

# Chapter 315

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**GENERAL PROVISIONS**

**315.005 Short title.** ORS 315.005 to 315.845 shall be known and cited as the Property Tax Relief Act of 1929.

**315.010 Definitions.** As used in ORS 315.005 to 315.845, unless the context requires otherwise:

(1) "Commission" or "tax commission" means the State Tax Commission.

(2) "Corporation" includes every corporation and every company, joint stock company, joint stock association, business, trust, society or other association organized for profit wherein interest or ownership is evidenced by certificates or other written instruments or wherein the interest or rights of stockholders, members, associates or beneficiaries are represented or evidenced by units or shares.

(3) "Cost" means the price paid for property less the depreciation or depletion sustained.

(4) "Distribution in complete liquidation" means a single and final distribution or any one of a series of distributions made by a corporation in complete cancelation or redemption of all of its stock in accordance with a bona fide plan of liquidation and dissolution under which plan the transfer of the property in the course of the liquidation is to be completed within the time specified in the plan, not exceeding three years from the close of the tax year during which is made the first of the series of distributions under the plan.

(5) "Distribution in partial liquidation" means a distribution, or one of a series of distributions, by a corporation in complete cancelation or redemption of a part of its stock.

(6) "Dividend" means any distribution (except a distribution in complete or partial liquidation of a corporation) made by a corporation to its stockholders, whether in money or in other property (a) out of its earnings or profits whenever accumulated or (b) out of the earnings or profits of the tax year (computed as of the close of the tax year without diminution by reason of any distribution made during the tax year), without regard to the amount of the earnings and profits at the time the distribution was made.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether indi-

vidual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(8) "Fiscal year" means an accounting period of 12 months, ending on the last day of any month other than December.

(9) "Foreign country" or "foreign government" means any jurisdiction other than one embraced within the United States.

(10) "Individual" means a natural person including an alien and a minor.

(11) "Money or credits" means and includes money at interest, bonds, notes, claims, demands and all other evidences of indebtedness, secured or unsecured, including notes, bonds or certificates secured by mortgages, and all shares of stock in corporations.

(12) "Paid," for the purposes of the deductions under ORS 315.005 to 315.845, means "paid or accrued" or "paid or incurred." The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under ORS 315.005 to 315.845.

(13) "Received," for the purpose of the computation of net income under ORS 315.005 to 315.845, means "received or accrued." The term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under ORS 315.005 to 315.845.

(14) "Resident" applies only to natural persons and includes for the purpose of determining liability to the taxes imposed by ORS 315.005 to 315.845 upon or with reference to the income of any tax year any person domiciled in the State of Oregon, and any other person who maintains a place of abode within the state and spends in the aggregate more than seven months of the tax year within the state.

(15) "Stock dividend" means any distribution by a corporation to a stockholder of stock in the distributing corporation, or of rights to acquire such stock, where by the distribution the pre-existing proportionate interest of the stockholder in the corporation is changed.

(16) "Stockholder" means any owner or holder of any certificate, unit or share representing or evidencing an interest in any corporation.

(17) "Taxpayer" includes any natural person or fiduciary whose income is in whole or in part subject to the taxes imposed by ORS 315.005 to 315.845.

(18) "Tax year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under ORS 315.005 to 315.845.

(19) "United States" includes the states, the territories of Alaska and Hawaii and the District of Columbia.

**315.015 Adjusted gross income defined.** For tax years beginning after December 31, 1950, the term "adjusted gross income" means the gross income minus:

(1) The deductions allowed by ORS 315.305 to 315.350 which:

(a) Are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employe.

(b) Consist of expenses of travel, meals and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employe.

(c) Consist of expenses, other than those described in paragraph (b) of this subsection, paid or incurred by the taxpayer, in connection with the performance by him of services as an employe, under a reimbursement or other expense allowance arrangement with his employer.

(d) Are attributable to property held for the production of rents or royalties.

(e) Consist of federal income taxes paid or accrued during the tax year.

(f) Are attributable to nonbusiness bad debts or the worthlessness of securities.

(2) The deductions allowed by ORS 315.275 to 315.295 as losses from the sale or exchange of property.

(3) Any dependency credit allowed by ORS 315.445; except that where the tax is computed under subsection (2) of ORS 315.090 the dependency credit shall not be prorated in the case of a change of status during the taxable year, but the dependency status shall be determined as of the last day of the taxpayer's taxable year.

**315.020 Adjusted gross income defined for tax years prior to January 1, 1951.** For tax years beginning after December 31, 1948, and prior to January 1, 1951, the term "adjusted gross income" means adjusted gross income as set forth in subsection (3) of section 1, chapter 413, Oregon Laws 1951.

**315.025 Excluding period of military service outside United States in determining amount of tax liability or time within which an act must be done.** The period of time (if such period is longer than 90 days) during which an individual is continuously outside the continental United States as a member of the Armed Forces of the United States, and the next 90 days thereafter, shall be disregarded in determining, with respect to any personal income tax liability or credit or refund:

(a) The amount of any such liability, credit or refund (including penalty and interest);

(b) Whether any return, report or additional information was filed or provided, or any such tax liability or refund was paid, within the time prescribed therefor (other than returns and payments of withholding taxes);

(c) Whether any petition, claim, credit, adjustment, appeal or suit was allowed, filed or commenced within the time prescribed therefor; or,

(d) Pursuant to regulations of the commission under this section, whether or not any other act required or permitted under ORS 315.005 to 315.845 was done within the time prescribed therefor.

**315.030 Evading requirements of ORS 315.005 to 315.845 prohibited.** No person, or officer or employe of a corporation or a member or employe of a partnership, shall, with intent to evade any requirement of ORS 315.005 to 315.845 or any lawful requirement of the commission thereunder:

(1) Fail to pay any tax or to make, sign or verify any return or to supply any information required by or under ORS 315.005 to 315.845;

(2) Make, render, sign or verify any false or fraudulent return or statement; or

(3) Supply any false or fraudulent information.

**315.035 Venue on failure to comply with ORS 315.005 to 315.845.** The failure to do any act required by or under ORS 315.005 to 315.845 shall be deemed an act committed in part at the office of the commission in Oregon.

**315.040 Omission of previously enacted savings clauses not intended as repeal.** The omission from the Oregon Revised Statutes of those statutes which were part of Acts amending the statutes that constitute the

source of ORS 315.005 to 315.845 and which provided savings clauses for the statutes amended, is not intended as a repeal of them. Such statutes shall, in so far as they are applicable, continue to be so applicable.

**315.045 Effect of subsequent repeal of ORS 315.005 to 315.845.** In the event of repeal of ORS 315.005 to 315.845, unless otherwise specifically provided in the repeal, ORS 315.005 to 315.845 shall remain in full force for the assessment, imposition and collection of the tax and all interest, penalty or forfeitures which have accrued or may accrue in relation to any such tax for the calendar year in which the tax is repealed.

**315.050** [ Reserved for expansion ]

**IMPOSITION OF TAX; TAX RATES; TAX TABLE; CREDITS AGAINST TAX**

**315.055 Imposition of tax.** (1) A tax hereby is imposed upon every resident of the state upon and with respect to his entire net income, as defined in ORS 315.155, including his entire net income from personal services rendered both within and without the state.

(2) A like tax hereby is imposed upon every individual not a resident of this state upon and with respect to his entire net income, as defined in ORS 315.155, from all property located in the state, from every business, trade, profession or occupation carried on in the state, and from money or credits having a situs for taxation in the state.

(3) The taxes imposed by this section shall be levied, collected and paid annually, computed at the rates prescribed by ORS 315.065 to 315.085 on net incomes after deducting the proper exemptions and credits in accordance with ORS 315.455.

**315.060 Taxes imposed by ORS 315.005 to 315.845 on income from money and credits in lieu of other state income taxes on such income.** The taxes imposed by ORS 315.005 to 315.845 with reference to income from money or credits shall be in lieu of all other net income taxes imposed by this state with reference to such income received after December 31, 1938; and such income received after that date shall not be taxed under the Intangibles Income Tax Act of 1931, as amended.

**315.065 Tax rate for tax years 1930, 1931 and 1932.** (1) For the tax years 1930, 1931 and 1932, the rates shall be:

(a) On the first \$1,000 of taxable income, or any part thereof, one percent.

(b) On the second \$1,000 of taxable income, or any part thereof, two percent.

(c) On the third \$1,000 of taxable income, or any part thereof, three percent.

(d) On the fourth \$1,000 of taxable income, or any part thereof, four percent.

(e) On all taxable income in excess of \$4,000, five percent.

(2) Such tax shall first be levied, collected and paid in the year 1931 and with respect to the net income received during the calendar year 1930 or during any tax year ending during such calendar year.

**315.070 Tax rate for tax years 1933 to 1938.** For the tax year 1933, and for each succeeding tax year beginning prior to January 1, 1939, the rates shall be:

(1) On the first \$1,000 of taxable income, or any part thereof, two percent.

(2) On the second \$1,000 of taxable income, or any part thereof, three percent.

(3) On the third \$1,000 of taxable income, or any part thereof, four percent.

(4) On the fourth \$1,000 of taxable income, or any part thereof, five percent.

(5) On the fifth \$1,000 of taxable income, or any part thereof, six percent.

(6) On all taxable income in excess of \$5,000, seven percent.

**315.075 Tax rate for tax years 1939 to 1946.** For tax years beginning after December 31, 1938, and before January 1, 1947, the rates shall be:

(1) On the first \$500 of taxable income, or any part thereof, two percent.

(2) On the second \$500 of taxable income, or any part thereof, three percent.

(3) On the second \$1,000 of taxable income, or any part thereof, four percent.

(4) On the third \$1,000 of taxable income, or any part thereof, five percent.

(5) On the fourth \$1,000 of taxable income, or any part thereof, six percent.

(6) On all taxable income in excess of \$4,000, seven percent.

**315.080 Tax rate for tax years after 1946.** For tax years beginning after December 31, 1946, the rates shall be:

(1) On the first \$500 of taxable income, or any part thereof, two percent.

(2) On the second \$500 of taxable income, or any part thereof, three percent.

(3) On the second \$1,000 of taxable income, or any part thereof, four percent.

(4) On the third \$1,000 of taxable income, or any part thereof, five percent.

(5) On the fourth \$1,000 of taxable income, or any part thereof, six percent.

(6) On all taxable income in excess of \$4,000, and not in excess of \$8,000, seven percent.

(7) On all taxable income in excess of \$8,000, eight percent.

**315.085 Amount of tax where joint return.** For tax years beginning after December 31, 1948, in the case of a joint return of husband and wife under ORS 315.510, the tax under ORS 315.055 shall be twice the tax that would be determined if the net income and the applicable exemptions and credits provided by ORS 315.455 were reduced by one-half.

**315.090 Election to pay tax in accordance with table.** (1) For tax years beginning after December 31, 1944, and before January 1, 1949, in lieu of the tax imposed by OCLA 110-1605, as amended by section 3, chapter 455, Oregon Laws 1943, and as limited by any discount provided by OCLA 110-1637, as amended by section 1, chapter 441, Oregon Laws 1943, an individual whose adjusted gross income for such taxable year is not more than \$5,000 may irrevocably elect for each taxable year to pay a tax in accordance with the tax table prepared by the State Tax Commission for the particular tax year, as provided by section 1, chapter 411, Oregon Laws 1945, and section 3, chapter 353, Oregon Laws 1947.

(2) For tax years beginning after December 31, 1948, in lieu of the tax imposed by ORS 315.055, and subject to the conditions of ORS 315.355, an individual or husband and wife filing a joint return whose adjusted gross income for the tax year is not more than \$5,000 may irrevocably elect for that tax year to pay a tax in accordance with a tax table, preparation of which by the State Tax Commission hereby is authorized. The taxes in such table shall be computed by adjusted gross income brackets, which shall be graduated by not less than each \$25 nor by more than each \$100 of adjusted gross income; and the taxes in such table shall be computed to the nearest dollar at the applicable rates set out in ORS 315.080 and 315.085 upon the taxable balance of net income after deducting from the median adjusted gross income of each such

bracket (a) the standard deduction provided by ORS 315.355 based upon such median adjusted gross income, and (b) the applicable exemption (but not any dependency credit) provided by ORS 315.455. Such exemption shall not, however, be prorated in case a taxpayer's status changes during his taxable year, but the taxpayer's exemption status shall be determined as of the last day of his taxable year; and in the case of a husband and wife filing separate returns the married exemption shall be divided equally between them.

(3) If the taxpayer claims any deduction in arriving at adjusted gross income which is not within the classes of deductions properly allowable in computing adjusted gross income under the law applicable to the tax year for which the return is made, his election to pay the tax computed in accordance with the tax table provided in this section is not irrevocable, and a new election may be made in an amended return, subject to the restrictions contained in ORS 315.355.

**315.095 Credit for taxes paid to other states or countries.** (1) Residents of this state shall be allowed a credit against the taxes imposed by ORS 315.005 to 315.845 for income taxes imposed by and paid to another state or country on income taxed under ORS 315.005 to 315.845, subject to the following conditions:

(a) The credit shall be allowed only for taxes paid to such other state or country on income derived from sources within such state or country which is taxed under the laws thereof irrespective of the residence or domicile of the recipient.

(b) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state or country for taxes paid or payable under ORS 315.005 to 315.845.

(c) The fraction of the gross income for Oregon income tax purposes which is subject to income tax in another state or country shall be ascertained and the Oregon net income tax before credit under this section shall be multiplied by such fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(d) Receipts showing the payment of income taxes to another state or country and a certified copy of a return or returns upon

the basis of which such taxes are assessed must be filed with the commission at, or prior to, the time credit is claimed. If credit is claimed on account of a deficiency assessment, a certified copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, must be filed.

(2) If an estate or trust is a resident of this state within the definition in ORS 315.810 and also a resident of another state or country, it shall, notwithstanding the limitations contained in subsection (1) of this section, be allowed a credit against the taxes imposed by ORS 315.005 to 315.845 for income taxes imposed by and paid to such other state or country in accordance with the formula contained in paragraph (c) of subsection (1) of this section and the requirements of paragraph (d) of subsection (1) of this section.

(3) A resident beneficiary of an estate or trust who is taxed under ORS 315.005 to 315.845 on the income of the estate or trust received by the beneficiary shall be allowed a credit against the taxes imposed by ORS 315.005 to 315.845 on such income for income taxes paid by the estate or trust to another state or country on such income in accordance with the formula contained in paragraph (c) of subsection (1) of this section and the requirements of paragraph (d) of subsection (1) of this section.

(4) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, such fact shall immediately be reported by the taxpayer to the commission. A tax equal to the credit allowed for such taxes so credited or refunded shall be due and payable from the taxpayer upon notice and demand from the commission. Interest shall be added to and collected as a part of such tax at the rate of six percent per year from the date the credit was allowed under this section to the date of the notice and demand. If the amount of such tax and the interest thereon is not paid within 10 days from the date of the notice and demand, the taxpayer shall be subject to the other penalties and interest on delinquent payments provided for in ORS 315.005 to 315.845.

(5) Nothing contained in this section shall be construed to permit a credit against the taxes paid under ORS 315.005 to 315.845 for federal income taxes.

### 315.100 [Reserved for expansion]

## GROSS INCOME; EXCLUSIONS FROM GROSS INCOME

**315.105 Gross income.** "Gross income" includes gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; and from royalties paid by licensees of copyrights, patents and other similar property or privileges created by law, and by licensees, or by lessees of real property or interest therein, for the privilege of severing or removing minerals, oil or other natural deposits; and from interest, rent, dividends, including stock dividends, or any other income from money or credits, or from securities; also from the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever, including income derived through resident and nonresident estates or trusts by the beneficiaries thereof. "Gross income" also includes salaries and compensation of all employes of this state or any political subdivision, district, or municipality thereof; and of all officials and judges, notwithstanding that such officials or judges hold constitutional offices and their compensation or salaries are not subject to being diminished during their terms of office.

**315.110 Exclusions from gross income.** "Gross income" does not include the following items, which shall be exempted from taxation under ORS 315.005 to 315.845:

(1) Interest, dividends and other income realized prior to January 1, 1939, which otherwise is taxed by this state as income of the taxpayer under the Intangibles Income Tax Act of 1931, as amended.

(2) Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise. However, if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(3) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or en-

dowment contract, whether in a single sum or otherwise, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity contract shall be included in gross income; except that there shall be excluded from gross income the amount received in the taxable year until the aggregate of the amounts excluded from gross income under this subsection on any such contract equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under this section.

(4) The value of property acquired by gift, bequest, devise or descent. However, the income from such property shall be included in gross income.

(5) Interest upon the obligations of the United States or its possessions, agencies or instrumentalities, to the extent such interest is exempt from state taxation by law.

(6) Pensions or retirement pay received for disability incurred in the performance of active service in the military or naval forces of the United States, in the amount of \$1,500, or in the amount exempted from state taxation by federal law, whichever is the greater.

(7) Any amounts received through accident or health insurance or under workmen's compensation Acts as compensation for personal injuries or sickness, plus the amount of damages received, whether by suit or agreement, on account of such injuries or sickness, and any amounts received by way of unemployment compensation, old age benefits or similar payments in pursuance of state or federal law.

**315.115 Pay for active service in Armed Forces.** Effective with respect to tax years beginning after December 31, 1946, in lieu of the deduction provided by ORS 315.460, there shall be exempted from taxation under ORS 315.005 to 315.845, compensation received for active service in the Armed Forces

of the United States in an amount not exceeding \$3,000 per year.

**315.120 Alimony or separate maintenance payments.** (1) In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or such payments so received from income of property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation (including a subsequent modification or amendment of such decree or instrument) shall be includible in the gross income of such wife, and such amounts received from income of property so transferred shall not be includible in the gross income of such husband. This subsection shall not apply to that part of any such periodic payments which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of such husband. In case any such periodic payment is less than the amount specified in the decree or written instrument, for the purpose of applying the preceding sentence, such payment, to the extent of such sum payable for such support, shall be considered a payment for such support. Instalment payments discharging a part of an obligation, the principal sum of which is, in terms of money or property, specified in the decree or instrument, shall not be considered periodic payments for the purposes of this subsection; except that an instalment payment shall be considered a periodic payment for the purposes of this subsection if such principal sum, by the terms of the decree or instrument, may be or is to be paid within a period ending more than 10 years from the date of such decree or instrument, but only to the extent that such instalment payment for the taxable year of the wife (or if more than one such instalment payment for such taxable year is received during such taxable year, the aggregate of such instalment payments) does not exceed 10 percent of the principal sum.

(2) As used in this section, if the husband and wife referred to in this section are



divorced, wherever appropriate to the meaning of this section, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in the section are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of the section, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

**315.125 to 315.150** [Reserved for expansion]

### NET INCOME; METHODS OF ACCOUNTING AND REPORTING

**315.155 Net income.** "Net income" means the gross income of the taxpayer, as defined in ORS 315.105 and 315.110, less the deductions allowed by ORS 315.305 to 315.360.

**315.160 Accounting periods and methods.** The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the commission does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

**315.165 Amendment of return to change basis of reporting.** Whether the taxpayer has filed on a cash or accrual basis, he may not amend his return for the purpose of changing his basis of filing unless in the opinion of the commission it is necessary to make the amended return on the different basis to correct errors in the original return or more clearly to reflect net income.

**315.170 Period for reporting income.** The amount of all items of gross income shall be reported in the return for the taxable year in which received by the taxpayer, unless, under a method of accounting properly employed by the taxpayer, such

amounts are to be properly accounted for as of a different period.

**315.175 Death of taxpayer; effect on reporting of gains, profits and income.** In the case of the death of a taxpayer, gains, profits and income are to be returned for the taxable year in which they are received by the taxpayer, unless they are to be reported as of a different period in accordance with the approved method of accounting followed by him. If a taxpayer has died, there shall also be included in computing his net income for the taxable period in which he died amounts accrued up to the date of his death (except as to livestock or crops not wholly produced within such taxable period) if not otherwise properly includible in respect of such period or a prior period, regardless of the fact that the decedent may have kept his books and made his returns on the basis of cash receipts and disbursements; except that the decedent's executor or other legal representative may, at his option, exclude such amounts in computing net income for the taxable period in which falls the date of the decedent's death, upon the condition that:

(1) In case an executor or representative acquires the right to receive such amounts by reason of the death of the decedent, such executor or representative includes such amounts in computing net income in a return filed by him under ORS 315.005 to 315.845 on behalf of the estate of the decedent for the taxable period in which such amounts are received;

(2) In case any other taxpayer acquires the right to receive such amounts by reason of the death of the decedent, such taxpayer includes such amounts in computing net income in a return filed by him under ORS 315.005 to 315.845 for the taxable period in which such amounts are received;

(3) In case the right to receive such amounts is transferred by an executor or representative or other taxpayer, he includes the fair market value of such right, plus the amount by which any consideration for the transfer exceeds such fair market value, in computing net income in a return filed by him under ORS 315.005 to 315.845 for the taxable period in which such transfer occurs;

(4) Such amounts are considered in such returns to have the character which they would have had in the hands of the decedent and to be includible in computing net income

to the same extent as if the decedent had lived and received such amounts; and

(5) There is filed with the tax commission, prior to the close of administration of the decedent's estate and the discharge of the executor or representative, a bond in the amount and with the sureties the commission deems necessary, conditioned upon the return as income by the executor, representative or other taxpayer of such amounts or the value of such rights not theretofore reported, in the same manner as such amounts would be returnable as income by the decedent if he had lived and received such amounts.

**315.180 Death of taxpayer; effect on deductions allowed.** In the case of the death of a taxpayer there shall be allowed as deductions for the taxable period in which he died, regardless of the fact that the decedent may have kept his books and made his returns on the basis of cash receipts and disbursements, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period. However, any deductions properly chargeable against income excluded from the decedent's final return by virtue of the exercise of the option provided in ORS 315.175, shall be allowed to, and may be claimed only by the person or taxable entity reporting such income.

**315.185 Dealers in personal property on an instalment basis.** Under regulations prescribed by the commission, a person who regularly sells or otherwise disposes of personal property on the instalment plan may return as income therefrom in any taxable year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed bears to the total contract price.

**315.190 Sales of realty and casual sales of personalty on instalment basis.** (1) In the case of (a) a casual sale or other casual disposition of personal property (other than property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding \$1,000, or (b) a sale or other disposition of real property, if in either case the initial payments do not exceed 30 percent of the selling price, the income may, under regulations prescribed by the commission, be returned on the basis and in the

manner prescribed in ORS 315.185. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the sale or other disposition is made.

(2) If the transaction is reported by the taxpayer as resulting in a gain, an election to report a casual sale or other casual disposition of real or personal property on the instalment basis must be clearly manifested in the first return of the taxpayer made for the taxable year in which the sale or other disposition was made. If such manifestation is not so made, or if the sale or disposition is omitted from the return, or if the transaction is erroneously and in bad faith reported as resulting in a loss, the entire gain, as determined by subsection (1) of ORS 315.260, shall be included in income for the taxable year in which the sale or disposition was made.

**315.195 Change to instalment basis of reporting net income.** If a taxpayer entitled to the benefits of ORS 315.185 elects for any taxable year to report his net income on the instalment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded.

**315.200 Gain or loss upon disposition of instalment obligation.** (1) If an instalment obligation is satisfied at other than its face value or distributed, transmitted, sold or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and

(a) In the case of satisfaction at other than face value or a sale or exchange, the amount realized, or

(b) In case of a distribution, transmission or disposition otherwise than by sale or exchange, the fair market value of the obligation at the time of such distribution, transmission, or disposition.

(2) Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the instalment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(3) This section does not apply to the transmission at death of instalment obligations if there is filed with the commission, at the time the return of the decedent is due (or such further time as the commission may grant), a bond in the amount and with the sureties the commission deems necessary, conditioned upon the return as income, by the person receiving any payment on such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment.

**315.205 Income from partnerships.** An individual carrying on business in partnership shall be liable for income tax only in his individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual.

**315.210 Allocation of nonresident's income from business within and without state.**

(1) If the gross income of a nonresident individual is derived from business done both within and without the state, the determination of net income shall be based upon the business done within the state, and the commission shall have power to permit or require either the segregated method of reporting or the apportionment method of reporting, under rules and regulations adopted by the commission, so as fairly and accurately to reflect the net income of the business done within the state.

(2) The provisions of subsection (1) of this section dealing with the apportionment of income earned from sources both within and without the State of Oregon are designed to allocate to the State of Oregon on a fair and equitable basis a proportion of such income earned from sources both within and without the state. Any nonresident taxpayer may submit an alternative basis of apportionment with respect to his own income and explain that basis in full in his return. If approved by the tax commission that method will be accepted as the basis of allocation.

**315.215 Inventories.** Whenever, in the opinion of the commission, the use of inventories is necessary in order clearly to determine the income of any taxpayer, inven-

tories shall be taken by such taxpayer upon such basis as the commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income.

**315.220 to 315.250** [Reserved for expansion]

## DETERMINATION AND RECOGNITION OF GAIN AND LOSS

**315.255 Definitions.** (1) As used in this section and in ORS 315.275 to 315.295:

(a) "Reorganization" means a statutory merger or consolidation; or the acquisition by one corporation in exchange solely for all or a part of its voting stock of at least 80 percent of the voting stock and at least 80 percent of the total number of shares of all other classes of stock of another corporation or of substantially all the properties of another corporation; or a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred; or a recapitalization; or a mere change in identity, form, or place of organization, however effected.

(b) "A party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

(2) "Control" means the ownership of at least 80 percent of the voting stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

**315.260 Computation of gain or loss.**

(1) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in ORS 315.270, and the loss shall be the excess of the adjusted basis provided in ORS 315.270 over the amount realized.

(2) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(3) Nothing in ORS 315.260 to 315.270 shall be construed to prevent (in the case of property sold under contract providing for

payment in instalments) the taxation of that portion of any instalment payment representing gain or profit in the year in which such payment is received.

**315.265 Unadjusted basis.** The basis of property shall be as stated below:

(1) If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(2) If the property was acquired by purchase after December 31, 1929, the basis shall be the cost of the property.

(3) If the property was acquired by purchase before January 1, 1930, the basis for computing profit shall be the cost of the property or the fair market value thereof on January 1, 1930, whichever is higher and the basis for computing loss shall be the cost of the property or the fair market value thereof on January 1, 1930, whichever is lower. However, no profit shall be deemed to have been derived if either the cost or the fair market value on January 1, 1930, exceeds the amount realized and no loss shall be deemed to have been sustained if the cost or fair market value on January 1, 1930, is less than the amount realized.

(4) If the property was acquired by gift or transfer in trust (other than a transfer in trust by a bequest or devise) before January 1, 1930, the basis for computing profit shall be the fair market value of the property at the date of transfer or the fair market value thereof on January 1, 1930, whichever is higher, and the basis for computing loss shall be the fair market value of the property at the date of transfer or the fair market value on January 1, 1930, whichever is lower. However, no profit shall be deemed to have been derived if either the fair market value at the date of transfer or the fair market value on January 1, 1930, exceeds the amount realized and no loss shall be deemed to have been sustained if either the fair market value at the date of transfer or the fair market value on January 1, 1930, is less than the amount realized.

(5) If the property was acquired by gift or transfer in trust after December 31, 1929, (other than a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift,

whichever is lower. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the commission shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the commission finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the commission as of the date or approximate date at which, according to the best information that the commission is able to obtain, such property was acquired by such donor or last preceding owner.

(6) If the property was acquired by bequest, devise or inheritance, or by the decedent's estate from the decedent, the basis shall be the same as if the property had been purchased for its fair market value at the date of the death of the decedent. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death. For the purpose of this subsection, property passing without full and adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising such power by bequest or devise.

(7) If the property was acquired before January 1, 1930, upon an exchange (whether or not an exchange as to which no gain or loss would be recognized under ORS 315.275 to 315.295), the basis shall be the same as if the property had been purchased on the date of such exchange for its fair market value on that date.

(8) If the property was acquired after December 31, 1929, upon an exchange described in ORS 315.280 and 315.285, the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain that was recognized upon such exchange. If the property so acquired consisted in part of the type of property permitted by ORS 315.280 to be received without the recognition of gain or

loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange.

(9) If the property was acquired after December 31, 1929, as the result of a compulsory or involuntary conversion described in ORS 315.295, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended upon such conversion, and increased in the amount of gain to the taxpayer recognized upon such conversion.

(10) If the property was acquired by a partnership and the basis is not otherwise determined under subsections (1) to (9) of this section, the basis shall be the same as it would be in the hands of the transferor. If the property was distributed in kind by a partnership to any partner, the basis of such property in the hands of the partner shall be such part of the basis of his partnership interest as is properly allocable to such property.

(11) If a taxpayer's personal residence was acquired upon a sale of his prior residence as described in subsection (5) of ORS 315.280, the basis of the acquired residence shall be the cost thereof reduced by the amount of the gain which was not recognized upon the sale of such other residence, and increased by the amount of the loss incurred on the sale of such other residence notwithstanding such loss was not otherwise recognized or allowed as a deduction.

**315.270 Adjusted basis; substituted basis.** (1) The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under ORS 315.265, adjusted as provided in this section.

(2) Proper adjustment in respect of the property shall in all cases be made:

(a) For expenditures, receipts, losses or other items, properly chargeable to capital account, but no such adjustment shall be made in respect to items for which deductions have been taken by the taxpayer on his tax returns for the current or prior years.

(b) In respect to any period (whether before or after January 1, 1930) for exhaustion, wear and tear, obsolescence, amortization and depletion, to the extent actually

sustained (except in the case of property to the extent used by the taxpayer as his personal residence), but in any event not less than the total amount actually allowed upon returns to the State of Oregon during the period after December 31, 1929.

(c) In the case of stock (to the extent not provided for in paragraphs (a) or (b) of this subsection) for the amount of distributions previously made which were applicable in reduction of basis.

(3) The term "substituted basis" as used in this section means a basis determined under any provision of ORS 315.265, providing that the basis shall be determined:

(a) By reference to the basis in the hands of a transferor, donor or grantor; or

(b) By reference to other property held at any time by the person for whom the basis is to be determined.

(4) Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (2) of this section shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

**315.275 Recognition of gain or loss.** Upon the sale or exchange of property the entire amount of the gain or loss, as determined under ORS 315.260 to 315.270, shall be recognized, except as provided in ORS 315.280 to 315.295.

**315.280 Exchanges solely in kind.** (1) No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(2) No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation or if preferred stock in a

corporation is exchanged solely for preferred stock in the same corporation.

(3) No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this subsection shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(5) No gain shall be recognized upon the exchange of the taxpayer's residence for another residence, or upon its sale if and to the extent that the proceeds from the sale (or an equivalent amount) are expended in the acquisition of another residence, provided such other residence is acquired or the taxpayer enters into a contract to acquire such other residence within a period commencing six months prior to and ending six months subsequent to the date of sale. The term "residence," as used in this subsection, means the principal place of abode of the taxpayer situated in the State of Oregon, and includes only property used for residential and household purposes. If the property sold or exchanged consisted in part of the taxpayer's residence and in part of other property, gain shall be recognized to the extent attributable to such other property. The nonrecognition of gain under this subsection shall not apply to the exchange or sale of a building held primarily for the production of income even though the taxpayer may have resided therein.

**315.285 Gain from exchanges not solely in kind.** (1) If an exchange would be within the provisions of subsections (1), (2), (3), (4) or (5) of ORS 315.280, if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such

money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of subsection (1) of this section but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under subsection (1) of this section as is not in excess of his ratable share of the undistributed earnings and profits of the corporation. The remainder, if any, of the gain recognized under subsection (1) of this section shall be taxed as a gain from the exchange of property.

**315.290 Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsections (1), (2), (3) or (4) of ORS 315.280, if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

**315.295 Involuntary conversion.** (1) If property (as a result of its destruction in whole or in part or its theft or seizure, or as a result of the exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the commission, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized.

(2) If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

**315.300** [Reserved for expansion]

### DEDUCTIONS ALLOWED IN COMPUTING NET INCOME

**315.305 Expenses.** In computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses, paid during the tax year in carrying on any trade or business, including:

(a) A reasonable allowance for salaries

or other compensation for personal services actually rendered;

(b) Rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity; and

(c) Expenses incurred while traveling away from home in connection with a trade or business, except where the taxpayer's employment, trade or business has no fixed situs and he maintains no fixed living establishment, there may be deducted only that portion of such traveling expenses which represents a sum in excess of the amount which would be required to maintain such a fixed living establishment.

(2) In the case of an individual or trust, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income subject to taxation under ORS 315.005 to 315.845, or for the management, conservation or maintenance of property held for the production of such income. Such deduction shall be allowed only for tax years beginning after December 31, 1942.

**315.310 Interest.** In computing net income there shall be allowed as a deduction all interest paid during the tax year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities, the interest on which is exempt from taxation under ORS 315.005 to 315.845; except that no interest incurred prior to January 1, 1930, may be deducted.

**315.315 Taxes.** In computing net income there shall be allowed as deductions taxes, paid during the tax year, imposed by the State of Oregon or any of its political subdivisions or by the authority of the United States and allocable to the State of Oregon, except:

(1) Estate, inheritance, legacy, succession, and gift taxes.

(2) Gasoline taxes when not a business expense.

(3) Taxes imposed by ORS 315.005 to 315.845 or by any law of the State of Oregon upon or measured by net income.

(4) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this subsection does not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(5) Taxes which became due and payable before January 1, 1930.

(6) Federal income taxes on income not taxed under ORS 315.005 to 315.845.

(7) Taxes which become a lien upon property at a date prior to the acquisition of such property by the taxpayer.

(8) Taxes imposed on admissions, dues and initiation fees.

(9) Taxes, contributions or other payments paid by employes in pursuance of federal or state laws relating to social security, unemployment compensation or old-age benefits.

**315.320 Losses.** (1) In computing net income there shall be allowed as deductions, losses sustained during the tax year and not compensated for by insurance or otherwise:

(a) If incurred in trade or business.

(b) If incurred in any transaction entered into for profit, though not connected with the trade or business.

(c) Of property not connected with the trade or business, if arising from fires, storm, shipwreck or other casualty, or from theft.

(2) The basis for determining the amount of deduction for losses sustained under paragraphs (a), (b) and (c) of subsection (1) of this section shall be computed according to the method prescribed for arriving at the adjusted basis in ORS 315.260 to 315.270.

**315.325 Loss from wash sales of securities.** (1) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed, unless the deduction is claimed by a person, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of his business.

(2) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall

be determined under rules and regulations prescribed by the commission.

(3) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under rules and regulations prescribed by the commission.

**315.330 Bad debts.** In computing net income there shall be allowed as deductions debts ascertained to be worthless and charged off within the tax year (or, in the discretion of the commission, a reasonable addition to a reserve for bad debts).

**315.335 Depreciation; depletion.** (1) In computing net income there shall be allowed as a deduction a reasonable allowance for the depreciation, exhaustion, wear and tear and obsolescence of property used in the trade or business, and in the case of mines, except in the case of metal mines, as provided in subsection (2) of this section, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion. In computing the deductions allowed under this section the basis shall be the cost (including, in the case of mines, oil and gas wells and other natural deposits, the cost of development, not otherwise deducted), and in the case of property acquired prior to January 1, 1930, the basis shall be the purchase price less depreciation or depletion properly chargeable against the property to January 1, 1930. The reasonable allowance under this section shall be made under rules and regulations to be prescribed by the commission, except as provided in subsection (2) of this section. In the case of leases the deductions allowed may be equitably apportioned between the lessor and the lessee.

(2) In the case of metal mines, a taxpayer may deduct an amount equal to 15 percent of the gross income from the property during the taxable year, but such deduction shall not in any case exceed 50 percent of the net income of such taxpayer (computed without allowance for depletion) from the property. In his first return made under ORS 315.005 to 315.845 (for a taxable year beginning after December 31, 1936), the taxpayer shall state as to each property with respect to which the taxpayer has any item of income or deduction (in case of

metal mines), whether he elects to have depletion allowance for each such property for the taxable year computed with or without reference to percentage depletion. An election once exercised under this subsection cannot thereafter be changed by the taxpayer, and the depletion allowance in respect to each such property will for all succeeding taxable years be computed in accordance with the election so made.

**315.340 Contributions and gifts.** (1) In computing net income there shall be allowed as deductions, to an amount not in excess of 15 percent of the taxpayer's adjusted gross income, contributions or gifts within the tax year:

(a) To the United States, the State of Oregon or any political subdivision thereof for use exclusively for public purposes within the State of Oregon;

(b) To corporations or associations operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; and

(c) For tax years beginning after December 31, 1950, only, to posts or organizations of war veterans (including their auxiliary units and societies) located in the State of Oregon, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(2) Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the commission.

**315.345 Extraordinary medical expenses.** (1) In computing net income there shall be allowed as deductions expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse or a dependent, to the extent that such expenses exceed five percent of the adjusted gross income.

(2) The deduction allowed by this section shall not be in excess of \$1,250 multiplied by the number of taxpayers and dependents for whom exemptions or credits are properly claimed on the return, except that the maximum deductions shall be \$5,000.

(3) The term "medical care," as used in this section, includes amounts paid for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of



affecting any structure or function of the body, amounts paid for accident or health insurance, and amounts paid for Christian Science treatment and nursing care.

**315.350 Deductions allowed nonresident taxpayers.** (1) Subject to subsection (2) of this section, in the case of a nonresident taxpayer the deductions allowed by ORS 315.305 to 315.355 shall be allowed only if and to the extent that they are connected with:

(a) Income which arises from sources within the State of Oregon and which is taxed to a nonresident taxpayer by the State of Oregon; or

(b) Property having a situs for taxation within the State of Oregon.

(2) The deduction prescribed in ORS 315.340, and as therein limited, shall be allowed to a nonresident taxpayer but only with respect to contributions or gifts within the tax year to the United States, the State of Oregon or any political subdivision thereof for use exclusively for public purposes within the State of Oregon, or to a corporation or association described in ORS 315.340, or a chapter or branch thereof, located within the State of Oregon.

**315.355 Optional standard deduction.**

(1) For tax years beginning after December 31, 1944, and before January 1, 1949, the optional standard deduction may be claimed as provided in section 2, chapter 411, Oregon Laws 1945, as amended by section 6, chapter 353, Oregon Laws 1947.

(2) For tax years beginning on and after January 1, 1949, at the taxpayer's election a standard deduction may be claimed as follows:

(a) The optional standard deduction shall be the amount of \$250, or five percent of adjusted gross income, whichever is the lesser, except that in the case of a husband and wife filing a joint return the standard deduction shall be \$500, or five percent of adjusted gross income, whichever is the lesser.

(b) The optional standard deduction shall be in lieu of all other deductions otherwise allowable under ORS 315.005 to 315.845 except those which under ORS 315.015 or 315.020, as the case may be, are to be subtracted from gross income in computing adjusted gross income.

(c) The optional standard deduction shall not be allowed to estates, trusts, individuals filing returns for less than 12

months, nonresidents reporting other than salary income, or husbands or wives living together if the net income of one of the spouses is determined without regard to the standard deduction. For the purposes of this paragraph the determination of whether an individual is married and living with his or her spouse shall be made as of the last day of the taxable year, except that if one of the spouses dies during the taxable year such determination shall be made as of the date of such spouse's death.

(d) If the adjusted gross income shown on the return is more than \$5,000, the optional standard deduction shall be allowed only if an election to claim such deduction is evidenced in the return. If the adjusted gross income shown on the return is \$5,000 or less, the optional standard deduction shall be allowed only if an election to claim such deduction is evidenced by the computation in the return of the tax in accordance with ORS 315.090.

(3) An election to claim, or not to claim, the optional standard deduction, including the use of the tax table prescribed in ORS 315.090, is irrevocable unless the item of adjusted gross income computed on the return as filed has been understated and such understatement is attributable to the improper deduction of any item or items not within the classes of deductions specified as being deductible from gross income in computing adjusted gross income under the law applicable to the tax year for which the return is made, in which event, a new election may be made in an amended return filed within the time specified in ORS 315.660 for the filing of a timely claim for refund.

**315.360 Alimony or separate maintenance payments.** (1) In computing net income there shall be allowed as deductions, in the case of a husband described in ORS 315.120 amounts described therein as includible in the gross income of his wife, payment of which is made within the husband's taxable year. If the amount of any such payment is not includible in such husband's gross income, no deduction shall be allowed under this section with respect to such payment.

(2) Subsection (2) of ORS 315.120 applies to this section.

**315.365 Items not deductible.** In computing net income of individuals no deductions shall in any case be allowed in the following:

(1) Personal, living or family expenses.

(2) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.

(3) Any amount expended in restoring property for which an allowance is or has been made.

(4) Premiums paid on any life insurance policy covering the life of any officer or employe or of any individual financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

**315.370 to 315.450** [Reserved for expansion]

### EXEMPTIONS AND CREDITS

**315.455 Exemptions and credits.** (1) For tax years or periods beginning after December 31, 1947, there shall be deducted from the net income of individuals the following personal exemptions and credits:

(a) In the case of a single individual or of a married individual not living with husband or wife, \$750.

(b) In the case of a head of a family, or a married individual living with husband or wife, \$1,500. A husband and wife living together shall be allowed but one such exemption, and if they make separate returns it may be divided between them or taken by either.

(c) A credit of \$300 for each dependent individual, other than husband or wife; except that a taxpayer who is allowed a personal exemption as a head of a family shall be allowed a credit only for each dependent individual in excess of the one dependent individual required to establish the taxpayer's status as head of a family.

(2) The exemptions and credits as set out in section 5, chapter 455, Oregon Laws 1943, section 3, chapter 411, Oregon Laws 1945, and section 1, chapter 539, Oregon Laws 1947, shall remain in effect with respect to taxable years beginning prior to January 1, 1948.

(3) A "head of a family" means a person who during the tax year maintained a home in which he exercised family control and in which he supported, by reason of a moral or legal obligation to do so, one or more dependent individuals.

(4) A "dependent individual" means a person:

(a) Whom the taxpayer had a moral or legal obligation to support;

(b) Who received his chief support from the taxpayer during the tax year;

(c) Who was under 18 years, over 18 years and regularly attending an institution of learning, or physically or mentally unable to support himself; and

(d) Who was financially unable to provide one-half of the necessary cost of his own support.

(5) If the status of the taxpayer changes during the tax year, in so far as it affects the personal exemptions or credits for dependents, by reason of death, marriage, divorce, change of residency, or otherwise, the personal exemptions and credits for dependents shall be apportioned, under rules and regulations prescribed by the commission, in accordance with the number of months before and after such change. For the purpose of such apportionment, a fractional part of the month shall be disregarded unless it amounts to more than one-half of a month in which case it shall be considered as a month. A husband and wife may file either a joint return or separate returns; but if their marital status is changed during the year and a joint return is filed, the total exemptions and credits allowed in the joint return shall not exceed the sum of the exemptions and credits which would have been allowed in reduction of taxable net income had separate returns been filed.

**315.460 Military deduction.** (1) Subject to ORS 315.115, any person who is subject to payment of income or intangibles tax under the laws of the State of Oregon, during the period in which he or she is serving in the Armed Forces of the United States of America while a state of war exists, shall be allowed in addition to the personal exemptions now provided by law, a deduction of \$3,000 from net income before computing the amounts of either of such taxes.

(2) This section is applicable to all tax years beginning after December 31, 1941.

**315.465 to 315.500** [Reserved for expansion]

### RETURNS AND PAYMENT OF TAX

**315.505 Persons required to make returns.** (1) For tax years or periods beginning after December 31, 1947, every single individual, or married individual not living with husband or wife, having during the tax year a net income of \$750 or over; every married individual, living with husband or

wife, having during the tax year a net income of \$1,500 or over; every individual having during the tax year gross income in excess of \$4,000; and every fiduciary and partnership shall make a return under such rules and regulations as the commission may prescribe. However, nothing contained in this section shall preclude the commission from requiring any person to file a return when in its judgment a return should be filed.

(2) If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

**315.510 Joint return of husband and wife.** (1) A husband and wife living together may make a single return jointly. Such a return may be made even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

(2) No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or of both, then the joint return may be made with respect to the taxable year of each, but this exception does not apply if the surviving spouse remarries before the close of his taxable year.

(3) In the case of the death of one spouse or both spouses, the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse a joint return may be made by the surviving spouse with respect to both himself and the decedent if:

(a) No return for the taxable year has been made by the decedent;

(b) No executor or administrator has been appointed; and

(c) No executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse.

(4) If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm the joint return by making, within one year after the last day prescribed by law for

filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(5) For the purposes of this section the status as husband and wife living together of two individuals having taxable years beginning on the same date shall be determined:

(a) If both have the same taxable year, as of the close of such year; and

(b) If one dies before the close of the taxable year of the other, as of the time of such death.

(6) For the purposes of this section an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

**315.515 Returns when accounting period changed.** If a taxpayer, with the approval of the commission, changes the tax year on the basis of which his net income is computed, he shall, at the time and in the manner the commission prescribes, make a separate return of his net income received during the period intervening between the end of his former income year and the beginning of his new income year.

**315.520 Return for decedent; collecting tax from estate.** The return by an individual who, while living, was subject to income tax in the state during the tax year, and who has died before making the return, shall be made in his name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from his estate.

**315.525 Allowance of final account of fiduciary and order closing estate prohibited unless taxes settled.** (1) No final account of a fiduciary shall be allowed by any court unless the account shows, and the judge of the court finds, that all taxes imposed by the provisions of ORS 315.005 to 315.845 upon the fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. No order closing an estate shall be entered unless the fiduciary files with the clerk of the court the commission's certificate of release, or shows that 30 days have elapsed since the mailing to the commission of a request for such release and

that the commission has not filed any objection to the final account.

(2) For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the commission may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of ORS 315.005 to 315.845 with respect to a tax return or returns of or for a decedent individual or an estate or trust, and payment in accordance with such agreement shall be in full satisfaction of the taxes to which the agreement relates.

**315.530 Information returns.** (1) Fiduciaries required to make returns under ORS 315.005 to 315.845, partnerships, corporations, joint stock companies or associations or insurance companies, having places of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employes of the state or of any political subdivision of the state, having the control, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, dividends, salaries, fees, wages, emoluments or other fixed or determinable annual or periodical gains, profits and income, paid or payable, during any year to any taxpayer, shall make return thereof, under oath, to the commission, under such regulations and in such form and manner and to such extent as it may prescribe.

(2) Every person doing business as a broker shall, when required by the commission, render a correct return duly verified under oath, under such rules and regulations as the commission may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the commission may require, as to each of such customers, as will enable the commission to determine whether all income tax due on profits or gains of such customers has been paid.

**315.535 Return of partnership.** Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distribu-

tive share of each individual. The return may be sworn to by any one of the partners.

**315.540 Form of returns; time for filing.** (1) Returns shall be in such form as the commission may, from time to time, prescribe and shall be filed with the commission on or before the fifteenth day of the fourth month after the expiration of the tax year. In case of sickness, absence or other disability, or whenever, in its judgment, a good cause exists, the commission may allow further time for filing returns except that no extension may be granted for more than six months.

(2) There shall be annexed to the return a statement verified by a written declaration of the taxpayer making the return to the effect that the statements contained therein are true.

(3) The commission shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form shall not relieve the taxpayer from the obligation of making any return required by ORS 315.005 to 315.845.

**315.545 Mandamus to compel return.** If a taxpayer fails to file a return within 60 days of the time prescribed by ORS 315.005 to 315.845, any judge of the circuit court, upon petition of the commission, or of any 10 taxable residents of the state, shall issue a writ of mandamus requiring the person to file a return. The order of notice upon the petition shall be returnable not later than 10 days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall be subject to the provisions of ORS 315.665 with reference to appeals to the Supreme Court, and shall include costs in favor of the prevailing party. All writs and processes may be issued from the clerk's office in any county, and, except as otherwise provided in this section, shall be returnable as the court shall order.

**315.550 Commission requiring return or supplementary return.** If the commission is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, it may require from the

taxpayer a return or supplementary return, under oath, in such form as it shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of ORS 315.005 to 315.845. If from a supplementary return, or otherwise, the commission finds that any items of income, taxable under ORS 315.005 to 315.845, have been omitted from the original return it may require the items so omitted to be disclosed under oath of the taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provisions of ORS 315.005 to 315.845 whether or not the commission required a return or a supplementary return under this section.

**315.555 Commission requiring additional facts.** Where the tax commission has reason to believe that any taxpayer so conducts his trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, it may require the facts it considers necessary for the proper computation of the entire net income and the net income properly attributable to the state, and in determining the same the commission shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

**315.560 Furnishing copy of federal return or report.** Every taxpayer shall, upon request of the commission, furnish a copy of the return for the corresponding year, which he has filed or may file with the Federal Government, showing his net income and how obtained and the several sources from which derived. Every taxpayer shall, upon request of the commission, furnish a copy of any federal revenue agent's report made upon any audit or adjustment of the taxpayer's federal income tax return.

**315.565** [Reserved for expansion]

**315.570 Payment of tax.** (1) The tax may be paid in four instalments, each consisting of one-fourth of the total amount of

the tax. The first instalment shall be paid to the commission at the time fixed by law for filing the return. The second instalment shall be paid on or before three months thereafter. The third instalment shall be paid on or before six months thereafter. The fourth instalment shall be paid on or before nine months thereafter; except that where the income consists wholly or in part of wages, salaries, bonus or other emoluments for services as an employe, the tax shall be paid in instalments of not less than one-quarter of the amount of the tax remaining after crediting the total amount deducted from such wages, salary, bonus or other emoluments, pursuant to ORS 315.575.

(2) If any instalment is not paid by the due date thereof, the commission may, at its option, declare the entire unpaid balance of the tax immediately due and take such action as may be necessary to enforce collection thereof. When, at the request of the taxpayer the time for filing the return is extended, interest at the rate of six percent per year, from the time when the return was originally required to be filed to the time of payment, shall be added and paid.

(3) If the total amount of the tax is \$10 or less, the whole amount of the tax shall be paid at the time of filing the return.

(4) The tax may be paid with uncertified check during such time and under such regulations as the commission shall prescribe, but if a check so received is not paid by the bank on which it is drawn the taxpayer by whom such check is tendered remains liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered.

**315.575 Withholding by employers.** (1) Every employer at the time of the payment of wages, salary, bonus or other emolument to any employe shall deduct and retain therefrom an amount equal to one percent of the total amount of such wages, salary, bonus or other emolument computed without deduction for any amount withheld, and shall, quarterly, on or before the last day of April, July, October and January pay over to the commission the amount hereby required to be deducted and retained from wages, salary, bonus or other emolument paid to any employe during the preceding three months. Every amount so paid over shall be accounted for as part of the collections under ORS 315.005 to 315.845.

No employe shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over in compliance or intended compliance with this section.

(2) The amounts deducted from the wages of an employe during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax on such employe's income for his tax year which begins within such calendar year, and the return made by the employer pursuant to ORS 315.585 shall be accepted by the commission as evidence in favor of the employe of the amounts so deducted from his wages.

(3) No amount shall be deducted or retained from:

(a) Wages paid for active service in the military or naval forces of the United States.

(b) Wages or salary paid to an employe of a common carrier where such employe is not a resident of Oregon as defined in ORS 315.010 and regularly performs services both within and without the State of Oregon.

(c) Wages paid for domestic service in a private home, a local college club or a local chapter of a college fraternity or sorority.

(d) Wages paid for casual labor not in the course of the employer's trade or business.

(e) Wages paid to part-time employes whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops.

(f) Wages of seamen which are exempt from garnishment, attachment or execution under sections 596, 597, 598 and 601 of title 46 of the United States Code.

(4) Every employer who deducts and retains any amount under the provisions of this section shall hold the same in trust for the State of Oregon and for the payment thereof to the commission in the manner and at the time provided under this section and to secure payment to it of any amount withheld but not remitted on the due date thereof plus all penalties and interest accrued on such delinquency, the commission shall have a lien upon the entire assets of the delinquent employer so long as such delinquency continues. The commission may at any time during the continuance of such delinquency enforce its lien by the issuance of a distraint warrant for the collection of

the delinquent amount and all penalties and interest accrued thereon. Such warrant shall be issued, docketed and proceeded upon in the same manner and shall have the same force and effect as is prescribed in ORS 315.630 and 315.635 with respect to warrants for the collection of delinquent personal income taxes.

(5) In so far as they are not inconsistent with the provisions of this section, the provisions of ORS 315.620, 315.645 to 315.655 and subsection (1) of 315.990, relating to penalties, interest, misdemeanors and arbitrary assessments shall apply to employers subject to the provisions of this section and for these purposes any amount deducted or required to be deducted and remitted to the commission under this section shall be considered the tax of the employer and with respect to such amounts he shall be considered as a taxpayer.

**315.580 Refunds to employes.** (1) Where the total amount deducted under ORS 315.575 exceeds the amount of the tax on the employe's entire income as computed under ORS 315.055 to 315.090, or where his income is not taxable under ORS 315.005 to 315.845, the commission shall, after auditing the annual return filed by the employe in accordance with ORS 315.540, refund the amount of the excess deducted, with interest thereon as provided by ORS 315.615. No refund shall be made to an employe who fails to file such return within two years from the due date of the return in respect of which the tax withheld might have been credited. If the excess tax deducted is less than \$1, no refund shall be made unless specifically requested by the taxpayer at the time such return is filed and in no event shall excess be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which such excess was withheld.

(2) The commission may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the commission. If a taxpayer entitled to a refund under this section dies, the commission may issue a draft for payment of such refund under the terms and conditions set out in ORS 291.526 to 291.530, exercising the same powers and sub-

ject to the same restrictions pursuant to which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes.

**315.585 Reports by employer.** (1) Every employer shall, with each payment made by him to the commission, deliver to the commission on a return in the form prescribed by the commission, showing the total amount of wages, salaries, bonuses or other emoluments paid to his employes, the amount deducted therefrom in accordance with the provision of ORS 315.575, and such other information as the commission may require. The employer is charged with the duty of advising the employe of the amount of moneys withheld, in accordance with such regulations as the commission may prescribe, using printed forms furnished or approved by the commission for such purpose.

(2) The employer shall make an annual return to the commission on forms provided or approved by it, summarizing the total compensation paid and the tax withheld for each employe during the calendar year and shall file the same with the commission before February 16 of the year following that for which report is made. Failure to file the annual report without reasonable excuse on or before 30 days after notice has been given to the employer of his failure, shall subject the employer to a penalty of \$5.

**315.590 Date return considered filed or advance payment considered made.** A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed shall be considered as made on the last day prescribed by law for the payment of the tax or, if the taxpayer elected to pay the tax in instalments, on the last day prescribed for the payment of the first instalment. The last day prescribed by law for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer by the commission.

**315.595 and 315.600** [Reserved for expansion]

## AUDITING RETURNS; COLLECTING DELINQUENT TAXES; INTEREST AND ADDITIONS TO TAX; APPEALS

**315.605 Penalties and interest on deficiencies.** (1) As soon as practicable after the return is filed, the commission shall audit it and compute the tax, and shall give notice to the taxpayer of the nature and amount of any deficiency and of its proposal to assess the same. Every deficiency shall bear interest at the rate of one-half of one percent per month computed from the due date of the return to date of payment.

(2) Penalties shall be imposed as follows:

(a) If the deficiency is due to negligence, five percent of the deficiency;

(b) If the return was falsely prepared and filed with intent to evade the tax imposed by ORS 315.005 to 315.845, 100 percent of the deficiency.

(3) The notice of deficiency and proposed assessment shall be mailed to the last known address of the taxpayer. Within 30 days from the date of mailing of such notice, the taxpayer shall pay the proposed deficiency with interest computed to the date of payment and any penalty proposed, or within that time shall advise the commission in writing wherein its determination of deficiency is erroneous. If neither payment nor written objection is received by the commission within the 30-day period, the commission shall assess the deficiency, including interest and any penalty in accordance with the notice of proposed assessment, plus \$1, and give notice of the amount so assessed. If requested by the taxpayer in his written objection to the proposed deficiency, the taxpayer shall have an opportunity to confer with the commission as to the proposed assessment at any time prior to the date such assessment is made. The provisions of ORS 315.005 to 315.845 with respect to revision and appeal shall apply to the tax, including penalty and interest, so assessed.

(4) All payments received under the provisions of ORS 315.005 to 315.845 must be credited first to penalty, then to interest accrued, and then to tax due.

**315.610 Additional assessment.** (1) If the commission discovers from the audit of the return or otherwise that the income of any taxpayer, or any portion thereof, has not been assessed, it may, at any time within three years after the return was filed,

compute the tax and give notice to the taxpayer of the amount due, including penalty and interest thereon. However, if the commission finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return for any tax year beginning after June 30, 1943, additional tax may be assessed upon such return at any time within five years after the return was filed. These limitations to the assessment of such tax or additional tax, including penalty and interest thereon, shall not apply to the assessment of additional taxes, and penalty and interest thereon, upon false or fraudulent returns, or in cases where no return has been filed.

(2) If, prior to the expiration of the three-year period prescribed by subsection (1) of this section, the commission and the taxpayer consent in writing to the assessment of the tax after the expiration of the three-year period, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(3) Mailing of notice of proposed assessment to the taxpayer at his last-known address shall constitute the giving of notice, and the giving of such notice within three years from the date the return was filed shall be compliance with subsections (1) and (2) of this section although the tax is assessed after such three-year period.

**315.615 Refunds.** If the amount of the tax found due as computed is less than the amount theretofore paid the excess shall be refunded by the commission, with interest at the rate of one-half of one percent for each month or fraction of a month from the time the tax was paid to the time the refund is made. No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance with the manner prescribed by the commission. No interest on a refund to an employe of a tax withheld by an employer shall be paid for any period prior to the time the employe filed his personal income tax return for the tax year involved, nor for any period prior to the day which is six months after the date when the employer's annual return for that year, as required by ORS 315.585, was filed or was due, whichever is the later. The amount of the refund, ex-

clusive of interest thereon, shall not exceed the portion of the tax paid during such period preceding the filing of the claim, or if no claim is filed, then during the period preceding the allowance of the refund during which a claim might have been filed. Where there has been an overpayment of any tax imposed by ORS 315.005 to 315.845, the amount of the overpayment and the interest thereon shall be credited against any tax, penalty or interest then due from the taxpayer, and only the balance shall be refunded.

(2) If, prior to the expiration of the period prescribed in subsection (1) of this section, the commission and the taxpayer consent in writing to the refund of tax after the expiration of the period prescribed, the refund may be made at any time prior to the expiration of the period agreed upon. The commission shall have the power to consent to such refund only where audit of the return in question has not been completed and the taxpayer has consented to assessment of additional tax, if such be determined upon audit, after the expiration of the three year period prescribed in subsection (1) of ORS 315.610. The period within which a refund may be made shall in no case extend beyond the period within which an additional assessment may be made.

**315.620 Determining and assessing income on failure to file return or filing false return after notice.** If any taxpayer who has failed to file a return as required by law, or has filed an incorrect or insufficient return, with the intention of evading the provisions of ORS 315.005 to 315.845, or if any taxpayer who has failed to file a return or has filed an incorrect or insufficient return and has been notified by the commission of his delinquency, refuses or neglects, within 20 days after such notice, to file a proper return, or files a fraudulent return, the commission shall determine the income of such taxpayer, according to its best information and belief, and assess the same at not more than double the amount so determined, with interest on the whole tax assessed at the rate of one-half of one percent per month or fraction thereof from the time the return was due until the tax is paid. The commission may, in its discretion, allow further time not exceeding six months, for filing a return in such case.

**315.625 Examining books, records or persons.** (1) The commission, for the pur-



pose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, may examine or cause to be examined by any agent or representative designated by it for the purpose, any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the taxpayer or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The commission shall have authority, by order or subpoena to be served with the same force and effect and in the same manner that a subpoena is served in a civil action in the circuit court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of ORS 315.005 to 315.845.

(2) If any person fails to comply with any subpoena or order of the commission or to produce or permit the examination or inspection of any books, papers or documents pertinent to any investigation or inquiry under this section, or to testify to any matter regarding which he may be lawfully interrogated, the commission may apply to the circuit court for the county in which the person resides for an order to the person to attend and testify, or otherwise comply with the demand or request of the commission. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to comply with the request on demand of the commission within 10 days after service of the order (or such further time as the court may grant) or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

### **315.630 Warrant for collection of taxes.**

(1) If any tax imposed by ORS 315.005 to 315.845 or any portion of such tax is not paid within 30 days after it becomes due (or within five days, in the case of the ter-

mination of the taxable year by the commission under the provisions of ORS 315.640), the commission shall issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the commission and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in real or personal property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the commission a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the commission shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax, and shall balance his assessment record by transferring the unpaid deficiency to his delinquent record.

**315.635 Release of tax lien.** (1) Any person having a lien upon or any interest in real estate against which the amount of the warrant provided for in ORS 315.630 has become a lien, notice of which has been recorded in accordance with the laws of this state prior to the filing of the warrant, may request the commission in writing to release the real estate from the lien of the warrant. If, upon such request, the commission finds that a sale of the property would not result in satisfaction of the taxes due in whole or in part, the commission shall execute a release of the lien as to such property and such release shall be conclusive evidence of the extinguishment of the lien as to that property. If the commission fails to act upon a request for release of lien under this section within 60 days from the date of such request, any person having a lien upon or interest in the property against which the warrant has become a lien may make the commission a party to any proceeding brought to enforce any interest in or lien upon such real property, and the determination of the court in such proceeding shall be conclusive and binding upon the commission and the State of Oregon.

(2) In addition to the release of lien provided for in subsection (1) of this section, the commission may execute releases in the following cases, which releases shall be conclusive evidence of the extinguishment of the lien:

(a) If the commission finds that the liability for the amount assessed, together with all interest, penalties and costs in respect thereof has been satisfied.

(b) If the commission finds that the fair market value of that part of the property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon the property.

(c) If there is furnished to the commission a bond, in the form and with the security the commission considers sufficient, conditioned upon the payment of the amount of the warrant, together with all interest in respect thereof, within 60 days after the issuance of the release.

(d) If there is paid to the commission in partial satisfaction of the amount of the warrant provided for in ORS 315.630 an amount not less than the value, as determined by the commission, of the interest of the State of Oregon in the part of the property to be so discharged. In determining such

value the commission shall give consideration to the fair market value of the part of the property to be so discharged and to such liens thereon as have priority to the lien of the State of Oregon.

**315.640 Tax as debt; termination of taxable period by commission and immediate assessment of tax.** (1) Every tax imposed by ORS 315.005 to 315.845, and all increases, interest and penalties thereon shall become, from the time such liability is incurred, a personal debt, due the State of Oregon, from the person or persons liable therefor.

(2) If the commission finds that a taxpayer designs quickly to depart from the state or to remove his property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past taxable year or the taxable year then current unless such proceedings be brought without delay, the commission shall declare the current taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer. Simultaneously, the commission, on the basis of the best information available to it, shall assess a tax for such terminated period and for the preceding taxable year (if no return has been filed therefor, whether or not the time otherwise allowed by law for filing such return and paying the tax has expired), and shall assess additional tax for any years open to assessment under the provisions of ORS 315.005 to 315.845. The commission shall give notice to the taxpayer of all taxes so assessed. Such taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his last known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the findings of the commission, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design and the certificate of the commission of the mailing or issuing of the notice and findings specified in this section is presumptive evidence that the notice and findings were mailed or issued.

**315.645 Penalty and interest on delinquencies.** If a taxpayer fails to file a return of income at the time required by or under

ORS 315.005 to 315.845, but thereafter voluntarily files a return of income, or fails to pay a tax or an instalment thereof at the time the tax or instalment becomes due, but thereafter voluntarily pays the tax or instalment, there shall be imposed a penalty in an amount equal to five percent of the tax or instalment, plus \$1, in addition to interest on the unpaid tax or instalment at the rate of one-half of one percent per month for each month or fraction of a month, computed from the time the tax or instalment became due, during which the tax or instalment remains unpaid.

**315.650 Waiver, reduction or compromise of penalties and interest.** The commission may, in its discretion, upon good and sufficient cause, according to and consistent with its rules and regulations, upon making a record of its reason therefor, waive, reduce or compromise any part or all of the penalties and interest provided for in ORS 315.005 to 315.845 and 315.990.

**315.655 Reduction or compromise of uncollectible taxes.** If the commission believes upon reasonable and sufficient evidence that any tax or portion thereof, including any penalty or interest, is in fact uncollectible, it may, after making a record of its reason therefor, reduce or compromise the tax or portion thereof.

**315.660 Appeal to commission.** (1) A taxpayer may appeal to the commission for the refund or revision, or both, of any tax within the time stated below:

(a) In the case of an appeal for a refund of taxes shown on the return filed by the taxpayer, within three years from the time the return was filed, or two years from the time the tax, or a part or instalment thereof, was paid, whichever period expires the later.

(b) In the case of an appeal from additional taxes assessed or taxes assessed where no return was filed, within two years from the date of notice of assessment, or three years from the time the return was filed, whichever period expires the later. Assessments shall be final after the expiration of the period specified in this paragraph and payment of the tax shall not give the taxpayer any extension of the period within which an appeal may be taken.

(2) The appeal shall be by way of written petition which shall state the grounds upon which the taxpayer contends that the

assessment is erroneous. The commission shall grant a hearing upon the appeal and shall examine the determination of the amount of tax due, including penalty and interest thereon, and shall redetermine such amount if it is necessary upon the law and the facts to do so. The commission shall notify the taxpayer of its determination of the amount of tax due, with penalty and interest, either as originally assessed or as redetermined, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found to be due, with interest thereon as provided in ORS 315.615. Where there has been an overpayment of any tax imposed by ORS 315.005 to 315.845, the amount of such overpayment and the interest thereon shall be credited against any tax, or penalty or interest then due from the taxpayer, and only the balance shall be refunded. If the taxpayer has failed prior to the time of the appeal, without good cause, to file any return required by ORS 315.005 to 315.845 within the time prescribed by law, or has filed a fraudulent return, or, having filed an incorrect return, has failed after notice, to file a proper return, the commission shall not reduce or refund so much of the amount of the tax involved in the hearing as it may be found that the taxpayer owes for any other year or years.

**315.665 Appeal from commission.** The determination of the commission upon application made by a taxpayer for refund or revision of any tax, under ORS 315.660, may be reviewed in any court of competent jurisdiction by a complaint filed by the taxpayer against the commission in the county in which the taxpayer resides or has his principal place of business or in which is located the office of the commission within 60 days after notice by the commission of its determination, given as provided in ORS 315.660, has been received by the taxpayer. Thereupon appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be found entitled may be granted and any such taxes, interest or penalties paid, found by the court to be in excess of those legally assessed, shall be ordered refunded to the taxpayer, with interest from time of payment. Such review shall proceed in the manner of a suit in equity. An appeal may be taken by the taxpayer or the commission to the Supreme Court in the manner that appeals are taken in suits in equity, irrespective of the amounts involved.

**315.670 When appeal stays collection proceedings.** Unless otherwise ordered by a court of competent jurisdiction, an appeal to the commission under ORS 315.660, or an appeal to the court under ORS 315.665, shall not stay proceedings to collect any unpaid tax if the commission believes that collection of the tax will be jeopardized by delay.

**315.675 Action to recover tax.** Action may be brought by the Attorney General, at the instance of the commission, in the name of the state, to recover the amount of any taxes, penalties and interest due under ORS 315.005 to 315.845 if the action for recovery is commenced within three years from the time the return was filed or where no return was filed within three years from the date of notice of assessment, or within a period covered by a waiver of restriction upon the assessment of additional income tax whichever period expires the later. This limitation does not apply to an action involving cases in which fraud is charged.

**315.680 to 315.700** [Reserved for expansion]

### ADMINISTRATIVE PROVISIONS

**315.705 Commission to administer and enforce law; enforcement districts.** The commission shall administer and enforce the tax imposed by ORS 315.005 to 315.845. For this purpose the commission may divide the state into districts. In each district a branch office may be established. The commission may, from time to time, change the limits of such districts.

**315.710 Deputies, agents, auditors and employes.** (1) Subject to any applicable provision of the State Civil Service Law:

(a) The commission may appoint and remove the deputy commissioners, agents, auditors, clerks and employes it considers necessary. Such persons shall have the duties and powers the commission from time to time prescribes.

(b) The salaries of all deputy commissioners, agents and employes shall be fixed by the commission.

(2) All such deputy commissioners, agents and employes shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties.

(3) The commission may require the of-

ficers, agents and employes it designates to give bond for the faithful performance of their duties in such sum and with such sureties as it may determine. The state shall pay the premiums on such bonds.

**315.715 Administering oaths and taking acknowledgments.** All officers empowered by law to administer oaths, the commissioner and all deputy commissioners, agents, auditors and such other employes as the commission may designate, shall have the power to administer an oath to any person or take the acknowledgment of any person in respect of any return or report required by ORS 315.005 to 315.845 or the rules and regulations of the commission.

**315.720 Rules and regulations.** The commission may, from time to time, make such rules and regulations, not inconsistent with ORS 315.005 to 315.845, that it considers necessary to enforce ORS 315.005 to 315.845.

**315.725 Recognizing representative of taxpayer.** No attorney, accountant or agent shall be recognized as representing any person in regard to any claim, appeal or other matter relating to the tax liability of such person in any hearing before, or conference with, the commission, or any member or agent thereof, unless there is first filed with the commission a written authorization or unless it appears to the satisfaction of the commission, or member or agent thereof, that the attorney, accountant or agent does in fact have authority to represent the person.

**315.730 Representation by former officer or employe of commission.** No former officer, clerk or employe of the commission shall represent any taxpayer in any claim or controversy pending in the department during his employment therein, nor shall he in any manner or by any means, aid in the prosecution of any such claim, within two years next after he has ceased to be such officer, clerk or employe.

**315.735 Preservation of reports and returns.** Reports and returns shall be preserved for four years and thereafter until the commission orders them destroyed.

**315.740 Divulging particulars of returns and reports prohibited.** Except in accordance with proper judicial order, or as otherwise provided by law, it shall be un-

lawful for the commission, any deputy, agent, auditor or other officer or employe, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under ORS 315.005 to 315.845. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representative of the state of the report or return of any taxpayer who brings action to set aside or review the tax based thereon, or against whom any action or proceeding has been instituted to recover any tax or any penalty imposed by ORS 315.005 to 315.845.

**315.745 Officials to whom information may be furnished.** Notwithstanding ORS 315.740, the commission may permit the Commissioner of Internal Revenue of the United States, the Governor or the administrative head of the Inheritance Tax Department of the State of Oregon, or the proper officer of any state or the District of Columbia imposing an income tax similar to that imposed by ORS 315.005 to 315.845, or the authorized representative of any such officer, to inspect the income tax returns of any taxpayer, or may furnish to such officer or his authorized representatives an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted, or such information furnished, to such officer or his representative only if the statutes, regulation or practice of the United States or of such other state or the District of Columbia, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of ORS 315.005 to 315.845.

**315.750 Certificate of commission as evidence.** The certificate of the commission to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied, as required by or under ORS 315.005 to 315.845, shall be prima facie evidence that the tax has not been paid, that the return has not been filed or that the information has not been supplied.

**315.755 Statistics.** The commission shall prepare and publish annually statistics, reasonably available, with respect to the operation of ORS 315.005 to 315.845, including amounts collected, classification of taxpayers, and other facts considered pertinent and valuable.

**315.760 Rewards for information.** The commission may pay rewards to persons, other than officers or employes of the commission, furnishing information that will lead to the recovery of tax from persons guilty of violating the provisions of ORS 315.005 to 315.845. Such rewards shall not exceed 10 percent of the net amount of tax, penalty and interest recovered by suit or otherwise and shall be paid only in cases where such evasions of tax would not be disclosed by the audit of returns or from other information available to the commission. Such reward shall be paid out of the revenue arising under the operation of ORS 315.005 to 315.845.

**315.765 to 315.785** [Reserved for expansion]

**315.790 Distribution of revenue; Property Tax Reduction Account.** (1) All costs incurred in the administration of ORS 315.005 to 315.845 shall be paid out of the revenue from the tax imposed by ORS 315.005 to 315.845 and the net revenue from the tax, after deduction of administrative costs, shall be deposited to the credit of the special account now existing in the General Fund known as the Property Tax Reduction Account to be applied as provided in this section. A working balance of unreceipted revenue from the tax imposed by ORS 315.005 to 315.845 may be retained for the payment of refunds and administrative costs, but such working balance shall not at the close of any fiscal year exceed \$1 million.

(2) In the annual state levy of taxes the balance remaining in the Property Tax Reduction Account at the close of the preceding fiscal year, together with the estimated receipts to that account during the fiscal year for which the levy is made, shall be applied first to reduce the state tax levy on property inside the six percent constitutional limitation and then to reduce the state levy on property outside such constitutional limitation. For the fiscal year 1951-52 and each fiscal year thereafter, however, the state tax levy outside the six percent constitutional limitation shall be reduced only

in the amount that the balance remaining in the Property Tax Reduction Account at the close of the preceding fiscal year, together with the estimated receipts to that account solely from the Property Tax Relief Act of 1929, as amended, during the fiscal year for which the levy is made, exceeds the amount required to offset the state levy inside the constitutional limitation. The application of any balance from the Property Tax Reduction Account, or of any net revenue from this tax, by the tax commission in making an annual levy for state purposes shall not affect the base for computing the limitation on such levy imposed by section 11, Article XI, Oregon Constitution.

(3) Any balance remaining in the Property Tax Reduction Account after the applications required by this section for any fiscal year, shall be retained therein to be applied for property tax relief for the next ensuing fiscal year for the purposes and in the order stated in this section. No application shall be made of any actual or estimated revenue from this tax, nor of any balance or surplus in the Property Tax Reduction Account, except for the special purposes and in the amounts specifically authorized by this section.

(4) This section shall first apply to the state levy of taxes for the fiscal year 1951-1952. For years prior to the fiscal year 1951-1952 the disposition of revenue from this tax shall be governed by the laws in effect for such years.

**315.795 and 315.800** [Reserved for expansion]

### ESTATES AND TRUSTS

**315.805 Tax on income.** The taxes imposed by ORS 315.005 to 315.845 shall apply to estates and trusts (other than the share trusts which are taxed as corporations under ORS chapter 317), and the taxes shall be levied, collected and paid annually upon and with respect to the income of estates or of any kind of property held in trust, including:

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate.

(2) Income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interest.

(3) Income held for future distribution under the terms of the will or trust.

(4) Income which is to be distributed to the beneficiaries periodically, whether or not

at regular intervals, and the income collected by a guardian of an infant to be held or distributed, as the court may direct.

(5) Income of an estate during the period of administration or settlement permitted by ORS 315.815 to be deducted from the net income upon which the tax is to be paid by the fiduciary.

**315.810 Return, computation and payment.** (1) The fiduciary shall be responsible for making the return of income from the estate or trust for which he acts, whether such income shall be taxable to the estate or trust or to the beneficiaries thereof. The taxes shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in ORS 315.830 and 315.835.

(2) The income of a resident trust or estate shall be taxed in the same manner and to the same extent as that of a resident individual. The income of a nonresident trust shall be taxed in the same manner and to the same extent as that of a nonresident individual.

(3) Income which is distributable to a beneficiary of a trust shall be taxed to the beneficiary in the same manner and to the same extent as if the income had been received directly by the beneficiary without the intervention of the trust. If the distributable income of a trust consists of both income which would be taxable if received directly by a beneficiary and income which would not be taxable if so received by the beneficiary, the income of each beneficiary shall be conclusively presumed to have been paid proportionately out of each class of income received by the trust, unless the trust instrument provides otherwise.

(4) For the purposes of this section:

(a) "Resident trust" means a trust of which the fiduciary is a resident of Oregon, or a trust the administration of which is carried on in Oregon.

(b) "Resident estate" means an estate of which the fiduciary was appointed by an Oregon court or the administration of which is carried on in Oregon.

**315.815 Computing net income.** (1) The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in this section.

(2) There shall be allowed as a deduction any part of the gross income, without limitation, which, pursuant to the terms of

the will or other instrument creating the trust, is, during the taxable year, paid to or permanently set aside for the United States, any state, territory, or any political subdivision thereof, or the District of Columbia, or any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or which, pursuant to the terms of the will or other instrument creating the trust, is to be used exclusively within the State of Oregon for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children, or cruelty to animals, or for purposes of educational loans or grants, not to particular individuals, but generally, upon the basis of need or merit.

(3) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of such income of the estate or trust for its taxable year:

(a) Which, pursuant to the terms of the will or instrument creating the trust, is to be distributed currently by the fiduciary to the beneficiaries;

(b) Which, pursuant to the terms of the will or instrument creating the trust, may be either distributed to the beneficiary or accumulated, in the discretion of the fiduciary, and which is actually paid or irrevocably credited to the beneficiary; or

(c) Which, in the case of income received by the estate of deceased persons during the period of administration or settlement of the estate, is distributed in partial settlement and such distribution is approved by order of the court having jurisdiction of the estate.

(4) Any amount allowed as a deduction to the estate or trust by subsection (3) of this section shall be included in computing the net income of the beneficiary receiving the same, or to whom it is properly credited, to the extent taxable by this state to such beneficiary.

(5) Gains from the sale or exchange of property constituting a part of the corpus or principal of the estate or trust are taxable to the estate or trust even though distributed during the tax year, unless the will or trust instrument expressly provides for current distribution of such corpus gains. Distribution of corpus gains or of current

income during the tax year, where such distribution is occasioned by a closing of the estate or termination of the trust and not by a provision of the will or trust instrument, shall not be deemed a current distribution of income within the meaning of subsections (2) to (4) of this section, and such gains or income shall be taxed to the estate or trust.

**315.820 Exemptions.** For the purpose of the taxes imposed by ORS 315.005 to 315.845, the estate or trust shall be allowed the same personal exemptions as are allowed to a single person, and the exemptions shall be subject to proration as in the case of a single person.

**315.825 Taxable year.** If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under subsections (3) and (4) of ORS 315.815, to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within his taxable year.

**315.830 Trust income taxable to grantor where grantor retains interest in trust corpus.** Where the power to revest title to any part of the corpus of the trust in the grantor is at any time vested:

(1) In the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; or

(2) In any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom;

then the income of such part of the trust shall be included in computing the net income of the grantor.

**315.835 Trust income taxable to grantor where grantor retains interest in trust income.** (1) There shall be included in computing the net income of the grantor of a trust, that part of the income of the trust which:

(a) Is, or, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, may be held or accumulated for future distribution to the grantor.

(b) May, in the discretion of the grantor or of any person not having a substantial

adverse interest in the disposition of such part of the income, be distributed to the grantor.

(c) Is, or, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable to an educational or charitable organization, gifts to which are deductible from net income) or to the payment of creditors of the grantor in case of a trust for the benefit of creditors.

(2) As used in this section the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

**315.840** [Reserved for expansion]

**315.845 Employee's trust.** A trust created by an employer as a part of a stock bonus, pension or profit sharing plan for the exclusive benefit of some of his employes, to which contributions are made by such employer, employe, or both, for the purpose of distributing to such employe the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under ORS 315.805 to 315.845, but the amount actually distributed or made available to any distributee shall be taxable to him in the taxable year in which so distributed or made available to the extent that such amounts are in excess of his contributions to such fund.

**315.850** [Reserved for expansion]

### COMMON TRUST FUNDS

**315.855 Definitions.** As used in ORS 315.855 to 315.885:

(1) "Common trust fund" means a fund maintained by a bank or trust company qualified to act as fiduciary in this state exclusively for the purpose of collective investment of funds held by such bank or trust company in its fiduciary capacity or any such capacity by it and any other co-fiduciary or co-fiduciaries, and in conformity with rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or of the

State Department of Banking of this state, pertaining to collective investment of trust funds.

(2) "Participant" means any trust, guardianship or estate whose moneys have been invested in a common trust fund.

**315.860 Common trust fund not subject to income or excise tax.** A common trust fund is not subject to taxation upon its income under either ORS chapter 317 or under ORS 315.005 to 315.845, but the participants in common trust funds shall be subject to taxation as provided in ORS 315.855 to 315.885.

**315.865 Income and losses of common trust fund included in income tax return of participant.** Each participant in a common trust fund shall include in its return of income taxable by this state its proportionate share of the net income or net loss of the common trust fund whether or not the income of the common trust fund is distributed and whether or not such income is distributable. There shall be excluded from the income of each participant in a common trust fund its proportionate share of any income which would not be taxable by this state if received directly by the participant.

**315.870 Computing net income of common trust fund.** The net income of a common trust fund shall be computed in the same manner and on the same basis as the net income of an individual under ORS 315.005 to 315.845.

**315.875 Admission and withdrawal of participant.** No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

**315.880 Taxable year.** If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the net income of the common trust fund, in computing the net income of the participant for its taxable year, shall be based upon the net income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

**315.885 Return by bank or trust company maintaining common trust fund.** Every bank or trust company maintaining a common trust fund shall make a return for



each taxable year, stating specifically, with respect to such fund, the items of gross income and deductions, and shall include in the return information sufficient to identify the trusts and estates entitled to share in the net income of the common trust fund and the amount of the proportionate share of each such participant. The return shall be made to the State Tax Commission at such time as is designated by the commission.

**315.890 to 315.985** [Reserved for expansion]

### PENALTIES

**315.990 Penalties.** (1) A person or an officer or employe of a corporation or a member or employe of a partnership who violates ORS 315.030 is liable to a penalty

of not more than \$1,000, to be recovered by the Attorney General, in the name of the state, by action in any court of competent jurisdiction, and is also guilty of a misdemeanor and shall, upon conviction, be fined not to exceed \$1,000 or be imprisoned not to exceed one year, or both. The penalties provided in this subsection shall be additional to all other penalties in ORS 315.005 to 315.990.

(2) Violation of ORS 315.730 to 315.740 is punishable, upon conviction, by a fine not exceeding \$1,000, or by imprisonment in the county jail for not more than one year, or by both. If the offender is an officer or employe of the state he shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter.

### CHAPTER 316

[Reserved for expansion]

