

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)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes partnership and partner audit procedures for Department of Revenue in conformity with federal centralized partnership audit regime. Allows department to issue assessment and collect taxes at partnership level based on adjustments arising from federal partnership-level audit or administrative adjustment request.

Applies to partnership adjustments for partnership tax years beginning on or after January 1, 2018.

Provides that election by pass-through entity to file composite return is irrevocable.

Applies to tax years beginning on or after January 1, 2019.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to audits of partnerships; creating new provisions; amending ORS 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 other competent authority or from the taxpayer's filing of an amended federal return, a federal refund claim or an administrative adjustment request.

(2) "Adjustments report" means a report used by a taxpayer to state adjustments to any partnership-related items, including adjustments arising from an action by the Internal Revenue Service or other competent authority or from the taxpayer's filing of an amended return, a refund claim or an administrative adjustment request.

(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.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (8) “Indirect partner” means a partner in a partnership or pass-through entity that holds
 2 an interest directly, or through another indirect partner, in a partnership or pass-through
 3 entity.

4 (9) “Nonresident partner” means a partner that is not a resident partner and is an indi-
 5 vidual, a trust or an estate.

6 (10) “Partnership-level audit” means an examination by the Internal Revenue Service at
 7 the partnership level pursuant to sections 6221 to 6241 of the Internal Revenue Code, or other
 8 competent authority, from which an adjustment arises.

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

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

14 (13) “Taxpayer” means:

15 (a) An individual or entity that is subject to the tax imposed under ORS chapter 316, 317
 16 or 318;

17 (b) A partnership subject to a partnership-level audit;

18 (c) A partnership that has made an administrative adjustment request and its tiered
 19 partners; or

20 (d) A tiered partner of a partnership.

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

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

26 (2)(a) A partnership’s federal partnership representative shall act as the partnership’s
 27 Oregon partnership representative for the reviewed year, unless the partnership designates
 28 another Oregon partnership representative.

29 (b) The Oregon partnership representative is responsible for any action required or per-
 30 mitted to be taken under this section, including providing the adjustments report to the
 31 Department of Revenue and making any election outlined under this section.

32 (c) With respect to representation before the department or the Oregon Tax Court, ORS
 33 305.242 applies for designation of a tax matters partner. If the federal partnership represen-
 34 tative does not qualify to be the tax matters partner under ORS 305.242, the federal part-
 35 nership representative may designate an Oregon partnership representative that qualifies to
 36 be a tax matters partner under ORS 305.242.

37 (d) With respect to an action required or permitted to be taken by a partnership under
 38 this section and proceedings under ORS 305.265, 305.270, 305.275 and 305.280, the Oregon
 39 partnership representative for the reviewed year has the sole authority to act on behalf of
 40 the partnership, and the direct partners and indirect partners of the partnership are bound
 41 by those actions.

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

44 (a) Not later than 90 days after the date of the audit report or the day on which the
 45 amended return, refund claim, administrative adjustment request or other similar report

1 was filed, the partnership shall:

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

5 (B) Concede the accuracy of the determination of the Internal Revenue Service or other
6 competent authority, or state wherein the taxpayer believes the determination to be erro-
7 neous;

8 (C) Submit with the adjustments report any other information required by the depart-
9 ment;

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

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

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

17 (b) Not later than 180 days after the date of the audit report or the day on which the
18 amended return, refund claim, administrative adjustment request or other similar report
19 was filed, each direct partner that is subject to the tax imposed under ORS chapter 316, 317
20 or 318 shall:

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

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

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

29 (a) Not later than 90 days after the date of the audit report, file with the department a
30 completed adjustments report, including partner information and any other information re-
31 quired by the department, and notify the department that it is making the election under
32 this subsection; and

33 (b) Not later than 180 days after the date of the audit report, pay an amount, in lieu of
34 taxes owed by the direct and indirect partners of the partnership, to be determined as fol-
35 lows:

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

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

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

1 (i) Determine the amount of any adjustment that is of a type that would be subject to
2 sourcing to Oregon under this chapter and determine the portion of this amount that would
3 be sourced to Oregon;

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

6 (iii) Determine the portion of the amount in sub-subparagraph (ii) of this subparagraph
7 that is properly allocable to indirect partners that are nonresident partners or other part-
8 ners not subject to tax on the adjustments or that can be excluded under subsection (8) of
9 this section; and

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

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

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

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

19 (a) The distributive share of adjustments that under this chapter or ORS chapter 317 or
20 318 must be included in the apportionable income of any direct or indirect partner that is a
21 corporate partner, provided that the audited partnership can reasonably determine this;

22 (b) The distributive share of adjustments made to a direct partner that is exempt from
23 tax under ORS 317.080; or

24 (c) Any adjustments arising from an administrative adjustment request.

25 (6) An audited partnership that is not otherwise subject to any reporting or payment
26 obligation to the department and that makes an election under subsection (4) of this section
27 consents to be subject to the laws of this state relating to reporting, assessment, appeals,
28 payment and collection of tax calculated under the election.

29 (7) The direct and indirect partners of an audited partnership that are tiered partners
30 and all partners of those tiered partners that are subject to tax imposed under ORS chapter
31 316, 317 or 318 are subject to the reporting and payment requirements of subsection (3) of
32 this section. The tiered partners are entitled to make the elections provided in subsections
33 (4) and (8) of this section. The tiered partners or their partners shall make the required re-
34 ports and payments not later than 90 days after the time for filing and furnishing statements
35 to tiered partners and their partners as established under section 6226 of the Internal Re-
36 venue Code and the regulations thereunder. The department may adopt rules to establish
37 procedures and interim time periods for the reports and payments required by tiered part-
38 ners and their partners and for making the elections under subsections (4) and (8) of this
39 section.

40 (8) Under procedures adopted by the department, an audited partnership or tiered part-
41 ner may, subject to the approval of the department, elect the use of an alternative reporting
42 and payment method, including alternatives to applicable time requirements or any other
43 requirement of this section, if the audited partnership or tiered partner demonstrates to the
44 satisfaction of the department that the requested method will reasonably provide for the
45 reporting and payment of taxes, penalties and interest due under the provisions of this sec-

1 tion. The audited partnership or tiered partner shall make an application for approval of an
 2 alternative reporting and payment method within the time limits provided in subsection (3)
 3 or (4) of this section, respectively. A partnership may appeal the denial of an alternative
 4 payment and reporting method using the procedures for a conference under ORS 305.265. The
 5 decision of the department regarding an appeal is final.

6 (9)(a) An election made pursuant to subsection (4) or (8) of this section is irrevocable.

7 (b) If reported properly and paid by the audited partnership or tiered partner, the amount
 8 determined in subsection (4)(b) of this section or under an election under subsection (8) of
 9 this section shall be treated as paid in lieu of taxes owed by its direct and indirect partners,
 10 to the extent applicable, on the same adjustments. Direct partners or indirect partners may
 11 not take any deduction or credit for the amount or claim a refund of the amount.

12 (c) Nothing in this subsection precludes a direct partner that is a resident partner from
 13 claiming a credit for any amounts paid by the audited partnership or tiered partner on the
 14 direct partner's behalf to another state or local tax jurisdiction in accordance with the pro-
 15 visions of ORS 316.082.

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

20 **SECTION 4.** The Department of Revenue shall assess additional tax, interest and penal-
 21 ties for adjustments arising from an audit by the Internal Revenue Service or other compe-
 22 tent authority, including a partnership-level audit, or reported by the taxpayer on an
 23 amended federal income tax return or refund claim or as part of an administrative adjust-
 24 ment request, by the following dates:

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

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

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

34 (2) If the taxpayer fails to file an adjustments report within the period specified in section
 35 3 of this 2019 Act or if the adjustments report filed by the taxpayer omits adjustments or
 36 understates the correct amount of tax owed, the department may assess any amounts, in-
 37 cluding in-lieu-of amounts, taxes, interest or penalties arising from the adjustments. The
 38 department shall issue a notice of deficiency to the taxpayer on or before the later of:

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

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

43 **SECTION 5.** Except for adjustments required to be reported for federal purposes under
 44 section 6225(a)(2) of the Internal Revenue Code, a taxpayer shall file a claim for refund or
 45 credit of tax arising from adjustments made by the Internal Revenue Service or other com-

1 **petent authority on or before the later of:**

2 (1) **The expiration of the last day for filing a claim for refund pursuant to ORS 314.415;**

3 **or**

4 **(2) Two years following the date of the audit report that made the adjustment.**

5 **SECTION 6.** ORS 314.712 is amended to read:

6 314.712. (1) Except as provided in ORS 314.722 or [314.723] **sections 2 to 5 of this 2019 Act**, a
7 partnership as such is not subject to the tax imposed by ORS chapter 316, 317 or 318. Partnership
8 income shall be computed pursuant to section 703 of the Internal Revenue Code, with the modifica-
9 tions, additions and subtractions provided in this chapter and ORS chapter 316. Persons carrying
10 on business as partners are liable for the tax imposed by ORS chapter 316, 317 or 318 on their dis-
11 tributive shares of partnership income only in their separate or individual capacities.

12 (2) If a partner engages in a transaction with a partnership other than in the partner's capacity
13 as a member of the partnership, the transaction shall be treated in the manner described in section
14 707 of the Internal Revenue Code.

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

19 **SECTION 7.** ORS 314.714 is amended to read:

20 314.714. (1) Each item of partnership income, gain, loss or deduction has the same character for
21 a partner as it has for federal income tax purposes. If an item is not characterized for federal income
22 tax purposes, it has the same character for a partner as if realized directly from the source from
23 which realized by the partnership or incurred in the same manner as incurred by the partnership.

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

29 (3) A partner shall, on the partner's return, treat a partnership item in a manner that is con-
30 sistent with the treatment of the partnership item on the partnership return, unless the partner
31 notifies the Department of Revenue of the inconsistency. The department shall prescribe by rule the
32 method for notification of an inconsistency. *[A partner of an electing large partnership under section*
33 *775 of the Internal Revenue Code must treat a partnership item in a manner that is consistent with the*
34 *treatment of the partnership item on the partnership return.]*

35 **SECTION 8.** ORS 314.778 is amended to read:

36 314.778. (1) A pass-through entity having distributive income attributable to Oregon sources
37 shall file a composite return of personal income and corporate income and excise tax on behalf of
38 owners that elect to be included in the composite return filed by the entity. **Distributive income**
39 **subject to this election does not include the distributive share that under this chapter or**
40 **ORS chapter 317 or 318 must be included in the apportionable income of any direct or indirect**
41 **partner that is a corporate partner, as defined in section 2 of this 2019 Act, provided that the**
42 **pass-through entity can reasonably determine that it must be included.**

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

45 (3) The election **is irrevocable and** shall be made by owners in the time, form and manner

1 prescribed by the Department of Revenue.

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

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

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

17 (6) **A pass-through entity that is not otherwise subject to any reporting or payment ob-**
 18 **ligation and that files a composite return under this section is subject to the administrative**
 19 **provisions of this chapter and ORS chapter 305.**

20 **SECTION 9. ORS 314.723 is repealed.**

21 **SECTION 10. (1) Sections 2 to 5 of this 2019 Act, the amendments to ORS 314.712 and**
 22 **314.714 by sections 6 and 7 of this 2019 Act and the repeal of ORS 314.723 by section 9 of this**
 23 **2019 Act apply to partnership adjustments for partnership tax years beginning on or after**
 24 **January 1, 2018.**

25 (2) **The amendments to ORS 314.778 by section 8 of this 2019 Act apply to tax years be-**
 26 **ginning on or after January 1, 2019.**

27 **SECTION 11. This 2019 Act takes effect on the 91st day after the date on which the 2019**
 28 **regular session of the Eightieth Legislative Assembly adjourns sine die.**