

House Bill 2567

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**.

Repeals corporate minimum tax. 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 repeal of the corporate minimum tax; creating new provisions; amending ORS 314.762,
3 317.070, 317.151 and 317.635 and section 8, chapter 115, Oregon Laws 2022; repealing ORS
4 317.090; and prescribing an effective date.

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

6 **SECTION 1.** ORS 314.762 is amended to read:

7 314.762. (1) Except as otherwise provided in ORS 314.766[,] **and** 314.767 [*and 317.090*], an S cor-
8 poration shall not be subject to the taxes imposed by ORS chapter 316, 317 or 318.

9 (2)(a) Subject to paragraphs (b) to (d) of this subsection, the taxable income of an S corporation
10 shall be computed pursuant to section 1363(b) of the Internal Revenue Code, with the modifications,
11 additions and subtractions provided in this chapter and ORS chapter 316.

12 (b) Except as otherwise provided under this chapter and ORS chapter 316, 317 or 318, and except
13 as inconsistent with ORS 314.761 to 314.772, subchapter C, chapter 1, Internal Revenue Code, shall
14 apply to an S corporation and its shareholders for Oregon tax purposes. For Oregon tax purposes,
15 the provisions of section 1371 of the Internal Revenue Code shall apply, subject to the modifications,
16 additions and subtractions under this chapter or ORS chapter 316, 317 or 318 and any provisions to
17 the contrary in this chapter or ORS chapter 316, 317 or 318.

18 (c) Notwithstanding ORS 317.476, 317.478 or 317.479, no carryforward, arising for a taxable year
19 for which a corporation is a C corporation, may be carried to a taxable year for which such cor-
20 poration is an S corporation.

21 (d) Notwithstanding ORS 317.476 or other law, no carryforward, and no carryback, shall arise
22 at the corporate level for a taxable year for which a corporation is an S corporation.

23 **SECTION 2.** ORS 317.070 is amended to read:

24 317.070. Every centrally assessed corporation, the property of which is assessed by the Depart-
25 ment of Revenue under ORS 308.505 to 308.674, and every mercantile, manufacturing and business
26 corporation and every financial institution doing business within this state, except as provided in
27 ORS 317.080 [*and 317.090*], shall annually pay to this state, for the privilege of carrying on or doing
28 business by it within this state, an excise tax according to or measured by its Oregon taxable in-
29 come, to be computed in the manner provided by this chapter, at the rate provided in ORS 317.061.

30 **SECTION 3.** ORS 317.151 is amended to read:

31 317.151. (1) A credit is allowed against the taxes otherwise due under this chapter. The amount

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 of the credit shall equal 10 percent of the fair market value of certain qualified charitable contri-
2 butions, as described in this section.

3 (2) To qualify for the credit allowed under subsection (1) of this section, the charitable contri-
4 bution must:

5 (a) Be a charitable contribution of tangible personal property described in section 1221(a)(1) of
6 the Internal Revenue Code that has as its original use, use by the donee for education of students
7 in this state, and that is a computer or other scientific equipment or apparatus; and

8 (b) Be a charitable contribution made during the tax year for which the credit is claimed to an
9 educational organization that is located in this state and that is:

10 (A) An institution of higher education described in section 170 (b)(1)(A)(ii) of the Internal Re-
11 venue Code; or

12 (B) A public educational institution offering instruction in prekindergarten through grade 12 or
13 any portion of that instruction.

14 (3) Notwithstanding subsection (2) of this section, a charitable contribution shall qualify for the
15 credit allowed under subsection (1) of this section, if:

16 (a) The charitable contribution would otherwise qualify for the credit under subsection (2) of
17 this section except that the charitable contribution is of a contract or agreement for the mainte-
18 nance of the computer or other scientific equipment or apparatus; or

19 (b) The charitable contribution is a contribution of moneys made under a contract or agreement
20 during the tax year for scientific or engineering research to an educational organization that is lo-
21 cated in this state and that is:

22 (A) An institution of higher education described in section 170 (b)(1)(A)(ii) of the Internal Re-
23 venue Code; or

24 (B) A public educational institution offering instruction in prekindergarten through grade 12 or
25 any portion of that instruction.

26 (4) The credit allowed under this section is in lieu of any deduction otherwise allowable under
27 this chapter. No deduction shall be allowed under this chapter for any amount upon which the credit
28 allowed under this section is based. However, nothing in this section shall affect the basis of the
29 property in the hands of the donee or any other taxpayer. The basis of the property in the hands
30 of the donee or other person shall be determined as if this section did not exist.

31 (5)(a) Except as provided in paragraph (b) of this subsection, the credit allowed under this sec-
32 tion *[shall]* **may** not exceed the tax liability of the taxpayer *[and shall not be allowed against the tax*
33 *imposed under ORS 317.090]*. To qualify for a credit under this section, the charitable contribution
34 must be made without consideration and be accepted by the donee institution or school.

35 (b) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
36 particular year may be carried forward and offset against the taxpayer's tax liability for the next
37 succeeding tax year. Any credit remaining unused in that next succeeding tax year may be carried
38 forward and used in the second succeeding tax year, and likewise any credit not used in that second
39 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
40 credit not used in that third succeeding tax year may be carried forward and used in the fourth
41 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
42 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
43 thereafter.

44 (6) For purposes of this section, "fair market value" shall be determined at the time the property
45 or services are contributed and shall be substantiated by whatever information the Department of

1 Revenue requires. A requirement for substantiation may be waived partially, conditionally or abso-
2 lutely, as provided under ORS 315.063.

3 **SECTION 4.** ORS 317.635 is amended to read:

4 317.635. [(1)] Except as provided in ORS 317.283, a domestic international sales corporation,
5 commonly referred to as “DISC,” as defined in section 992 of the Internal Revenue Code, shall be
6 taxed in the manner provided for other corporations under this chapter and without regard to
7 sections 991 to 996 of the Internal Revenue Code.

8 [(2) *An interest charge DISC formed on or before January 1, 2014, is exempt from the tax imposed*
9 *under ORS 317.090.*]

10 **SECTION 5.** Section 8, chapter 115, Oregon Laws 2022, is amended to read:

11 **Sec. 8.** (1) As used in this section and sections 9 and 10, **chapter 115, Oregon Laws 2022** [*of*
12 *this 2022 Act*]:

13 (a) “Agricultural worker” has the meaning given that term in section 1, **chapter 115, Oregon**
14 **Laws 2022** [*of this 2022 Act*].

15 (b) “Eligible employer” means an employer doing business in 2017 North American Industry
16 Classification System code 111, crop production, or code 112, animal production and aquaculture.

17 (c) “Full-time equivalent employee” means an employee or a combination of employees that
18 perform at least 2,080 hours of work for an employer in a calendar year.

19 (2)(a) A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer
20 is a corporation, under ORS chapter 317 or 318 is allowed for overtime compensation required under
21 section 2, **chapter 115, Oregon Laws 2022**, [*of this 2022 Act*] to be paid, for work performed in
22 Oregon, by an eligible employer to agricultural workers on an hourly basis. The amount of the credit
23 shall equal a percentage of the actual excess paid to agricultural workers during the calendar year
24 in which the tax year begins, as determined under section 9, **chapter 115, Oregon Laws 2022** [*of*
25 *this 2022 Act*].

26 (b) A labor contractor licensed under ORS 658.410 may not claim a credit under this section.
27 An eligible employer may claim a credit under this section for wages paid to workers recruited,
28 solicited, supplied or employed by a labor contractor on behalf of the eligible employer.

29 [(c) *Notwithstanding ORS 317.090 (3), a credit under this section is allowed against the tax im-*
30 *posed under ORS 317.090.*]

31 [(d)] (c) A credit is not allowed under this section for any overtime wages paid to an employee
32 who is exempt from the provisions of section 2, **chapter 115, Oregon Laws 2022**, [*of this 2022*
33 *Act*] as a member of the immediate family of the employer.

34 (3) Prior to claiming the credit allowed under this section, a taxpayer is required to receive a
35 notice of acknowledgment from the Department of Revenue, as provided in section 10, **chapter 115,**
36 **Oregon Laws 2022** [*of this 2022 Act*], stating the maximum amount of credit that the taxpayer may
37 claim for the calendar year.

38 (4) If the amount allowable:

39 (a) As a credit under this section against taxes imposed under ORS chapter 316, when added to
40 the sum of the amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax pre-
41 payment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters
42 314 and 316 for the tax year after application of any nonrefundable credits allowable for purposes
43 of ORS chapter 316 for the tax year, the amount of the excess shall be refunded to the taxpayer as
44 provided in ORS 316.502.

45 (b) As a credit under this section against taxes imposed under ORS chapter 317 or 318, when

1 added to the sum of the amount of estimated tax paid under ORS 314.515 and any other tax pre-
 2 payment amounts, exceeds the taxes imposed by ORS chapters 314 and 317 for the tax year (reduced
 3 by any nonrefundable credits allowable for purposes of ORS chapter 317 for the tax year), the
 4 amount of the excess shall be refunded to the taxpayer as provided in ORS 314.415.

5 (5) Any amount that is refunded to the taxpayer under this section and that is in excess of the
 6 tax liability of the taxpayer does not bear interest.

7 (6) A nonresident shall be allowed the credit under this section. The credit shall be computed
 8 in the same manner and be subject to the same limitations as the credit granted to a resident.
 9 However, the credit shall be prorated using the proportion provided in ORS 316.117.

10 (7) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the
 11 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
 12 lowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

13 (8) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
 14 resident occurs, the credit allowed under this section shall be determined in a manner consistent
 15 with ORS 316.117.

16 (9) The Department of Revenue shall adopt rules for the purposes of sections 8 to 11, **chapter**
 17 **115, Oregon Laws 2022** [*of this 2022 Act*], including policies and procedures for providing notice to
 18 taxpayers regarding the credit allowed under this section as required in section 10, **chapter 115,**
 19 **Oregon Laws 2022** [*of this 2022 Act*].

20 **SECTION 6. ORS 317.090 is repealed.**

21 **SECTION 7. The amendments to ORS 314.762, 317.070, 317.151 and 317.635 and section 8,**
 22 **chapter 115, Oregon Laws 2022, by sections 1 to 5 of this 2023 Act and the repeal of ORS**
 23 **317.090 by section 6 of this 2023 Act apply to tax years beginning on or after January 1, 2024.**

24 **SECTION 8. This 2023 Act takes effect on the 91st day after the date on which the 2023**
 25 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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