by 457.450(2). The agency must turn over each amount that was apportioned to a county to that county's treasurer.

(4) After the county treasurer is notified by the assessor under section (2) of this rule about a plan or the county treasurer receives money from an urban renewal agency under ORS 457.450(3) regarding a plan, the treasurer must:

(a) Discontinue any future distributions to the agency for that plan from the division of tax and any special levy;

(b) Prepare a schedule to allocate for each taxing district that levied within that plan area on the last tax roll any unexpended moneys returned by the agency under ORS 457.450(3) plus any future moneys that otherwise would be distributed for that plan. Allocation percentages must be in proportion to the amounts calculated to be raised from division of tax from each taxing district for that plan on the last tax roll;

(c) Distribute to the taxing districts based on the schedule prepared under subsection (4)(b) of this rule any money that otherwise would be distributed for that urban renewal plan, or that has been returned by the agency for the plan under ORS 457.450(3); and

(d) If a special levy for that plan was combined with special levies for other plans of the same agency and tax had been imposed through one special levy rate, allocate and distribute special levy collections for that plan as follows:

(A) Prepare a schedule to allocate the combined special levy collections for the plans that continue to receive distributions and the plan that will no longer receive distributions. Using the last tax roll on which that plan's special levy was combined with other special levies of the agency, determine the allocation percentage for that plan by dividing that plan's portion of the combined special levy amount by the total special levy amount for the agency. Apply this allocation percentage to allocate an amount for that plan from collections of special levy amounts for any years that the combined special levy included an amount for that plan.

(B) Distribute the special levy amount allocated for that plan to the taxing districts instead of to the urban renewal agency based on the schedule prepared under subsection (4)(b) of this rule. Distribute the remainder of the special levy moneys to the urban renewal agency. [Table & Examples not included. See ED. NOTE.]

(5) Nothing in this rule is intended to prevent the county from using a different allocation procedure if it results in the same distribution to the taxing districts.

[ED. NOTE: Table & Examples referenced are available from the agency.]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 457.450
Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-457.450(1)
Notice of Plan Adoption or Area Change

An urban renewal agency's notice to the assessor of a plan adoption or amendment to a plan area must provide the following information:

(1) A legal description of the plan area boundary, or the boundary of the amended area of the plan, that includes the information required by ORS 308.225(2)(b);

(2) An accurate map showing the boundary line of the plan area or the boundary of the amended area of the plan;

(3) The date the plan or plan amendment was approved; and

(4) The name of the plan area.

Stat. Auth.: ORS 305.100.
Stats. Implemented: ORS 457.450(1).
Hist.: REV 2-2005, f. 6-27-05, cert. ef 6-30-05

DIVISION 465

HAZARDOUS WASTE AND HAZARDOUS MATERIALS

150-465.101
Bulk Facility Defined; Cargo Tank Defined; Load Fee

As used in OAR 150-465.101–465.131, and 150-324.340(Note):

(1) A bulk facility is a terminal facility to which a refined petroleum product is delivered primarily by pipeline, barge or rail and from which refined petroleum product is withdrawn and delivered into a cargo tank or barge. A bulk facility must receive some petroleum from pipeline, barge or rail. Bulk facility does not mean an intermediate storage facility. An intermediate storage facility is a facility to which petroleum product is delivered primarily by means other than pipeline, barge or rail.

(2) A single cargo tank may have one or more holding compartments and those compartments may comprise one or more separate tanks and are attached to the same motor. A single cargo tank may not be more than one rail car.

(3) "Fee" or "Load fee" includes the underground storage tank regulatory fee, the petroleum products delivery fee, and the petroleum products import delivery fee.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.101
Hist.: RD 1-1989(Temp), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

150-465.101(5)
Vessels in Interstate or Foreign Commerce

Petroleum products sold to vessels engaged in interstate or foreign commerce are not subject to the fee. The seller of a petroleum product shall not charge the fee if the person ordering the withdrawal from bulk verifies that the product will be used in a vessel engaged in interstate or foreign commerce. Verification can be a copy of a federal permit, license or registration. Vessels engaged in interstate commerce include barges and tugboats licensed as carriers by the Interstate Commerce Commission.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.101
Hist.: RD 1-1989(Temp), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1992, f. & cert. ef. 12-29-92, Renumbered from 150-465.104(5)

150-465.101(5)-(B)
Definition of "Petroleum Product"

As used in ORS 465.101 through 465.131, "petroleum product" includes blends of petroleum products mandated by ORS 646.905 through 646.963, such as diesel that contains a percentage of biodiesel, or gasoline that contains a percentage of ethanol.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.101
Hist.: REV 13-2010(Temp), f. & cert. ef. 8-19-10 thru 2-14-11; REV 18-2010, 12-17-10, cert. ef. 1-1-11

150-465.104(1)-(A)
Payment of Fee by Seller

The owner of the petroleum product is considered to be the seller. The seller must pay the fee when the product is withdrawn from the seller's bulk facility for sale or use in the seller's own distribution chain.

For example, Company A owns a bulk facility in Portland and a chain of service stations throughout the state. Company A also owns its own truck-trailers. Company A must pay the fee at the time it withdraws product from its bulk facility into its truck-trailers for distribution to its service stations.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.104
Hist.: RD 1-1989(Temp), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

150-465.104(1)-(B)
Product Exchange Agreements

When a product exchange occurs, the seller of the petroleum product that was exchanged must charge the fee.

For example, Company A owns product in a terminal facility. Company A enters into an exchange agreement with Company B whereby Company A will provide Company A's product to Company B's customers. Company B must charge the fee on the withdrawal of product from Company A's bulk facility by Company B's customer.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.104
Hist.: RD 1-1989(Temp), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

150-465.104(1)-(C)
Multiple Withdrawals in a Single Load; Load, Split Load Defined

The fee is to be paid for each load of petroleum products withdrawn from a terminal. A "load" is the total amount of petroleum products withdrawn prior to delivery into a storage tank not connected to another bulk facility, regardless of how many different petroleum products make up the load.

For example, if a cargo tank makes a withdrawal from a bulk facility of gasoline into one tank and diesel into another tank without making any deliveries between the withdrawals, only one load fee is to be charged.

If one load of petroleum products came from different sellers at different bulk facilities or from different sellers at the same facility, the load is a "split load" and only one fee is due for the split load. If each seller collects a fee, the person ordering the withdrawal can receive a credit or refund from the seller by verifying that the withdrawals were a split load. The verification must be submitted to one of the sellers on forms approved by the Department of Revenue.

The person ordering the withdrawal is responsible for paying the fee to the Department of Revenue in the event of fraudulent or improper verification to a seller.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.104
Hist.: RD 1-1989(T), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

150-465.104(2)
Importer Defined; Delivery Defined

An importer is one who causes petroleum products to be brought into the state from outside Oregon for delivery into one or more storage tanks not connected to a bulk facility. A common carrier that provides transportation service for shippers of petroleum products and that does not own the product is not an importer. Delivery means the offloading into one or more storage tanks not connected to a bulk facility, of one or more petroleum products from a cargo tank or barge. Only one import fee is due for each cargo tank load or barge load of petroleum products delivered in Oregon.

For example, if an importer brings petroleum products into Oregon in a cargo tank and delivers the products to three customers, the importer shall pay one import fee for the load, regardless of the number of customers receiving product.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.104
Hist.: RD 1-1989(T), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

150-465.104(3)
Exemption for Export of Petroleum Products; Claim for Refund

(1) Where the ultimate destination for a petroleum load being shipped by cargo tank or barge is outside of Oregon, the load is exempt from the load fee. To avoid being charged the fee, the person making the withdrawal for delivery out of Oregon must verify the exemption to the seller. The verification may be in the form of a separate account with the seller for which the person making the withdrawal certifies that all withdrawals charged on this account will be delivered out of state. The person making the withdrawal is responsible for paying the fee to the Department of Revenue for any load or partial load delivered in Oregon for which the person previously received an export exemption.

(2) If the person making the withdrawal does not first verify to the seller that the load being withdrawn will be delivered out of state, the fee shall be charged. The person may then request a credit or refund from the seller by verifying the exemption to the seller on a form approved by the Department of Revenue.

(3) If any portion of a cargo tank load or barge load of petroleum products is to be delivered in Oregon, there is no export exemption and the load fee shall be charged.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.104
Hist.: RD 1-1989(T), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

150-465.104(4)
Due Dates for Payment of Fees

After January 1, 1990, all fees collected during a calendar quarter are due on the last day of the month following the end of the calendar quarter. The due dates will be January 31, April 30, July 31, and October 31.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 465.104
Hist.: RD 1-1989(T), f. & cert. ef. 8-31-89 thru 12-31-89; RD 4-1989, f. 12-18-89, cert. ef. 12-31-89

DIVISION 670

INDEPENDENT CONTRACTOR

150-670.600
Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret 670.600 in a consistent manner; to clarify the meaning of terms used in 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for "independent contractors". One requirement is that an "independent contractor" must be engaged in an "independently established business." Another requirement is related to licenses and certificates that are required for an "independent contractor" to provide services. A third requirement is that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others.

(b) The specific focus of this rule is the "direction and control" requirement. See ORS 670.600 for the requirements of the "independently established business" test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the "direction and control" test:

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) "Manner" is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) "Free from direction and control" means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor's services does not constitute direction and control over the means or manner of providing those services.

(4) Application of "direction and control" test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscaping businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor's services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

Stat. Auth.: ORS 305.100, 670.605

Stats. Implemented: ORS 670.600

Hist.: REV 1-2007, f. & cert. ef. 2-1-07