Senate Bill 193

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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.**

Provides that interstate broadcaster's market for sales, used in determination of receipts factor in apportionment formula for corporate excise tax, is in state if customer's corporate domicile is in state or if individual customer is resident of state.

Applies to tax years beginning on or after January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to apportionment of income of interstate broadcasters; creating new provisions; amending ORS 314.665 and 314.666; repealing ORS 314.680, 314.682, 314.684, 314.686, 314.688 and 314.690; and prescribing an effective date.

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

SECTION 1. ORS 314.666 is amended to read:

314.666. (1) A taxpayer's market for sales is in this state:

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

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

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

(2) A taxpayer's market for sales is in this state in the case of intangible property that is rented, leased or licensed, if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is deemed to be used in this state if that good or service is purchased by a consumer that is in this state.

(3) A taxpayer's market for sales is in this state in the case of intangible property that is sold, if and to the extent the property is used in this state. Under this subsection:

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

(b) Intangible property sales that are contingent on the productivity, use or disposition of the intangible property shall be treated as the rental, lease or licensing of such intangible property under subsection (2) of this section.

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

(4)(a) As used in this subsection:

(A)(i) "Broadcaster" means a television network, a cable program network or a television

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.

distribution company.

(ii) "Broadcaster" does not include a cable system operator, a direct broadcast satellite system operator or a television or radio station licensed by the Federal Communications Commission.

(B) "Broadcasting activities" means the transmission of any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or any other conduit of communication.

(C) "Commercial domicile" has the meaning given that term in ORS 314.610.

(D) "Customer" means an advertiser, a licensee or any other person that has a direct contractual relationship with an interstate broadcaster under which revenue is derived by the interstate broadcaster.

(b) The market for sales of a taxpayer that is an interstate broadcaster is in this state:

(A) If the commercial domicile of the customer is in this state; or

(B) In the case of an individual customer, if the customer is a resident of this state.

[*(4)*] **(5)** If the state or states of assignment under subsections (1) to [*(3)*] **(4)** of this section cannot be determined, the state or states of assignment shall be reasonably approximated.

SECTION 2. ORS 314.665 is amended to read:

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

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

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

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

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

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

(ii) 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; and

(B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an affiliate of the person storing goods in a public warehouse or a person that is related under section 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

(3) Subsection (2)(b) of this section does not apply to sales of tangible personal property if:

(a) The sales are included in the numerator of a formula used to apportion income to another state of the United States, a foreign country or the District of Columbia; and

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

(4) Sales, other than sales of tangible personal property, are in this state if the taxpayer's market for sales is in this state, as determined under ORS 314.666.

(5) Where the sales apportionment factor is determined by administrative rule pursuant to ORS [*314.682, 314.684 or*] 317.660 or other law, the Department of Revenue shall adopt rules that are

consistent with the determination of the sales factor under this section.

(6) The department may determine that a warehouse that meets the definition of "public warehouse" under this section may not be treated as a public warehouse if the warehouse is being used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are primarily for tax avoidance purposes.

(7) As used in this section, "public warehouse":

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

(b) Does not include a warehouse that is owned by a person that is related to the person that owns goods that are stored in the warehouse, as determined under section 267 of the Internal Revenue Code, or an affiliate of the person that owns goods that are stored in the warehouse.

SECTION 3. ORS 314.680, 314.682, 314.684, 314.686, 314.688 and 314.690 are repealed.

SECTION 4. The amendments to ORS 314.665 and 314.666 by sections 1 and 2 of this 2019 Act and the repeal of ORS 314.680, 314.682, 314.684, 314.686, 314.688 and 314.690 by section 3 of this 2019 Act apply to tax years beginning on or after January 1, 2020.

SECTION 5. 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.