House Bill 2577

Sponsored by Representative RESCHKE (Presession 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.**

Increases threshold amount of understated income tax above which penalty applies.
Applies to tax years beginning on or after January 1, 2023.
Takes effect on 91st day following adjournment sine die.

1 **A BILL FOR AN ACT**

2 Relating to the penalty for understatement of net tax; creating new provisions; amending ORS

3 314.402; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.402 is amended to read:

6 314.402. (1) If the Department of Revenue determines that there is a substantial understatement

7 of net tax for any tax year under any law imposing a tax on or measured by net income, there shall

8 be added to the amount of tax required to be shown on the return a penalty equal to 20 percent of

9 the amount of any underpayment of tax attributable to the understatement.

10 (2)**(a)** A substantial understatement of net tax exists for any tax year if the amount of the

11 understatement for the tax year exceeds **$1 million.**[*:*]

12 [*(a) Except as provided in paragraph (b) of this subsection, $2,400.*]

13 [*(b) In the case of a corporation other than an S corporation, as defined in section 1361 of the*

14 *Internal Revenue Code, or a personal holding company, as defined in section 542 of the Internal Re-*

15 *venue Code, $3,500.*]

16 [*(c)(A)*] **(b)(A)** For a calendar year beginning on or after January 1, [*2017*] **2025**, the Department

17 of Revenue shall make a cost-of-living adjustment to the net tax threshold amounts described in

18 [*paragraphs (a) and (b)*] **paragraph (a)** of this subsection.

19 (B) The cost-of-living adjustment for a calendar year is the percentage by which the monthly

20 averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31

21 of the prior calendar year exceeds the monthly averaged index for the period beginning September

22 1, [*2015*] **2023**, and ending August 31, [*2016*] **2024**.

23 (C) As used in this paragraph, "U.S. City Average Consumer Price Index" means the U.S. City

24 Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of

25 Labor Statistics of the United States Department of Labor.

26 (D) If any adjustment determined under subparagraph (B) of this paragraph is not a multiple of

27 $50, the adjustment shall be rounded to the next lower multiple of $50.

28 (E) The adjustment shall apply to all tax years beginning in the calendar year for which the

29 adjustment is made.

30 (3) In the case of any item attributable to an abusive tax shelter:

31 (a) [*No*] **A** reduction of the amount of the understatement [*shall*] **may not** be made with regard

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 to that item regardless of the existence of substantial authority for the treatment of the item by the

2 taxpayer.

3 (b) [*No*] **A** reduction of the amount of the understatement [*shall*] **may not** be made with regard

4 to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless,

5 in addition to the disclosure, the taxpayer reasonably believed that the tax treatment of the item

6 was more likely than not the proper treatment.

7 (4) As used in this section:

8 (a) "Abusive tax shelter" means any partnership, corporation or other organization or entity,

9 any investment plan or arrangement or any other plan or arrangement, which has as its principal

10 purpose the evasion or improper avoidance of federal or state income tax. "Abusive tax shelter"

11 includes any investment or activity in connection with which tax benefits derived by investors are

12 not clearly intended under the tax laws or any investment or activity that involves little or no

13 economic reality, making use of unrealistic allocations of income or expenses, inflated appraisals of

14 asset values, losses substantially in excess of investment, mismatching of income and expenses, fi-

15 nancing techniques that do not conform to standard commercial business practice or mischaracter-

16 ization of the substance of the investment or activity.

17 (b) "Understatement" means the excess of the amount of the net tax required to be shown on

18 the return for the tax year over the amount of the net tax shown on the return, reduced by any

19 portion of the understatement that is attributable to:

20 (A) The tax treatment of any item by the taxpayer if there is or was substantial authority for

21 such treatment; or

22 (B) Any item with respect to which:

23 (i) The relevant facts affecting the item's tax treatment are adequately disclosed in the return

24 or in a statement attached to the return; and

25 (ii) There is a reasonable basis for the tax treatment of the item by the taxpayer.

26 (5) The penalty imposed under this section is in addition to any other penalty imposed by law.

27 A penalty imposed under this section shall be treated for all purposes as an additional deficiency

28 subject to the provisions of ORS 305.265, but shall not bear interest.

29 (6) The department may waive all or any part of the penalty imposed under this section on a

30 showing by the taxpayer that there was reasonable cause for the understatement, or any portion

31 thereof, and that the taxpayer acted in good faith.

32 **SECTION 2. The amendments to ORS 314.402 by section 1 of this 2023 Act apply to tax**

33 **years beginning on or after January 1, 2023.**

34 **SECTION 3. This 2023 Act takes effect on the 91st day after the date on which the 2023**

35 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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