HB 2099-9
(LC 1681)
5/26/15 (CMT/ps)

PROPOSED AMENDMENTS TO HOUSE BILL 2099

On page 1 of the printed bill, line 3, delete "317.715" and insert "317.267, 317.715 and 317.717".

Delete lines 5 through 30 and delete page 2 and insert:

"**SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 317.**

"**SECTION 2. (1)(a) For purposes of determining Oregon taxable income, the taxable income or loss of any corporation that is a member of a unitary group or that is a corporation that files a separate return and that is incorporated in any of the jurisdictions listed in paragraph (b) of this subsection shall be added to the federal consolidated taxable income of the unitary group filing a consolidated Oregon return or to the federal taxable income of the corporation filing a separate return.**

"**(b) This section applies to Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, Bonaire, the British Virgin Islands, the Cayman Islands, the Cook Islands, Curacao, Cyprus, Dominica, Gibraltar, Grenada, Guatemala, Guernsey-Sark-Alderney, Hong Kong, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Montserrat, Nauru, Niue, Panama, Saba, Samoa, San Marino, Seychelles, Sint Eustatius, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.**

"(2) After making any addition required by subsection (1)(a) of this section, any item of income, gain, loss or expense of a corporation that is a member of a unitary group and that is incorporated in any of the jurisdictions that are listed in subsection (1)(b) of this section shall be eliminated from federal taxable income if the item is not attributable directly or indirectly to activity of or transactions with a unitary group member included in a federal consolidated or separate return.

"(3) If the Department of Revenue deems that a jurisdiction that is not listed in subsection (1)(b) of this section meets the requirements provided in ORS 317.717 for inclusion on the list in subsection (1)(b) of this section, corporations that are incorporated in the jurisdiction:

"(a) May be required by the department to add back income to federal taxable income; and

"(b) If required to add back income, are eligible for elimination of items of income, gain, loss or expense as provided in subsection (2) of this section.

"(4) The department shall adopt rules:

"(a) To determine the computation of income or loss for a corporation that is a member of a unitary group and that is not otherwise required to file a consolidated federal return.

"(b) To prevent double taxation or double deduction of any amount included in the computation of income under this section.

"(c) To implement this section.

"**<u>SECTION 3.</u>** ORS 317.715 is amended to read:

"317.715. (1) If a corporation required to make a return under this chapter is a member of an affiliated group of corporations making a consolidated federal return under sections 1501 to 1505 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined beginning with federal consolidated taxable income of the affiliated group as provided in this section.

"[*(2)(a) For purposes of determining Oregon taxable income, the taxable income or loss of any corporation that is a member of a unitary group and that is incorporated in any of the following jurisdictions shall be added to federal consolidated taxable income:*]

"[*(b) Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.*]

"[*(3)*] **(2)** If the affiliated group, of which the corporation subject to taxation under this chapter is a member, consists of more than one unitary group, before the additions, subtractions, adjustments and modifications to federal taxable income provided for in this chapter are made, and before allocation and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated taxable income shall be computed. Modified federal consolidated taxable income shall be determined by eliminating from the federal consolidated taxable income of the affiliated group the separate taxable income, as determined under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, and any deductions or additions or items of income, expense, gain or loss for which consolidated treatment is prescribed under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, attributable to the member or members of any unitary group of which the corporation is not a member.

"[*(4)(a)*] **(3)(a)** After modified federal consolidated taxable income is determined under subsection [*(3)*] **(2)** of this section, the additions, subtractions, adjustments and modifications prescribed by this chapter shall be made to the modified federal consolidated taxable income of the remaining members of the affiliated group, where applicable, as if all such members were subject to taxation under this chapter. After those modifications are made, Oregon taxable income or loss shall be determined as provided in ORS 317.010 (10)(a) to (c), if necessary.

"(b) In the computation of the Oregon apportionment percentage for a corporation that is a member of an affiliated group filing a consolidated federal return, there shall be taken into consideration only the property, payroll, sales or other factors of those members of the affiliated group[*, and of those corporations described in subsection (2) of this section,*] whose items of income, expense, gain or loss remain in modified federal consolidated taxable income after the eliminations required under subsection [*(3)*] **(2)** of this section. Those members of an affiliated group making a consolidated federal return or a consolidated state return may not be treated as one taxpayer for purposes of determining whether any member of the group is taxable in this state or any other state with respect to questions of jurisdiction to tax or the composition of the apportionment factors used to attribute income to this state under ORS 314.280 or 314.605 to 314.675.

"[*(5) The Department of Revenue shall adopt rules:*]

"[*(a) To determine the computation of income or loss for a corporation that is a member of a unitary group and that is not otherwise required to file a consolidated federal return.*]

"[*(b) To prevent double taxation or double deduction of any amount included in the computation of income under this section.*]

"<u>SECTION 4.</u> ORS 317.717 is amended to read:

"317.717. On or before January 1 of each odd-numbered year, the Department of Revenue shall submit a report to the Legislative Assembly in the manner provided by ORS 192.245. The report shall include recommendations for legislation related to jurisdictions listed in [*ORS 317.715 (2)(b)*] **section 2 of this 2015 Act**, including recommendations for additions to or subtractions from the list of jurisdictions in [*ORS 317.715 (2)(b).*] **section 2 of**

this 2015 Act. In making the determination of which jurisdictions to recommend for inclusion, the department shall determine whether the jurisdiction:

"(1) Has laws or practices that prevent effective exchange of information for tax purposes with other governments about taxpayers benefiting from the tax regime.

"(2) Has a tax regime that lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available.

"(3) Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy.

"(4) Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market.

"(5) Has created a tax regime that is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy.

"**SECTION 5.** ORS 317.267 is amended to read:

"317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income amounts received as dividends from corporations deducted for federal purposes pursuant to section 243 or 245 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code, amounts paid as dividends by a public utility or telecommunications utility and deducted for federal purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by members of an affiliated group that are eliminated from a consolidated federal return pursuant to ORS 317.715 [*(3)*] **(2)**.

"(2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of this section, there shall be subtracted from federal taxable income an amount equal to 70 percent of dividends (determined without regard to section 78 of the Internal Revenue Code) received or deemed received from corporations if such dividends are included in federal taxable income. However:

"(a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the same conditions and in same amount as the dividends received deduction otherwise allowable for federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

"(b) In the case of any dividend received from a 20 percent owned corporation, as defined in section 243(c) of the Internal Revenue Code, this subsection shall be applied by substituting '80 percent' for '70 percent.'

"(c) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for purposes of this subsection.

"(d) If a dividends received deduction is not allowed for federal tax purposes because of section 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

"(3) There shall be excluded from the sales factor of any apportionment formula employed to attribute income to this state any amount subtracted from federal taxable income under subsection (2) of this section.

"SECTION 6. Section 2 of this 2015 Act and the amendments to ORS 317.715 and 317.267 by sections 3 and 5 of this 2015 Act apply to tax years beginning on or after January 1, 2016.

"SECTION 7. This 2015 Act takes effect on the 91st day after the date on which the 2015 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.".