

Chapter 314

1955 REPLACEMENT PART

Provisions Applicable to Both Personal Income and Corporation Tax Acts

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ORS 314.002, 314.004, 314.006, 314.008, 314.010, 314.012, 314.014, 314.016, 314.018, 314.020, 314.022, 314.024, 314.026, 314.028, 314.030, 314.032, 314.034, 314.036, 314.038, 314.040, 314.042, 314.044, 314.046, 314.048, 314.050, 314.052, 314.054, 314.056, 314.058, 314.060, 314.062, 314.064, 314.066, 314.068, 314.070, 314.072, 314.074 and 314.990, which constituted the Intangibles Income Tax Act of 1931, were repealed by 1953 c.310 §3.

CORRECTION OF CERTAIN ERRORS IN TAX RETURNS OTHERWISE BARRED; ADJUSTMENT OF RETURNS OF RELATED TAXPAYERS

314.110 Definitions. For the purposes of ORS 314.110 to 314.140:

(1) The term "determination of tax liability" means an appealable order or ruling of the State Tax Commission upon an appeal to it by a taxpayer protesting the assessment of any income tax or claiming a refund, abatement or credit of any income tax.

(2) A determination of tax liability shall be deemed final on the date that the order of the commission becomes final for want of a perfected appeal to a court of competent jurisdiction or in the event of such an appeal, on the date the judgment of any court with respect to such determination becomes final for want of a perfected appeal therefrom or from the date an appeal from an order of the commission or the judgment of a lower court is dismissed by stipulation of the parties or by the court on its own motion, whichever date occurs earliest.

(3) The term "income tax" means any tax imposed by the laws of the State of Oregon upon or measured by net income and includes penalties and interest prescribed by any such law.

(4) The term "commission" means the State Tax Commission.

(5) The term "taxpayer" means any person or entity subject to any income tax.

(6) The term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination of tax liability specified in subsections (1), (2), (3) or (4) of ORS 314.120 is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance or disallowance therein referred to was made, in one of the following relationships:

- (a) Husband and wife;
- (b) Grantor and fiduciary;
- (c) Grantor and beneficiary;
- (d) Fiduciary and beneficiary, legatee or heir;
- (e) Decedent and decedent's estate; or
- (f) Partner. [1953 c.702 §1]

314.120 Correction of certain errors in tax returns where correction otherwise barred by law. When a determination of tax liability:

(1) Requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer; or

(2) Allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer; or

(3) Requires the exclusion from gross income of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year or from the gross income of a related taxpayer; or

(4) Allows or disallows any of the deductions with respect to income distributed or distributable to beneficiaries, heirs or legatees in computing the net income of an estate or trust, or requires or denies the inclusion of any such item in computing the net income of the beneficiary, heir or legatee, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer; or

(5) Determines the basis of property for depletion, exhaustion, wear and tear, or obsolescence, or for gain or loss on a sale or exchange, and in respect of any transaction upon which such basis depends there was an erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition of gain or loss to, the taxpayer or any person or entity who acquired title to such property in such transaction and from whom mediately or immediately the taxpayer derived title subsequent to such transaction

and, on the date the determination of tax liability becomes final, correction of the effect of the error is prevented by the operation of any provision of an income tax law of this state other than ORS 314.110 to 314.140 or other than a compromise settlement, then the effect of such error shall be corrected in accordance with ORS 314.130, but only if in the determination of tax liability the commission or the taxpayer, as the case may be, maintains a position inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be. In case the

amount of the adjustment would be assessed and collected in the same manner as a deficiency, the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or appeal to any circuit court of the State of Oregon for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination. [1953 c.702 §2]

314.130 Manner of correction of errors described in ORS 314.120. (1) The correction of an error under circumstances described in ORS 314.120 shall be made by an adjustment of tax liability with respect to the erroneous return of the taxpayer or of a related taxpayer, as the case may be, in the same manner as a deficiency in tax would have been assessed or an overpayment of tax would have been refunded or credited or an overstatement of tax would have been abated, as the case may be, as if on the date the determination of tax liability became final there remained one year before the expiration of the period of limitation upon the assessment of the deficiency or the filing of a claim for refund or abatement, as the case may be, with respect to the erroneous return.

(2) Such adjustment shall be confined to the correction of the error committed and no deficiency, refund, abatement or credit developing from the adjustment shall be reduced or increased by the adjustment of any other item in the return or any other omission from the return. [1953 c.702 §3]

314.140 Adjustment of returns of related taxpayers after reallocation of income or deduction on federal return. (1) Whenever there has been an adjustment of federal income tax liability involving a reallocation of any item of income or deduction between related taxpayers, and when such adjustment results in the assessment of a tax deficiency or the issuance of a refund check or both, then for Oregon income tax purposes, whether or not the commission effects a similar reallocation of income or deduction for the same tax year, said federal tax deficiency and additions thereto shall be deducted (to the extent otherwise provided by law) by the taxpayer paying the same, and said federal tax refund, including interest thereon, shall be returned (to the extent otherwise required by law) by the taxpayer receiving the same.

(2) If, however, the related taxpayers involved (or their authorized representatives) so elect in accordance with subsection (3), then the refund of one, with interest thereon, shall be treated as a reduction of the deficiency of the other, including additions thereto, so that only the net amount of deficiency shall be deducted or the net amount of refund shall be returned, as the case may be.

(3) An election under subsection (2) shall be in writing, signed by each related taxpayer or his authorized representative, and filed with the commission prior to the expiration of the applicable period of limitation with respect to the adjustment of the last open state return of either related taxpayer affected by the federal tax deficiency or refund. Such election shall constitute a waiver of any statute of limitations to permit the adjustment of all returns of the related taxpayers for the purpose only of effecting a reallocation of income or deductions similar to that made by the federal tax authorities and to adjust the federal income tax deductions resulting therefrom. [1953 c.702 §4]

314.150 to 314.200 [Reserved for expansion]

EXCLUSION FROM GROSS INCOME OF EXCESS PROFITS REPAID OR ELIMINATED IN RENEGOTIATION OF FEDERAL CONTRACT

314.210 Exclusion from gross income of excess profits repaid or eliminated in renegotiation of federal contract. If a renegotiation or repricing has been or shall be made in respect to a contract with the United States or any agency thereof, or any subcontract thereunder, which was entered into by a taxpayer subject to a tax under any law of this state imposing a tax on or measured by net income and the amount of excessive profits received or accrued under the contract or subcontract during a taxable year or years (hereafter referred to in this section as prior taxable year or years) has been eliminated, and

(1) If in a taxable year ending after December 31, 1940, a taxpayer is required to pay or repay to the United States or any agency thereof the amount of profits so eliminated, or

(2) If the amount of profits so eliminated is applied as an offset against any other amount due the taxpayer,

then the profits so eliminated shall be excluded from gross income for the prior taxable year or years if they were included in gross income for such prior taxable year or years under any law of this state imposing a tax on or measured by net income. [Formerly 317.605]

314.220 Refund of excess tax paid. (1) If a final tax return has been filed by the taxpayer for a taxable year ending after December 31, 1940, and if the tax return included excessive profits that were subsequently eliminated on renegotiation or repricing and paid or repaid or offset as provided in ORS 314.210, the taxpayer shall, upon the filing of a properly verified claim for refund under regulations prescribed by the tax commission, be refunded an amount equal to the difference between the amount of tax paid by the taxpayer for such taxable year and the amount of the tax computed for such taxable year after the exclusion of the excessive profits which have been paid, repaid or offset.

(2) If a taxpayer has paid any tax or interest or penalty because of the provisions of chapter 226, Oregon Laws 1945, then the taxpayer shall, upon the filing of a properly verified claim for refund under regulations prescribed by the tax commission, be refunded such tax or interest or penalty so paid, without interest. No claim for any tax or interest or penalty under chapter 226, Oregon Laws 1945, shall be made or collected after July 16, 1949.

(3) The amount to be refunded to the taxpayer under subsections (1) and (2) of this section shall be reduced by the amount of any refund or credit allowed or received by the taxpayer under the provisions of chapter 226, Oregon Laws 1945.

(4) Notwithstanding any other provisions of ORS 314.210 to 314.230, no refund shall be made of any tax allowed as a credit or otherwise taken into consideration in reducing the profits eliminated or the amount refunded upon renegotiation, whether or not the renegotiation agreement contains a recapture clause.

(5) If a refund allowed under this section had been allowable under chapter 226, Oregon Laws 1945, and the taxpayer could not have received such refund under chapter 226, Oregon Laws 1945, without the imposition of federal excess profits taxes upon such refund, then the amount of the refund allowed under this section

shall be reduced by the amount of excess profits taxes which would have been imposed upon such refund after deducting from such excess profits taxes the amount of federal corporation income taxes which would have been imposed upon such refund if such refund were subject only to such federal corporation income taxes. [Formerly 317.610]

314.230 Time for filing claim for credit or refund. Notwithstanding the provisions of any statute of limitations, claim for any credit or refund provided for in ORS 314.210 to 314.230 shall be made within two years from July 16, 1949, or from the date of final determination of the amount of excessive profits under a contract or subcontract described in ORS 314.210, except that if subsection (4) of ORS 314.220 is declared unconstitutional, no refund or credit resulting from such declaration shall be allowed unless a properly verified claim therefor is filed with the tax commission under ORS 314.220 or under chapter 226, Oregon Laws 1945, within two years from the date on which the excessive profits involved were finally determined. [Formerly 317.615]

314.240 to 314.300 [Reserved for expansion]

LIABILITY OF TRANSFEREE OF PROPERTY OF TAXPAYER FOR TAXES IMPOSED ON TAXPAYER

314.310 Liability of transferee of property of taxpayer for taxes imposed on taxpayer. (1) When a taxpayer ceases to exist or is no longer subject to the jurisdiction of this state (although subject to the courts of a state having comity with the State of Oregon), being indebted for taxes upon or measured by net income, the transferee of the money or property of the taxpayer shall be liable for any such tax or deficiency in tax, including penalties and interest, imposed by law on the taxpayer and accruing or accrued upon the date of transfer, to the extent of the amount of money or value of the property received by the transferee. Property received by the transferee shall be valued at the fair market value of said property at the time of transfer to the initial transferee by the taxpayer. However, no heir, legatee, devisee or distributee of an estate of a deceased person shall be liable as a transferee of the decedent or of the decedent's estate (a) after the State Tax Com-

mission's certificate of release with respect to such decedent's estate has been filed with the clerk of the probate court pursuant to subsection (1) of ORS 316.530, or (b) where no release has been filed but 90 days have elapsed following a request to the commission by the decedent's representative for such release, unless within that time the probate court, upon application by the commission, finds reasonable grounds for extending the period and allows the commission additional time in which to issue a release.

(2) The amount for which a transferee of the property of a taxpayer is liable in respect of any such tax or deficiency in tax, including penalties and interest, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee and collected and paid in the same manner and subject to the same provisions and limitations as would apply to the taxpayer had he or it continued subject to the jurisdiction of this state, except as provided in this section.

(3) As used in this section, the term "transferee" means one not a bona fide purchaser for value and includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation which is a party to a corporate reorganization, and persons acting on behalf of such transferees in a fiduciary capacity.

(4) The period of limitation for assessment of any such liability of a transferee shall be as follows:

(a) In the case of the liability of an initial transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the taxpayer;

(b) In the case of the liability of a transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assess-

ment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the taxpayer;

(c) If, before the expiration of the period of limitation for the assessment of the liability of the transferee, as set forth in paragraphs (a) or (b) of this subsection, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, then the period of limitation for assessment of the liability of the transferee shall expire one year after final judgment has been rendered in the court proceedings;

(d) If, before the expiration of the time prescribed in paragraphs (a), (b) or (c) of this subsection for the assessment of the liability, both the State Tax Commission and the transferee have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period of extension agreed upon. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period of extension previously agreed upon.

(5) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period which would be in effect had death or termination of existence not occurred.

(6) In the absence of notice to the State Tax Commission of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax or deficiency in tax, including penalties and interest thereon, imposed upon or measured by net income, if mailed to the person subject to the liability at his last-known address, shall be sufficient for the purposes of this section even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. [1955 c.367 §2]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on October 15, 1955.

Sam R. Haley
Legislative Counsel