

House Bill 2674

Sponsored by Representative PHAM K (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**.

Includes, for purposes of corporate excise tax, corporation incorporated in United States or foreign country in determination of unitary relationship among corporations.

Applies to tax years beginning on or after January 1, 2023.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of multinational corporations; creating new provisions; amending ORS 314.505,
3 317.010, 317.090, 317.267, 317.479, 317.720, 317.725, 401.690, 731.854 and 743B.012; repealing ORS
4 317.705, 317.710 and 317.715; and prescribing an effective date.

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

6 **SECTION 1. Sections 2 to 7 of this 2023 Act are added to and made a part of ORS chapter**
7 **317.**

8 **SECTION 2. As used in sections 2 to 7 of this 2023 Act and ORS 317.720:**

9 (1) **"Apportionable income" has the meaning given that term in ORS 314.610.**

10 (2) **"Combined group" means the group of all persons whose income and apportionment**
11 **factors are required to be taken into account pursuant to section 3 of this 2023 Act in de-**
12 **termining the taxpayer's share of the net apportionable income or loss apportionable to this**
13 **state.**

14 (3) **"Corporation" means a corporation for profit that is incorporated under or subject**
15 **to ORS chapter 60 or that is incorporated under laws other than the laws of this state, or**
16 **organization of any kind treated as a corporation for tax purposes under the laws of this**
17 **state, wherever located, which if the organization were doing business in this state would**
18 **be a taxpayer.**

19 (4) **"Nonapportionable income" has the meaning given that term in ORS 314.610.**

20 (5) **"Partnership" means a general or limited partnership, or an organization of any kind**
21 **treated as a partnership for tax purposes under the laws of this state.**

22 (6) **"Person" means any individual, firm, partnership, general partner of a partnership,**
23 **limited liability company, registered limited liability partnership, foreign limited liability**
24 **partnership, association, corporation, company, syndicate, estate, trust, business trust,**
25 **trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization**
26 **of any kind.**

27 (7) **"Taxpayer" means any person subject to the tax imposed by ORS chapter 317 or 318.**

28 (8) **"Unitary business" means a single economic enterprise whose members are separate**
29 **parts of a single business entity, or of a commonly controlled group of business entities, that**
30 **are sufficiently interdependent, integrated and interrelated through their activities to pro-**

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 vide a mutual benefit that produces a sharing or exchange of value among the entities and
 2 a significant flow of value to the separate parts.

3 (9) “Unitary income” means income of a corporation or group of corporations engaged
 4 in business activities that constitute a unitary business that includes the subsidiary to which
 5 excess losses are attributable, and a member of which is subject to taxation under this
 6 chapter.

7 (10) “United States” means a state, territory or insular possession of the United States,
 8 the District of Columbia and the Commonwealth of Puerto Rico.

9 **SECTION 3.** (1) A taxpayer engaged in a unitary business with one or more other cor-
 10 porations shall file a combined report that includes the income determined under section 6
 11 of this 2023 Act and the apportionment factors determined under ORS 314.280 or 314.605 to
 12 314.675 and section 5 of this 2023 Act of all corporations that are members of the unitary
 13 business and any other information required by the Department of Revenue.

14 (2) The department may adopt rules requiring that the combined report include the in-
 15 come and associated apportionment factors of any persons that are not included under sub-
 16 section (1) of this section, but that are members of a unitary business, in order to reflect
 17 proper apportionment of income of the entire unitary business. Rules adopted under this
 18 subsection may require combination of persons doing business in this state that are not, or
 19 would not be, subject to the tax imposed under ORS chapter 317 or 318.

20 (3) The department shall by rule adopt policies and procedures ensuring that persons are
 21 not subject to duplicate taxation or allowed duplicate deductions.

22 (4) If the department determines that the reported income or loss of a taxpayer engaged
 23 in a unitary business with any person not included pursuant to subsection (1) of this section
 24 represents an avoidance or evasion of tax by the taxpayer, the department may, on a case-
 25 by-case basis, require all or any part of the income or loss and associated apportionment
 26 factors of this person be included in the taxpayer’s combined report.

27 (5) If the department determines that the inclusion of associated apportionment factors
 28 under subsection (2) of this section does not fairly reflect the taxpayer’s business activity in
 29 this state, the department may require:

30 (a) The exclusion of any one or more of the factors;

31 (b) The inclusion of one or more additional factors that will fairly reflect the taxpayer’s
 32 business activity in this state; or

33 (c) The employment of any other method to effectuate a fair reflection of the total
 34 amount of income subject to apportionment and an equitable allocation and apportionment
 35 of the taxpayer’s income.

36 (6) The business conducted by a partnership that is directly or indirectly held by a cor-
 37 poration shall be considered the business of the corporation to the extent of the
 38 corporation’s distributive share of the partnership income, inclusive of guaranteed payments
 39 to the extent prescribed by rules adopted by the department.

40 **SECTION 4.** (1) The members of an affiliated group making a consolidated federal return
 41 or a combined report under sections 2 to 7 of this 2023 Act may not be treated as one tax-
 42 payer, but the property, payroll, sales or other factors of all members of a unitary group
 43 shall be included in the numerator of the Oregon apportionment percentage if any member
 44 of the group is taxable in this state. Each taxpayer member is responsible for tax based on
 45 its taxable income or loss apportioned or allocated to this state, which includes, in addition

1 to other types of income, the taxpayer member's apportioned share of apportionable income
2 of the combined group, where apportionable income of the combined group is calculated as
3 a summation of the individual net apportionable incomes of all members of the combined
4 group. A member's net apportionable income is determined by removing all but apportionable
5 income, expense and loss from that member's total income.

6 (2) Each taxpayer member is responsible for tax based on the taxpayer member's taxable
7 income or loss apportioned or allocated to this state, which shall include:

8 (a) The taxpayer member's share of any apportionable income apportionable to this state
9 of each of the combined groups of which the taxpayer is a member, determined under section
10 5 of this 2023 Act;

11 (b) The taxpayer member's share of any apportionable income apportionable to this state
12 of a distinct business activity conducted within and without the state wholly by the taxpayer
13 member, determined under ORS 314.280 or 314.605 to 314.675;

14 (c) The taxpayer member's income from a business conducted wholly by the taxpayer
15 member entirely within the state;

16 (d) The taxpayer member's income sourced to this state from the sale or exchange of
17 capital or assets, and from involuntary conversions, as determined under section 6 of this
18 2023 Act;

19 (e) The taxpayer member's nonapportionable income or loss allocable to this state, de-
20 termined under ORS 314.280 or 314.625 to 314.645; and

21 (f) The taxpayer member's income or loss allocated or apportioned in an earlier year,
22 required to be taken into account as state source income during the taxable year, other than
23 a net operating loss.

24 (3) If the taxable income computed pursuant to sections 4 to 6 of this 2023 Act results
25 in a loss for a taxpayer member of the combined group, that taxpayer member has an Oregon
26 net loss. An Oregon net loss is applied as a deduction in a subsequent year, as provided in
27 ORS 317.476, only if that taxpayer has Oregon source positive net income, whether or not the
28 taxpayer is or was a member of a combined reporting group in the prior or subsequent year.

29 (4) Except as otherwise provided, a tax credit or post-apportionment deduction earned
30 by one member of the combined group, but not fully used by or allowed to that member, may
31 not be used in whole or in part by another member of the combined group or applied in whole
32 or in part against the total income of the combined group. A post-apportionment deduction
33 carried over into a subsequent year as to the member that incurred the deduction and
34 available as a deduction to that member in a subsequent year will be considered in the
35 computation of the income of that member in the subsequent year, regardless of the com-
36 position of that income as apportioned, allocated or wholly within this state.

37 **SECTION 5.** The taxpayer's share of the apportionable income apportionable to this state
38 of each combined group of which the taxpayer is a member shall be the product of:

39 (a) The apportionable income of the combined group, determined under section 6 of this
40 2023 Act; and

41 (b) The taxpayer member's apportionment percentage, determined under ORS 314.280 or
42 314.605 to 314.675. The sales of a partnership shall be included in the determination of the
43 partner's apportionment percentage in proportion to a ratio, the numerator of which is the
44 amount of the partner's distributive share of the partnership's unitary income included in
45 the income of the combined group in accordance with section 6 of this 2023 Act, and the de-

1 nominator of which is the amount of the partnership's total unitary income.

2 **SECTION 6.** The apportionable income of a combined group is determined as follows:

3 (1) From the total income of the combined group, determined under subsection (2) of this
 4 section, subtract any income, and add any expense or loss, other than the apportionable in-
 5 come, expense or loss of the combined group.

6 (2) Except as otherwise provided, the total income of the combined group is the sum of
 7 the income of each member of the combined group determined under federal income tax
 8 laws, as if the member were not consolidated for federal purposes, with the additions, sub-
 9 tractions, adjustments and other modifications contained in this chapter. The income of each
 10 member of the combined group shall be determined as follows:

11 (a) For any member incorporated in the United States, or included in a consolidated
 12 federal corporate income tax return, the income to be included in the total income of the
 13 combined group shall be the federal taxable income for the corporation with the additions,
 14 subtractions, adjustments and other modifications contained in this chapter.

15 (b)(A) For any member not described in paragraph (a) of this section, the income to be
 16 included in the total income of the combined group shall be determined as follows:

17 (i) A profit and loss statement shall be prepared for each foreign branch or corporation
 18 in the currency in which the books of account of the branch or corporation are regularly
 19 maintained.

20 (ii) Adjustments shall be made to the profit and loss statement to conform it to the ac-
 21 counting principles generally accepted in the United States for the preparation of similar
 22 statements, except as modified by this section.

23 (iii) Adjustments shall be made to the profit and loss statement to conform it to the tax
 24 accounting standards required by ORS chapters 317 and 318.

25 (iv) Except as otherwise provided by law, the profit and loss statement of each member
 26 of the combined group, and the apportionment factors related thereto, whether United States
 27 or foreign, shall be translated into the currency in which the parent company maintains its
 28 books and records.

29 (v) Income apportioned to this state shall be expressed in United States dollars.

30 (B) In lieu of the procedures set forth in subparagraph (A) of this paragraph, any mem-
 31 ber not described in paragraph (a) of this subsection may determine its income on the basis
 32 of the consolidated profit and loss statement that includes the member and that is prepared
 33 for filing with the Securities and Exchange Commission by related corporations if the Di-
 34 rector of the Department of Revenue determines that the profit and loss statement reason-
 35 ably approximates income as determined under this chapter. If the member is not required
 36 to file with the Securities and Exchange Commission, the director may allow the use of the
 37 consolidated profit and loss statement prepared for reporting to shareholders and subject to
 38 review by an independent auditor. If the statements filed with the Securities and Exchange
 39 Commission or prepared for reporting to shareholders do not reasonably approximate income
 40 as determined under this chapter, the director may accept those statements with appropriate
 41 adjustments to approximate income determined under this chapter.

42 (c) If a unitary business includes income from a partnership, the income to be included
 43 in the total income of the combined group shall be the member of the combined group's di-
 44 rect and indirect distributive share of the partnership's unitary apportionable income.

45 (d) All dividends paid by one member to another member of the combined group shall,

1 to the extent those dividends are paid out of the earnings and profits of the unitary business
 2 included in the combined report, in the current or an earlier year, be eliminated from the
 3 income of the recipient. This provision does not apply to dividends received from members
 4 of the unitary business that are not a part of the combined group.

5 (e) Except as otherwise provided by law, apportionable income from an intercompany
 6 transaction between members of the same combined group shall be deferred in a manner
 7 similar to 26 C.F.R. 1.1502-13. Deferred apportionable income resulting from an intercom-
 8 pany transaction between members of a combined group shall be restored to the income of
 9 the seller and shall be treated as apportionable income earned immediately before the event
 10 if:

11 (A) The object of a deferred intercompany transaction is:

12 (i) Resold by the buyer to an entity that is not a member of the combined group;

13 (ii) Resold by the buyer to an entity that is a member of the combined group for use
 14 outside the unitary business in which the buyer and seller are engaged; or

15 (iii) Converted by the buyer to a use outside the unitary business in which the buyer and
 16 seller are engaged; or

17 (B) The buyer and seller are no longer members of the same combined group, regardless
 18 of whether the members remain unitary.

19 (f) A charitable expense incurred by a member of a combined group shall, to the extent
 20 allowable as a deduction pursuant to section 170 of the Internal Revenue Code, be subtracted
 21 first from the apportionable income of the combined group, subject to the application of the
 22 income limitations of section 170 of the Internal Revenue Code to the entire apportionable
 23 income of the group, and any remaining amount shall then be treated as a nonapportionable
 24 expense allocable to the member that incurred the expense, subject to the application of the
 25 income limitations of section 170 of the Internal Revenue Code to the nonbusiness income
 26 of that specific member. Any charitable deduction disallowed under this paragraph, but al-
 27 lowed as a carryover deduction in a subsequent year, shall be treated as originally incurred
 28 in the subsequent year by the same member, and this paragraph shall apply in the subse-
 29 quent year in determining the allowable deduction in that year.

30 (g) Gain or loss from the sale or exchange of capital assets, property described by section
 31 1231(a)(3) of the Internal Revenue Code and property subject to an involuntary conversion,
 32 shall be removed from the total separate net income of each member of a combined group
 33 and shall be apportioned and allocated as follows:

34 (A) For each class of gain or loss, namely, short term capital, long term capital, Internal
 35 Revenue Code section 1231, or involuntary conversions, all members' apportionable gain and
 36 loss for the class shall be combined without netting between such classes, and each class of
 37 net apportionable gain or loss shall be separately apportioned to each member using the
 38 member's apportionment percentage determined under section 5 of this 2023 Act.

39 (B) Each taxpayer member shall then net its apportionable gain or loss for all classes,
 40 including any such apportionable gain and loss from other combined groups, against the
 41 taxpayer member's nonapportionable gain and loss for all classes allocated to this state, us-
 42 ing the rules of sections 1222 and 1231 of the Internal Revenue Code, without regard to any
 43 of the taxpayer member's gains or losses from the sale or exchange of capital assets, Inter-
 44 nal Revenue Code section 1231 property, and involuntary conversions that are
 45 nonapportionable items allocated to another state.

1 (C) Any resulting state source income, or loss if the loss is not subject to the limitations
 2 of section 1211 of the Internal Revenue Code, of a taxpayer member produced by the appli-
 3 cation of subparagraphs (A) and (B) of this paragraph shall then be applied to all other state
 4 source income or loss of that member.

5 (D) Any resulting state source loss of a member that is subject to the limitations of
 6 section 1211 of the Internal Revenue Code shall be carried forward by that member and shall
 7 be treated as state source short-term capital loss incurred by that member for the year for
 8 which the carryover applies.

9 (h) Any expense of one member of the unitary group that is directly or indirectly at-
 10 tributable to the nonapportionable income or exempt income of another member of the
 11 unitary group shall be allocated to that other member as corresponding nonapportionable
 12 expense or exempt expense, as appropriate.

13 **SECTION 7.** As a filing convenience, and without changing the respective liability of the
 14 group members, members of a combined group may annually elect to designate one taxpayer
 15 member of the combined group to file a single return in the form and manner prescribed by
 16 the Department of Revenue, in lieu of filing their own respective returns, provided that the
 17 taxpayer designated to file the single return consents to act as surety with respect to the
 18 tax liability of all other taxpayers properly included in the combined report and agrees to act
 19 as agent on behalf of those taxpayers for the year of the election for tax matters relating
 20 to the combined report for that year. If for any reason the surety is unwilling or unable to
 21 perform its responsibilities, tax liability may be assessed against the taxpayer members.

22 **SECTION 8.** ORS 314.505 is amended to read:

23 314.505. (1) Every corporation expecting to have a tax liability under either ORS chapter 317
 24 or 318 of \$500 or more shall make an estimate of tax liability for the corporation's tax year and pay
 25 the amount of tax determined as provided in ORS 314.515.

26 (2) The Department of Revenue shall by rule provide for the payment of estimated tax liability
 27 by a **combined** group of [*affiliated*] corporations filing a [*consolidated return*] **combined report**
 28 **under sections 2 to 7 of this 2023 Act.**

29 (3) As used in ORS 314.505 to 314.525, the term "estimated tax liability" means the tax computed
 30 under ORS chapter 317 or 318 less the credits allowed for purposes of ORS chapter 317 or 318.

31 **SECTION 9.** ORS 317.010 is amended to read:

32 317.010. As used in this chapter, unless the context requires otherwise:

33 (1) "Centrally assessed corporation" means every corporation the property of which is assessed
 34 by the Department of Revenue under ORS 308.505 to 308.674.

35 (2) "Department" means the Department of Revenue.

36 (3)[*(a)*] "Consolidated federal return" means the return permitted or required to be filed by a
 37 group of affiliated corporations under section 1501 of the Internal Revenue Code.

38 [*(b)*] "*Consolidated state return*" means the return required to be filed under ORS 317.710 (5).]

39 (4) "Doing business" means any transaction or transactions in the course of its activities con-
 40 ducted within the state by a national banking association, or any other corporation; provided, how-
 41 ever, that a foreign corporation whose activities in this state are confined to purchases of personal
 42 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be
 43 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-
 44 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-
 45 termined as provided in section 1504 of the Internal Revenue Code.

1 (5) “Excise tax” means a tax measured by or according to net income imposed upon national
 2 banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing
 3 and business corporations for the privilege of carrying on or doing business in this state.

4 (6) “Financial institution” has the meaning given that term in ORS 314.610 except that it does
 5 not include a credit union as defined in ORS 723.006, an interstate credit union as defined in ORS
 6 723.001 or a federal credit union.

7 (7) “Internal Revenue Code,” except where the Legislative Assembly has provided otherwise,
 8 refers to the laws of the United States or to the Internal Revenue Code as they are amended and
 9 in effect:

10 (a) On December 31, 2021; or

11 (b) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

12 (8) “Oregon taxable income” means taxable income, less the deduction allowed under ORS
 13 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and
 14 ORS 317.650 to 317.665.

15 (9) “Oregon net loss” means taxable loss, except as otherwise provided with respect to insurers
 16 in subsection (11) of this section and ORS 317.650 to 317.665.

17 (10) “Taxable income or loss” means the taxable income or loss determined, or in the case of a
 18 corporation for which no federal taxable income or loss is determined, as would be determined, un-
 19 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States
 20 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,
 21 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-
 22 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or
 23 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a
 24 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of
 25 income from transactions or activities carried on both within and without the state) applies, to
 26 derive taxable income or loss, the following shall occur:

27 (a) From the amount otherwise determined under this subsection, subtract nonapportionable in-
 28 come, or add nonapportionable loss, whichever is applicable.

29 (b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon ap-
 30 portionment percentage defined under ORS 314.280, 314.650 or 314.667, whichever is applicable. The
 31 resulting product shall be Oregon apportioned income or loss.

32 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this
 33 subsection, add nonapportionable income allocable entirely to Oregon under ORS 314.280 or 314.625
 34 to 314.645, or subtract nonapportionable loss allocable entirely to Oregon under ORS 314.280 or
 35 314.625 to 314.645. The resulting figure is “taxable income or loss” for those corporations carrying
 36 on taxable transactions or activities both within and without Oregon.

37 (11) As used in ORS 317.122 and 317.650 to 317.665, “insurer” means any domestic, foreign or
 38 alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its at-
 39 torney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting
 40 as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or
 41 interinsurance exchange. However, “insurer” does not include title insurers or health care service
 42 contractors operating pursuant to ORS 750.005 to 750.095.

43 **SECTION 10.** ORS 317.090 is amended to read:

44 317.090. (1) As used in this section:

45 (a) “Oregon sales” means:

1 (A) If the corporation apportions income under ORS 314.650 to 314.665 for Oregon tax purposes,
 2 the total sales of the taxpayer in this state during the tax year, as determined for purposes of ORS
 3 314.665;

4 (B) If the corporation does not apportion income for Oregon tax purposes, the total sales in this
 5 state that the taxpayer would have had, as determined for purposes of ORS 314.665, if the taxpayer
 6 were required to apportion income for Oregon tax purposes; or

7 (C) If the corporation apportions income using a method different from the method prescribed
 8 by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by rule.

9 (b) If the corporation is an agricultural cooperative that is a cooperative organization described
 10 in section 1381 of the Internal Revenue Code, "Oregon sales" does not include sales representing
 11 business done with or for members of the agricultural cooperative.

12 (2) Each corporation or *[affiliated]* **combined** group of corporations filing a *[return under ORS*
 13 *317.710]* **combined report under sections 2 to 7 of this 2023 Act** shall pay annually to the state,
 14 for the privilege of carrying on or doing business by it within this state, a minimum tax as follows:

15 (a) If Oregon sales properly reported on a return are:

16 (A) Less than \$500,000, the minimum tax is \$150.

17 (B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

18 (C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

19 (D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

20 (E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

21 (F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

22 (G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

23 (H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000.

24 (I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.

25 (J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.

26 (K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.

27 (L) \$100 million or more, the minimum tax is \$100,000.

28 (b) If a corporation is an S corporation, the minimum tax is \$150.

29 (3) The minimum tax is not apportionable (except in the case of a change of accounting periods),
 30 is payable in full for any part of the year during which a corporation is subject to tax and may not
 31 be reduced, paid or otherwise satisfied through the use of any tax credit.

32 **SECTION 11.** ORS 317.267 is amended to read:

33 317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income:

34 (a) Amounts received as dividends from corporations deducted for federal purposes pursuant to
 35 section 243 or 245 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code;

36 (b) Amounts deducted for income repatriated, deemed or otherwise, under section 965 of the
 37 Internal Revenue Code;

38 (c) Amounts deducted as global intangible low-taxed income pursuant to section 250 of the
 39 Internal Revenue Code; **or**

40 (d) Amounts paid as dividends by a public utility or telecommunications utility and deducted for
 41 federal purposes pursuant to section 247 of the Internal Revenue Code[; or].

42 *[(e) Dividends eliminated under Treasury Regulations adopted under section 1502 of the Internal*
 43 *Revenue Code that are paid by members of an affiliated group that are eliminated from a consolidated*
 44 *federal return pursuant to ORS 317.715 (2).]*

45 (2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of

1 this section, there shall be subtracted from federal taxable income an amount equal to 70 percent
2 of dividends (determined without regard to section 78 of the Internal Revenue Code) received or
3 deemed received from corporations if such dividends are included in federal taxable income. How-
4 ever:

5 (a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of
6 the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the
7 same conditions and in same amount as the dividends received deduction otherwise allowable for
8 federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

9 (b) In the case of any dividend received from a 20 percent owned corporation, as defined in
10 section 243(c) of the Internal Revenue Code, or global intangible low-taxed income included in gross
11 income pursuant to section 951A of the Internal Revenue Code, this subsection shall be applied by
12 substituting "80 percent" for "70 percent."

13 (c) A dividend that is not treated as a dividend under section 243(d) of the Internal Revenue
14 Code may not be treated as a dividend for purposes of this subsection.

15 (d) If a dividends received deduction is not allowed for federal tax purposes because of section
16 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for
17 received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

18 (e) In the case of any dividend received from an alien, domestic or foreign insurer, as defined
19 in ORS 731.082, [*that would be included in the taxpayer's consolidated Oregon return but for the ap-*
20 *plication of ORS 317.710 (5) or (7),*] this subsection shall be applied by substituting "100 percent" for
21 "70 percent."

22 (f) A subtraction under this subsection is not allowed for any amount of foreign-source dividend
23 income, as described in section 245A of the Internal Revenue Code, that is included in gross income.

24 (3) There shall be excluded from the sales factor of any apportionment formula employed to at-
25 tribute income to this state any amount subtracted from federal taxable income under subsection (2)
26 of this section or deducted under section 245A of the Internal Revenue Code. The amount of any
27 dividend or of any global intangible low-taxed income that is apportionable shall be determined as
28 provided by the apportionment formula applicable to the taxpayer, as provided in ORS 314.280 and
29 314.605 to 314.675, but may not include any amount subtracted under subsection (2) of this section.

30 **SECTION 12.** ORS 317.479 is amended to read:

31 317.479. (1) Preacquisition losses, as described under section 384 of the Internal Revenue Code,
32 to the extent allocated or apportioned to Oregon, with the additions, subtractions, modifications and
33 other adjustments required for purposes of this chapter, shall not be considered in determining the
34 taxable income or loss under ORS 317.010.

35 (2) If any preacquisition loss, as described in subsection (1) of this section, may not offset a re-
36 cognized built-in gain by reason of section 384 of the Internal Revenue Code, such gain shall not
37 be taken into account in determining under ORS 317.476 the amount of such loss which may be
38 carried to other taxable years.

39 (3) In any case in which a preacquisition loss, as described in subsection (1) of this section, for
40 any taxable year is subject to limitation under subsection (1) of this section and a taxable loss from
41 such taxable year is not subject to such limitation, taxable income shall be treated as having been
42 offset first by the loss subject to such limitation.

43 (4) The definitions contained in section 384(c) of the Internal Revenue Code shall apply for
44 purposes of this section, except that where appropriate, gain, loss and items of income shall be de-
45 termined as allocated or apportioned to Oregon and with the additions, subtractions, modifications

1 and other adjustments contained in this chapter.

2 (5) Section 384(b) and (c)(5) and (6) of the Internal Revenue Code shall be applied for purposes
3 of this section in a manner consistent with ORS [317.705 to 317.715,] 317.720 and 317.725 **and**
4 **sections 2 to 7 of this 2023 Act.**

5 **SECTION 13.** ORS 317.720 is amended to read:

6 317.720. [(1)] To derive Oregon taxable income, there shall be subtracted from federal taxable
7 income the amount of the excess loss account included under Treasury Regulations adopted under
8 section 1502 of the Internal Revenue Code to the extent that the excess losses have not offset
9 unitary income. However, in no event shall excess losses be recaptured on account of Treasury
10 Regulations adopted under section 1502 of the Internal Revenue Code for purposes of this chapter
11 if the losses were deducted for a taxable year beginning before January 1, 1986.

12 [(2) *As used in this section, "unitary income" means income of a unitary group, as that term is*
13 *defined in ORS 317.705, that includes the subsidiary to which excess losses are attributable, and a*
14 *member of which is subject to taxation under this chapter.*]

15 **SECTION 14.** ORS 317.725 is amended to read:

16 317.725. (1)(a) If any provision of the Internal Revenue Code [*or of ORS 317.705 to 317.715,*] re-
17 lating to the use of consolidated federal returns **or sections 2 to 7 of this 2023 Act relating to**
18 **the use of combined reports**, requires that any amount be added to or deducted from federal
19 consolidated taxable income or the Oregon taxable income subject to taxation under this chapter
20 or ORS chapter 318 that previously had been added to or deducted from income upon or with respect
21 to which tax liability was measured under the Oregon law in effect prior to the taxpayer's taxable
22 year as to which [*ORS 317.705 to 317.715*] **sections 2 to 7 of this 2023 Act**, are first effective, an
23 appropriate adjustment shall be made to the income for the year or years subject to [*ORS 317.705*
24 *to 317.715*] **sections 2 to 7 of this 2023 Act**, so as to prevent the double taxation or double de-
25 duction of any such amount that previously had entered into the computation of income upon or
26 with respect to which tax liability was measured.

27 (b) If it appears to the Department of Revenue that a corporation making a return under this
28 chapter or ORS chapter 318 is required to make any adjustment to [*federal consolidated*] **the**
29 **corporation's** taxable income pursuant to [*ORS 317.715*] **sections 2 to 7 of this 2023 Act**, that is
30 unduly burdensome or that produces an inequitable or unreasonable result, the department, upon
31 application by the corporation, may relieve the corporation of the requirement and may permit or
32 require any other adjustment to be made to fairly reflect income and produce an equitable result.
33 The department shall adopt rules prescribing the method by which a corporation may apply for relief
34 under this paragraph.

35 (2) Notwithstanding the provisions of ORS 317.013, any regulation promulgated pursuant to
36 sections 1501 to 1505 of the Internal Revenue Code [*which*] **that** makes reference to provisions of
37 the Internal Revenue Code with respect to which modifications to federal taxable income are pre-
38 scribed under this chapter shall not be applied to the extent the regulation conflicts with the pro-
39 visions of this chapter.

40 (3) The Department of Revenue shall not make any adjustment under this section if the resulting
41 increase or decrease in tax liability would be less than \$250.

42 **SECTION 15.** ORS 401.690 is amended to read:

43 401.690. (1) Disaster or emergency related work conducted by an out-of-state business may not
44 be used as the sole basis for:

45 (a) Notwithstanding ORS 317.018 and 317.080, a finding that the out-of-state business is doing

1 business in this state;

2 (b) Imposition of the taxes imposed under ORS 314.725 or ORS chapter 316 or 317;

3 (c) Notwithstanding ORS 60.704, 63.704, 65.704, 67.705 and 70.355, a requirement that the out-
4 of-state business register with or obtain authority to transact business from the Secretary of State
5 during the disaster response period; or

6 (d) A requirement that the out-of-state business or an out-of-state employee comply with state
7 or local business or professional licensing or registration requirements or state and local taxes or
8 fees including unemployment insurance, state or local occupational licensing fees and ad valorem
9 tax on equipment brought into this state for use during the disaster response period and subse-
10 quently removed from this state.

11 (2) For purposes of any state or local tax on or measured by, in whole or in part, net or gross
12 income or receipts, all activity of the out-of-state business that is conducted in this state, or equip-
13 ment brought into this state, pursuant to ORS 401.685 to 401.695 shall be disregarded with respect
14 to the filing requirements of [ORS 317.710 and 317.715] **sections 2 to 7 of this 2023 Act** and the
15 apportionment provisions of ORS 314.605 to 314.675. Receipts from disaster or emergency related
16 work may not be sourced to and may not otherwise impact or increase the amount of income, re-
17 venue or receipts apportioned to this state.

18 (3) For purposes of ORS chapter 316, an out-of-state employee is not taxed as a resident, non-
19 resident or part-year resident and is not considered to have established domicile or residence in this
20 state. Wages paid for disaster or emergency related work are not subject to the withholding pro-
21 visions of ORS 316.162 to 316.221.

22 (4) Out-of-state businesses and out-of-state employees shall be required to pay transaction taxes
23 and fees including fuel taxes, transient lodging taxes, car rental taxes or applicable fees during the
24 disaster response period, unless an exemption applies to the taxes or fees during the disaster re-
25 sponse period.

26 (5) Any out-of-state business that transacts business in this state or out-of-state employee who
27 remains in this state after the end of the disaster response period will become subject to this state's
28 normal standards for establishing domicile or residency or doing business in this state and will be-
29 come responsible for any business or employee tax requirements that ensue.

30 (6) ORS 401.990 does not apply to ORS 401.685 to 401.695.

31 **SECTION 16.** ORS 731.854 is amended to read:

32 731.854. (1) When by or pursuant to the laws of any other state or foreign country any taxes,
33 licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other
34 material obligations, prohibitions or restrictions are or would be imposed upon insurers domiciled
35 in this state, or upon the insurance producers or representatives of such insurers, which are in ex-
36 cess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines,
37 penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed
38 upon similar insurers, or upon the insurance producers or representatives of such insurers, of such
39 other state or country under the statutes of this state, so long as such laws of such other state or
40 country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate,
41 or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions
42 of whatever kind shall be imposed by the Director of the Department of Consumer and Business
43 Services upon the insurers, or upon the insurance producers or representatives of such insurers, of
44 such other state or country doing business or seeking to do business in this state. Any tax, license
45 or other fee or other obligation imposed by any city, county, or other political subdivision or agency

1 of such other state or country on insurers domiciled in this state or their insurance producers or
2 representatives shall be deemed to be imposed by such state or country within the meaning of this
3 subsection.

4 (2) Foreign reciprocal or interinsurance exchanges filing a [*consolidated return*] **combined re-**
5 **port** for purposes of ORS chapter 317 shall prepare and file a separate individual retaliatory tax
6 calculation. The excise tax for the consolidated group shall be allocated for retaliatory tax purposes
7 among the individual foreign insurers writing Oregon premiums. The allocation, after excluding the
8 domestic share as determined by the Director of the Department of Consumer and Business Services
9 by rule, shall be in the proportion that the premiums written in Oregon by a foreign insurer of the
10 group bears to the total premiums written in Oregon by all foreign insurers in the group writing
11 premiums in Oregon.

12 (3) This section does not apply as to personal income taxes, nor as to local ad valorem taxes
13 on real or personal property nor as to special purpose obligations or assessments heretofore imposed
14 by another state in connection with particular classes of insurance, other than property insurance;
15 except that deductions, from premium taxes or other taxes otherwise payable, allowed on account
16 of real estate or personal property taxes paid shall be taken into consideration by the director in
17 determining the propriety and extent of retaliatory action under this section.

18 (4) For the purpose of applying this section to an alien insurer, its domicile shall be determined
19 in accordance with ORS 731.092 and 731.096.

20 (5) For the purpose of applying this section to foreign and alien insurers, the following specif-
21 ically shall be treated as taxes imposed by this state:

22 (a) The corporate excise tax imposed under ORS chapter 317, without taking into consideration
23 the amount of any reduction due to the credit allowed under ORS 315.533.

24 (b) The assessments imposed under ORS 731.804 made to support the legislatively authorized
25 budget of the Department of Consumer and Business Services with respect to the functions of the
26 department under the Insurance Code.

27 (c) The assessments paid by insurers on behalf of their insureds under ORS 656.612.

28 **SECTION 17.** ORS 743B.012 is amended to read:

29 743B.012. (1) As a condition of transacting business in the small employer health insurance
30 market in this state, a carrier shall offer small employers all of the carrier's health benefit plans,
31 approved by the Department of Consumer and Business Services for use in the small employer
32 market, for which the small employer is eligible.

33 (2) A carrier shall issue to a small employer any health benefit plan that is offered by the car-
34 rier if the small employer applies for the plan and agrees to make the required premium payments
35 and to satisfy the other provisions of the health benefit plan.

36 (3) A multiple employer welfare arrangement, professional or trade association or other similar
37 arrangement established or maintained to provide benefits to a particular trade, business, profession
38 or industry or their subsidiaries may not issue coverage to a group or individual that is not in the
39 same trade, business, profession or industry as that covered by the arrangement. The arrangement
40 shall accept all groups and individuals in the same trade, business, profession or industry or their
41 subsidiaries that apply for coverage under the arrangement and that meet the requirements for
42 membership in the arrangement. For purposes of this subsection, the requirements for membership
43 in an arrangement may not include any requirements that relate to the actual or expected health
44 status of the prospective enrollee.

45 (4) A carrier shall, pursuant to subsection (2) of this section, accept applications from and offer

1 coverage to a small employer group covered under an existing health benefit plan regardless of
2 whether a prospective enrollee is excluded from coverage under the existing plan because of late
3 enrollment. When a carrier accepts an application for a small employer group, the carrier may
4 continue to exclude the prospective enrollee excluded from coverage by the replaced plan until the
5 prospective enrollee would have become eligible for coverage under that replaced plan.

6 (5) A carrier is not required to accept applications from and offer coverage pursuant to sub-
7 section (2) of this section if the department finds that acceptance of an application or applications
8 would endanger the carrier's ability to fulfill its contractual obligations or result in financial
9 impairment of the carrier.

10 (6) A carrier shall actively market all health benefit plans that are offered by the carrier to
11 small employers in the geographical areas in which the carrier makes coverage available or provides
12 benefits.

13 (7)(a) Subsection (2) of this section does not require a carrier to offer coverage to or accept
14 applications from:

15 (A) A small employer if the small employer is not physically located in the carrier's approved
16 service area;

17 (B) An employee of a small employer if the employee does not work or reside within the carrier's
18 approved service areas; or

19 (C) Small employers located within an area where the carrier reasonably anticipates, and dem-
20 onstrates to the department, that it will not have the capacity in its network of providers to deliver
21 services adequately to the enrollees of those small employer groups because of its obligations to
22 existing small employer group contract holders and enrollees.

23 (b) A carrier that does not offer coverage pursuant to paragraph (a)(C) of this subsection may
24 not offer coverage in the applicable service area to new employer groups other than small employers
25 until the carrier resumes enrolling groups of new small employers in the applicable area.

26 (8) For purposes of ORS 743B.010 to 743B.013, except as provided in this subsection, carriers
27 that are affiliated carriers or that are [*eligible to file a consolidated tax return pursuant to ORS*
28 *317.715*] **required to file a combined report under sections 2 to 7 of this 2023 Act** shall be
29 treated as one carrier and any restrictions or limitations imposed by ORS 743B.010 to 743B.013 ap-
30 ply as if all health benefit plans delivered or issued for delivery to small employers in this state by
31 the affiliated carriers were issued by one carrier. However, any insurance company or health
32 maintenance organization that is an affiliate of a health care service contractor located in this state,
33 or any health maintenance organization located in this state that is an affiliate of an insurance
34 company or health care service contractor, may treat the health maintenance organization as a
35 separate carrier and each health maintenance organization that operates only one health mainte-
36 nance organization in a service area in this state may be considered a separate carrier.

37 (9) A carrier that elects to discontinue offering all of its health benefit plans to small employers
38 under ORS 743B.013 (3)(e) or elects to discontinue renewing all such plans is prohibited from offer-
39 ing health benefit plans to small employers in this state for a period of five years from:

40 (a) The date of notice to the department pursuant to ORS 743B.013 (3)(e); or

41 (b) If notice is not provided under paragraph (a) of this subsection, the date on which the de-
42 partment provides notice to the carrier that the department has determined that the carrier has
43 effectively discontinued offering health benefit plans to small employers in this state.

44 (10) The department may, in accordance with ORS 743B.129, shorten the period of prohibition
45 described in subsection (9) of this section if necessary to ensure, in all geographic areas of this

1 state, that:

2 (a) A competitive health insurance market exists;

3 (b) Small employers have a reasonable number of health insurance options available to them;

4 and

5 (c) Consumers who purchase insurance are protected.

6 **SECTION 18. ORS 317.705, 317.710 and 317.715 are repealed.**

7 **SECTION 19. Sections 2 to 7 of this 2023 Act, the amendments to ORS 314.505, 317.010,**
8 **317.090, 317.267, 317.479, 317.720, 317.725, 401.690, 731.854 and 743B.012 by sections 8 to 17 of**
9 **this 2023 Act and the repeal of ORS 317.705, 317.710 and 317.715 by section 18 of this 2023 Act**
10 **apply to tax years beginning on or after January 1, 2023.**

11 **SECTION 20. This 2023 Act takes effect on the 91st day after the date on which the 2023**
12 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

13