

# House Bill 2546

Sponsored by Representative RESCHKE (Pre-session filed.)

## 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**.

Eliminates general rule that sale made to state where taxpayer is not taxable is considered sale in Oregon for apportionment of business income for corporate excise tax purposes.

Applies to tax years beginning on or after January 1, 2024.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to apportionment of business income; creating new provisions; amending ORS 314.665; and  
3 prescribing an effective date.

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

5 **SECTION 1.** ORS 314.665 is amended to read:

6 314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the numerator of which is the  
7 total sales of the taxpayer in this state during the tax period, and the denominator of which is the  
8 total sales of the taxpayer everywhere during the tax period.

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

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

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

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

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

19 (ii) The taxpayer's only activities in Oregon are the storage of the goods in the public ware-  
20 house prior to shipment and the presence of employees within this state solely for purposes of so-  
21 liciting sales of the taxpayer's products; and

22 (B) "Taxpayer" means a taxpayer as defined in section 7701 of the Internal Revenue Code, an  
23 affiliate of the person storing goods in a public warehouse or a person that is related under section  
24 267 of the Internal Revenue Code to the person storing goods in a public warehouse.

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

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

28 [*(b) The other state, a foreign country or the District of Columbia has imposed a tax on or meas-*  
29 *ured by the apportioned income.]*

30 [(4)] **(3)** Sales, other than sales of tangible personal property, are in this state if the taxpayer's

**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 market for sales is in this state, as determined under ORS 314.666.

2 [(5)] (4) Where the sales apportionment factor is determined by administrative rule pursuant to  
3 ORS 317.660 or other law, the Department of Revenue shall adopt rules that are consistent with the  
4 determination of the sales factor under this section.

5 [(6)] (5) The department may determine that a warehouse that meets the definition of “public  
6 warehouse” under this section may not be treated as a public warehouse if the warehouse is being  
7 used primarily for tax avoidance purposes or if transactions related to the use of the warehouse are  
8 primarily for tax avoidance purposes.

9 [(7)] (6) As used in this section, “public warehouse”:

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

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

15 **SECTION 2. The amendments to ORS 314.665 by section 1 of this 2023 Act apply to tax**  
16 **years beginning on or after January 1, 2024.**

17 **SECTION 3. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
18 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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