

Enrolled
House Bill 2101

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

CHAPTER

AN ACT

Relating to audits of partnerships; creating new provisions; amending ORS 305.242, 314.712, 314.714 and 314.778; repealing ORS 314.723; and prescribing an effective date.

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

SECTION 1. Sections 2 to 5 of this 2019 Act are added to and made a part of ORS chapter 314.

SECTION 2. As used in sections 2 to 5 of this 2019 Act:

(1) "Adjustment" means a partnership adjustment, as defined in section 6241 of the Internal Revenue Code, whether that adjustment arises from action by the Internal Revenue Service or from the taxpayer's filing of an amended federal return, a federal refund claim or similar report, including any report made under section 6225(c) of the Internal Revenue Code, or an administrative adjustment request.

(2) "Adjustments report" means a report used by a taxpayer to state adjustments to any partnership-related items.

(3) "Administrative adjustment request" means a request filed by a partnership under section 6227 of the Internal Revenue Code.

(4) "Audited partnership" means a partnership subject to a partnership-level audit from which an adjustment arises.

(5) "Corporate partner" means a partner that is subject to the tax imposed under ORS chapter 317 or 318.

(6) "Direct partner" means a partner that holds an interest directly in a partnership or pass-through entity.

(7) "Federal partnership representative" means the person that a partnership designates for the tax year as the partnership's representative, or the person the Internal Revenue Service has appointed to act as the federal partnership representative, pursuant to section 6223(a) of the Internal Revenue Code.

(8) "Indirect partner" means a partner in a partnership or pass-through entity that holds an interest directly, or through another indirect partner, in a partnership or pass-through entity.

(9) "Nonresident partner" means a partner that is not a resident partner and is an individual, a trust or an estate.

(10) "Partnership-level audit" means an examination by the Internal Revenue Service at the partnership level pursuant to sections 6221 to 6241 of the Internal Revenue Code from which an adjustment arises.

(11) "Resident partner" means a partner that is an individual who is a resident of this state as defined in ORS 316.027 for the tax year or is a resident trust or a resident estate as defined in ORS 316.282.

(12) "Reviewed year" means the tax year of a partnership that is required to be or elects to be subject to a partnership-level audit from which adjustments arise.

(13) "Taxpayer" means:

(a) A partner that is subject to the tax imposed under ORS chapter 316, 317 or 318;

(b) A partnership that is subject to a partnership-level audit or that has made an administrative adjustment request; or

(c) A tiered partner of a partnership.

(14) "Tiered partner" means a partner that is a partnership or pass-through entity.

SECTION 3. (1) Notwithstanding ORS 314.380, and except for adjustments required to be reported for federal purposes pursuant to section 6225(a)(2) of the Internal Revenue Code, partnerships and partners shall report the adjustments arising from a partnership-level audit or an administrative adjustment request and make payments as required under this section.

(2)(a) A partnership's federal partnership representative shall act as the partnership's Oregon partnership representative for the reviewed year, unless the partnership designates, in the time and manner prescribed by the Department of Revenue by rule or through forms and instructions, another Oregon partnership representative. If the partnership representative is an entity, the entity representative shall act through a designated individual in the manner provided by the department by rule or through forms and instructions.

(b) The Oregon partnership representative for the reviewed year is responsible for any action required or permitted to be taken under this section, including providing the adjustments report to the Department of Revenue and making any election outlined under this section. With respect to an action required or permitted to be taken by the partnership under this section, the Oregon partnership representative for the reviewed year has the sole authority to act on behalf of the partnership, and the direct partners and indirect partners of the partnership are bound by those actions.

(c) With respect to representation in any conference before the department or before the Oregon Tax Court, if the designated partnership representative qualifies as a tax matters partner under ORS 305.242 (2), the partnership representative shall serve as the tax matters partner, unless the partnership representative designates another person who qualifies as a tax matters partner under ORS 305.242 (2). If the designated partnership representative does not qualify to be the tax matters partner under ORS 305.242 (2), the partnership representative shall designate a person that qualifies to be a tax matters partner under ORS 305.242 (2). For purposes of any conference before the department or proceeding before the tax court, the partnership and all partners of the partnership shall be bound by the actions of the designated partnership representative or other person designated to act as the tax matters partner under this paragraph.

(3) Adjustments subject to the requirements of this section, except for those subject to an election under subsection (4) of this section, shall be reported as follows:

(a) Not later than 180 days after the date of the federal notice of final partnership adjustment or 90 days after the date on which the amended federal return, federal refund claim or other similar report, including any report made under section 6225(c) of the Internal Revenue Code, or administrative adjustment request was filed, whichever is later, the partnership shall:

(A) File with the department a completed adjustments report in the form and manner prescribed by the department that is sufficiently detailed to allow computation of the tax change resulting from the adjustment;

(B) Concede the accuracy of the determination of the Internal Revenue Service or state wherein the taxpayer believes the determination to be erroneous;

(C) Submit with the adjustments report any other information required by the department;

(D) Notify the partnership's direct partners of their distributive share of adjustments, including information as required by the department;

(E) File an amended composite return for direct partners that are nonresident partners as required under ORS 314.778; and

(F) Pay any additional personal income tax and corporate income or excise tax that would have been due had the adjustments been reported properly as required on the composite return.

(b) Not later than 270 days after the date of the federal notice of final partnership adjustment or 180 days after the date on which the amended federal return, federal refund claim or other similar report, including any report made under section 6225(c) of the Internal Revenue Code, or administrative adjustment request was filed, whichever is later, each direct partner that is subject to the tax imposed under ORS chapter 316, 317 or 318 shall:

(A) File with the department an adjustments report or an original or amended Oregon tax return reporting the direct partner's distributive share of the adjustments reported to them under this subsection; and

(B) Pay any additional amount of tax that would have been due had the adjustments been reported properly, plus any interest and penalty due under ORS 305.220 or 314.400.

(4) An audited partnership may make an election to pay at the partnership level. Subject to the limitations in subsection (5) of this section, an audited partnership making an election under this subsection shall:

(a) Not later than 180 days after the date of the federal notice of final partnership adjustment, file with the department a completed adjustments report, including partner information and any other information required by the department, and notify the department that it is making the election under this subsection; and

(b) Not later than 270 days after the date of the federal notice of final partnership adjustment, pay an amount, in lieu of taxes owed by the direct and indirect partners of the partnership, to be determined as follows:

(A) For the total distributive shares of adjustments made to direct partners that are corporate partners, apportion and allocate any adjustments as provided under this chapter and multiply the resulting amount by the highest marginal tax rate applicable to taxpayers subject to the tax imposed under ORS chapter 317 or 318 for the reviewed year;

(B) For the total distributive shares of adjustments made to direct partners that are nonresident partners subject to tax under ORS chapter 316, determine the amount of any adjustment that is income from Oregon sources under ORS chapter 316 and multiply the resulting amount by the highest marginal tax rate applicable to taxpayers for the tax year under ORS chapter 316;

(C) For the total distributive shares of adjustments made to tiered partners:

(i) Determine the amount of any adjustment that is of a type that would be subject to sourcing to Oregon by a nonresident partner under ORS chapter 316 and determine the portion of this amount that would be sourced to Oregon;

(ii) Determine the amount of any adjustment that is of a type that would not be subject to sourcing to Oregon by a nonresident partner under ORS chapter 316;

(iii) Determine the portion of the amount in sub-subparagraph (ii) of this subparagraph that can be established, as prescribed by the department by rule, to be properly allocable to indirect partners that are nonresident partners or other partners not subject to tax on the adjustments; and

(iv) Multiply the total of the amounts in sub-subparagraphs (i) and (ii) of this subparagraph, reduced by the amount determined in sub-subparagraph (iii) of this subparagraph, by the highest marginal tax rate under ORS chapter 316;

(D) For the total distributive shares of adjustments made to direct partners that are resident partners, multiply the amount of the adjustments by the highest marginal tax rate under ORS chapter 316; and

(E) Add the amounts determined in subparagraphs (A) to (D) of this paragraph and any interest and penalty as provided in ORS 305.220 or 314.400.

(5) Adjustments subject to the election in subsection (4) of this section do not include:

(a) The distributive share of adjustments that under this chapter or ORS chapter 317 or 318 must be included in the apportionable income of any direct partner that is a corporate partner unless the corporate partner states in writing to the partnership representative that its distributive share of the adjustments is not required to be included in its apportionable income;

(b) The distributive share of adjustments that under this chapter or ORS chapter 317 or 318 must be included in the apportionable income of any indirect partner that is a corporate partner, provided that the audited partnership can reasonably determine this;

(c) The distributive share of adjustments made to a direct partner that is exempt from tax under ORS 316.277 or 317.080, other than any distributive share that is unrelated business taxable income of the partner; or

(d) Any adjustments arising from an administrative adjustment request.

(6) For purposes of subsection (5) of this section, a corporate partner's distributive share is presumed to be included in the partner's own apportionable income unless the partner provides the statement described in subsection (5)(a) of this section to the partnership representative.

(7)(a) An audited partnership that makes an election under subsection (4) of this section consents to be subject to the administrative provisions of this chapter and ORS chapter 305.

(b) The department may adopt rules to prevent double taxation or double deduction of any amount included in the computation of income under this section.

(8) The direct and indirect partners of an audited partnership that are tiered partners and all partners of those tiered partners that are subject to tax imposed under ORS chapter 316, 317 or 318 are subject to the reporting and payment requirements of subsection (3) of this section. The tiered partners are entitled to make the elections provided in subsection (4) of this section. The tiered partners or their partners shall make the required reports and payments not later than 90 days after the time for filing and furnishing statements to tiered partners and their partners as established under section 6226 of the Internal Revenue Code and the regulations thereunder. The department may adopt rules to establish procedures and interim time periods for the reports and payments required by tiered partners and their partners and for making the elections under subsection (4) of this section.

(9)(a) The department may adopt rules allowing an extension of time for an audited partnership and its tiered partners or direct partners to file reports of adjustments required under this section.

(b) Notwithstanding paragraph (a) of this subsection, the tax shall be paid to the department on the date fixed by this section without regard to extensions.

(c) Any extension granted under this section extends the final date prescribed by law for assessing any additional tax arising from the adjustments.

(10)(a) An election made pursuant to subsection (4) of this section is irrevocable.

(b) If reported properly and paid by the audited partnership or tiered partner, the amount determined in subsection (4)(b) of this section shall be treated as paid in lieu of taxes owed by its direct and indirect partners, to the extent applicable, on the same adjustments. Direct partners or indirect partners may not take any deduction or credit for the amount or claim a refund of the amount.

(c) Nothing in this subsection precludes a direct partner that is a resident partner or nonresident partner from claiming a credit for any amounts paid by the audited partnership

or tiered partner on the direct partner's behalf to another state or local tax jurisdiction in accordance with the provisions of ORS 316.082 or 316.131.

(11) Nothing in this section prevents the department from assessing direct partners or indirect partners for taxes owed, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required by this section for any reason, or from collecting from direct partners or indirect partners.

SECTION 4. The Department of Revenue shall assess additional tax, interest and penalties for adjustments arising from an audit by the Internal Revenue Service, including a partnership-level audit, or reported by the taxpayer on an amended federal return, federal refund claim or other similar report, including a report required under section 6225(c) of the Internal Revenue Code, or as part of an administrative adjustment request, by the following dates:

(1) If a taxpayer files with the department an adjustments report or an amended Oregon tax return as required within the period specified in section 3 of this 2019 Act, the department may assess any amounts, including in-lieu-of amounts, taxes, interest or penalties arising from the adjustments. The department shall issue a notice of deficiency to the taxpayer on or before the later of:

(a) The expiration of the applicable limitations period specified in ORS 314.410; or

(b) Two years following the earlier of the date the department is notified by the Internal Revenue Service or the date the taxpayer files the adjustments report or amended Oregon tax return with the department.

(2) If the taxpayer fails to file an adjustments report within the period specified in section 3 of this 2019 Act or if the adjustments report filed by the taxpayer omits adjustments or understates the correct amount of tax owed, the department may assess any amounts, including in-lieu-of amounts, taxes, interest or penalties arising from the adjustments. The department shall issue a notice of deficiency to the taxpayer on or before the later of:

(a) The expiration of the applicable limitations period specified in ORS 314.410; or

(b) Two years following the earlier of the date the department is notified by the Internal Revenue Service or the date the taxpayer files the adjustments report with the department.

SECTION 5. Except for adjustments required to be reported for federal purposes under section 6225(a)(2) of the Internal Revenue Code, a taxpayer shall file a claim for refund or credit of tax arising from adjustments made by the Internal Revenue Service on or before the later of:

(1) The expiration of the last date for filing a claim for refund pursuant to ORS 314.415; or

(2) Two years following the date of the federal notice of final partnership adjustment.

SECTION 6. ORS 305.242 is amended to read:

305.242. (1)(a) When the treatment of partnership items on a partner's return is consistent with the treatment of that item on the partnership return and results in a notice of deficiency, the partners may designate a tax matters partner to represent each of them before the Department of Revenue in any conference or before a tax court magistrate in any proceeding with respect to the administration of any tax on or measured by net income.

(b) Notwithstanding paragraph (a) of this subsection, a tax matters partner shall be designated as provided in section 3 (2) of this 2019 Act, in the case of a partnership subject to sections 2 to 5 of this 2019 Act.

(2) The designation of a tax matters partner shall be made in writing and filed with the department or magistrate within 30 days after the date of the notice of deficiency. The tax matters partner must be:

(a) A general partner in the partnership at some time during the taxable year; or

(b) A general partner in the partnership at the time the designation is made.

(3) If a notice explaining the partnership adjustments is mailed by the department to the tax matters partner with respect to any partnership taxable year, the tax matters partner shall supply

the department or, if applicable, the magistrate with the name, address, profits interest and taxpayer identification number of each person who was a partner in the partnership at any time during the taxable year, unless that information was provided in the partnership return for that year.

(4) A timely request for a conference filed with the department or appeal filed with the tax court by the tax matters partner shall be considered as a request or an appeal by all of the partners represented by the tax matters partner, and all issues regarding treatment of partnership items shall be resolved in a single conference.

(5) A partner who elects to be represented by a tax matters partner, **or any partner in a partnership subject to sections 2 to 5 of this 2019 Act**, shall be bound by all things done by the tax matters partner and may not thereafter claim that any act or proceeding was legally defective because the partner was not represented by an attorney.

SECTION 7. ORS 314.712 is amended to read:

314.712. (1) Except as provided in ORS 314.722 or [314.723] **sections 2 to 5 of this 2019 Act**, a partnership as such is not subject to the tax imposed by ORS chapter 316, 317 or 318. Partnership income shall be computed pursuant to section 703 of the Internal Revenue Code, with the modifications, additions and subtractions provided in this chapter and ORS chapter 316. Persons carrying on business as partners are liable for the tax imposed by ORS chapter 316, 317 or 318 on their distributive shares of partnership income only in their separate or individual capacities.

(2) If a partner engages in a transaction with a partnership other than in the partner's capacity as a member of the partnership, the transaction shall be treated in the manner described in section 707 of the Internal Revenue Code.

[(3) If a partnership is an electing large partnership under section 775 of the Internal Revenue Code, the modifications of law applicable to an electing large partnership for federal tax purposes are applicable to the electing large partnership for purposes of the tax imposed by this chapter or ORS chapter 316, 317 or 318.]

SECTION 8. ORS 314.714 is amended to read:

314.714. (1) Each item of partnership income, gain, loss or deduction has the same character for a partner as it has for federal income tax purposes. If an item is not characterized for federal income tax purposes, it has the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

(2) A partner's distributive share of an item of partnership income, gain, loss or deduction (or item thereof) shall be that partner's distributive share of partnership income, gain, loss or deduction (or item thereof) for federal income tax purposes as determined under section 704 of the Internal Revenue Code and adjusted for the modifications, additions and subtractions provided in this chapter and ORS chapters 316, 317 and 318.

(3) A partner shall, on the partner's return, treat a partnership item in a manner that is consistent with the treatment of the partnership item on the partnership return, unless the partner notifies the Department of Revenue of the inconsistency. The department shall prescribe by rule the method for notification of an inconsistency. *[A partner of an electing large partnership under section 775 of the Internal Revenue Code must treat a partnership item in a manner that is consistent with the treatment of the partnership item on the partnership return.]*

SECTION 9. ORS 314.778 is amended to read:

314.778. (1)(a) A pass-through entity having distributive income attributable to Oregon sources shall file a composite return of personal income and corporate income and excise tax on behalf of owners that elect to be included in the composite return filed by the entity. **Distributive income subject to this election does not include the distributive share that under this chapter or ORS chapter 317 or 318 must be included in the apportionable income of any direct partner that is a corporate partner, as defined in section 2 of this 2019 Act, unless the corporate partner states in writing to the partnership that its distributive share of the partnership's income and expenses is not required to be included in the corporate partner's apportionable income. For purposes of this paragraph, a corporate partner's distributive share is presumed**

to be included in the partner's own apportionable income unless the partner provides the statement to the partnership representative.

(b) Distributive income subject to this election does not include the distributive share that under this chapter or ORS chapter 317 or 318 must be included in the apportionable income of an indirect partner that is a corporate partner, as defined in section 2 of this 2019 Act, provided that the partnership can reasonably determine this.

(2) A pass-through entity shall file a composite return under this section only if one or more owners that are nonresidents make an election under this section.

(3) The election is **irrevocable and** shall be made by owners in the time, form and manner prescribed by the Department of Revenue.

(4) The composite return shall report the share of distributive income of each electing owner, the share of distributive income from Oregon sources of each electing owner[, *the amount of tax withheld under ORS 314.781 on behalf of each electing owner*] and any other information required by the department. The composite return shall be filed with the department in the time, form and manner prescribed by the department. **The pass-through entity shall file an amended composite return to report adjustments arising from an audit or other action by the Internal Revenue Service or to correct any item reported on the original composite return.**

(5)(a) An electing owner may file a nonresident personal income tax return or a corporate excise or income tax return for the tax year of the electing owner in which the electing owner's share of distributive income reported on the composite return is properly reportable.

(b) An electing owner that files a return under this subsection shall [*receive credit for any tax paid on behalf of the owner by the pass-through entity*] **be allowed a subtraction under ORS chapter 316, 317 or 318 for its share of distributive income reported on the composite return.**

(6)(a) A pass-through entity that files a composite return under this section is subject to the administrative provisions of this chapter and ORS chapter 305.

(b) The department may adopt rules to prevent double taxation or double deduction of any amount included in the computation of income under this section.

SECTION 10. Nothing in sections 2 to 5 of this 2019 Act or the amendments to ORS 305.242, 314.712, 314.714 or 314.778 by sections 6 to 9 of this 2019 Act is intended to affect the obligation or right of a partner subject to the tax imposed under ORS chapter 316, 317 or 318 to report changes in the partner's taxable income subject to taxation by this state or changes in a taxpayer's tax liability paid to or owing to this state because of changes or corrections by, or as a result of original or amended returns accepted by:

(1) The Internal Revenue Service, in the case of a partner in a partnership that elects the application of section 6221(b) of the Internal Revenue Code; or

(2) The taxing authority of another state, in the case of any partner or partnership.

SECTION 11. ORS 314.723 is repealed.

SECTION 12. (1) Sections 2 to 5 of this 2019 Act, the amendments to ORS 305.242, 314.712 and 314.714 by sections 6 to 8 of this 2019 Act and the repeal of ORS 314.723 by section 11 of this 2019 Act apply to partnership adjustments for partnership tax years beginning on or after January 1, 2018.

(2) The amendments to ORS 314.778 by section 9 of this 2019 Act apply to tax years beginning on or after January 1, 2019.

SECTION 13. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

Passed by House April 1, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 14, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State