

Chapter 316

1955 REPLACEMENT PART

Personal Income Tax Act of 1953

GENERAL PROVISIONS

- 316.005 Short title
- 316.010 General definitions
- 316.015 Adjusted gross income defined
- 316.020 Excluding period of military service outside United States in determining amount of tax liability or time within which an act must be done
- 316.025 Evading requirements of chapter prohibited
- 316.030 Venue on failure to comply with chapter
- 316.035 Effective date of chapter
- 316.040 Effect of subsequent repeal of chapter

IMPOSITION OF TAX; TAX RATES; CREDITS AGAINST TAX

- 316.055 Imposition of tax; credit against tax for taxpayers who have attained age 65
- 316.060 Tax rates
- 316.065 Amount of tax where joint return used
- 316.070 Amount of tax on compensation for services rendered for a period of 36 months or more and back pay
- 316.075 Election to pay tax in accordance with table
- 316.080 Credit for taxes paid to other states or countries

GROSS INCOME; NET INCOME

- 316.105 Gross income
- 316.110 Exclusions from gross income
- 316.115 Alimony or separate maintenance payments
- 316.125 Net income

METHODS OF ACCOUNTING AND REPORTING INCOME

- 316.160 Accounting periods and methods; periods for first return under chapter
- 316.165 Amendment of return to change basis of reporting
- 316.170 Period for reporting income
- 316.175 Death of taxpayer; effect on reporting income
- 316.180 Death of taxpayer; effect on deductions allowed
- 316.185 Dealers in personal property on an instalment basis
- 316.190 Sales of realty and casual sales of personal property on instalment basis
- 316.195 Gain or loss upon disposition of instalment obligation
- 316.200 Income from partnerships
- 316.205 Allocation of nonresident's income from business within and without state
- 316.210 Inventories

DETERMINATION AND RECOGNITION OF GAIN AND LOSS

- 316.255 Definitions
- 316.260 Computation of gain or loss
- 316.265 Unadjusted basis
- 316.270 Adjusted basis; substituted basis

- 316.275 Recognition of gain or loss
- 316.280 Exchanges solely in kind
- 316.285 Gains from exchanges not solely in kind
- 316.290 Loss from exchanges not solely in kind
- 316.295 Involuntary conversion

DEDUCTIONS ALLOWED IN COMPUTING NET INCOME

- 316.305 Expenses
- 316.306 Amounts paid to employees' plan or trust in excess of current contribution
- 316.310 Interest
- 316.315 Taxes
- 316.320 Losses
- 316.325 Loss from wash sales of securities
- 316.330 Bad debts
- 316.335 Depreciation; depletion
- 316.340 Contributions and gifts
- 316.345 Extraordinary medical expenses; expense of child care paid by working parent
- 316.350 Bond premiums
- 316.355 Accounting period during which deductions may be taken
- 316.360 Deductions allowed nonresident taxpayers
- 316.365 Optional standard deduction
- 316.370 Alimony or separate maintenance payments
- 316.375 Items not deductible
- 316.380 Certain losses not deductible

EXEMPTIONS AND CREDITS

- 316.455 Exemptions and credits

RETURNS AND PAYMENT OF TAX

- 316.505 Persons required to make returns
- 316.510 Joint return of husband and wife
- 316.515 Return of minor
- 316.520 Returns when accounting period changed
- 316.525 Return for decedent; collecting tax from estate
- 316.530 Allowance of final account of fiduciary and order closing estate prohibited unless taxes settled
- 316.535 Information returns
- 316.540 Return of partnership
- 316.545 Form of returns; time for filing
- 316.550 Mandamus to compel return
- 316.555 Commission requiring return or supplementary return
- 316.560 Commission requiring additional facts
- 316.565 Furnishing copy of federal return or report
- 316.570 Payment of tax
- 316.575 Withholding by employers
- 316.580 Refunds to employees
- 316.585 Reports by employer
- 316.590 Date return considered filed or advance payment considered made

AUDITING RETURNS; COLLECTING DELIN- QUENT TAXES; INTEREST AND ADDITIONS TO TAX; APPEALS

- 316.605 Penalties and interest on deficiencies
- 316.610 Additional assessment

316.615 Refunds
 316.620 Determining and assessing income on failure to file return after notice
 316.625 Examining books, records or persons
 316.630 Warrant for collection of taxes
 316.635 Release of tax lien
 316.640 Tax as debt; termination of taxable period by commission and immediate assessment of tax
 316.645 Penalty and interest on delinquencies
 316.650 Waiver, reduction or compromise of penalties and interest
 316.655 Cancellation or reduction of uncollectible taxes
 316.660 Appeal to commission
 316.665 Appeal from commission
 316.670 When appeal stays collection proceedings
 316.675 Action to recover tax

ADMINISTRATIVE PROVISIONS

316.705 Commission to administer and enforce law; enforcement districts
 316.710 Deputies, agents, auditors and employees
 316.715 Administering oaths and taking acknowledgments
 316.720 Rules and regulations
 316.725 Recognizing representative of taxpayer
 316.730 Representation by former officer or employee of commission
 316.735 Preservation of reports and returns
 316.740 Divulging particulars of returns and reports prohibited
 316.745 Officials to whom information may be furnished

316.750 Certificate of commission as evidence
 316.755 Statistics
 316.760 Rewards for information
 316.790 Distribution of revenue

ESTATES AND TRUSTS

316.805 Tax on income
 316.810 Return, computation and payment
 316.815 Computing net income
 316.820 Exemptions
 316.825 Tax year
 316.830 Trust income taxable to grantor where grantor retains interest in trust corpus
 316.835 Trust income taxable to grantor where grantor retains interest in trust income
 316.840 Employee's trust

COMMON TRUST FUNDS

316.855 Definitions
 316.860 Common trust fund not subject to income or excise tax
 316.865 Income and losses of common trust fund included in income tax return of participant
 316.870 Computing net income of common trust fund
 316.875 Admission and withdrawal of participant
 316.880 Tax year
 316.885 Return by bank or trust company maintaining common trust fund

PENALTIES

316.990 Penalties

CROSS REFERENCES

Date of receipt of payment, report, return or claim for credit or refund, determination of, 291.578
 Federal areas in state, application of tax laws to, 306.240

316.030

Venue on appeal from commission, 316.665

316.110

Excess profits repaid or eliminated after renegotiation of government contract, exclusion of, 314.210
 Excluding benefits under:
 Public employees' retirement law, 237.201, 237.980
 Retirement plans for school district employees, 239.502
 Veterans bonus law, 407.420
 Housing authority bonds, exemption of income from, 456.230

316.530

Account of executor or administrator to show payment of taxes, 117.610

316.590

Date of receipt of payment, report, return or claim for credit or refund, determination of, 291.578

316.615

Refunds, 306.260 to 306.280

316.625

Witness fees and mileage, 306.200

316.675

Actions in other states for Oregon taxes, 306.250
 Reciprocal recognition of tax liability, 306.250

316.710

Travel allowances for state officers and employees, 292.210 to 292.298

316.720

Declaratory rulings respecting regulations, 306.710
 Rules and regulations, making and filing, Ch. 183

316.745

Certification of "gross annual income" to welfare commission, 411.462
 Furnishing information to county in public assistance cases, 419.072

316.750

Certificate as to mailing notice of assessment and findings, 316.640

316.790

Payment of administrative expenses during 1955-57 biennium, 1955 c.763 §2

GENERAL PROVISIONS

316.005 Short title. This chapter shall be known and cited as the Personal Income Tax Act of 1953. [1953 c.304 §1]

316.010 General definitions. As used in this chapter, 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 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.

(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. Every distribution is deemed to have been made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator or any person, whether individual 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 this chapter, 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 this chapter.

(13) "Received," for the purpose of the computation of net income under this chapter, 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 this chapter.

(14) "Resident" applies only to individuals and includes all individuals who, at any time during the tax year, are domiciled in this state or who, whether regarding their domicile as in this state or not, reside within this state for other than a temporary or transitory purpose. Every individual who resides within the state for more than 200 calendar days, in the aggregate, during the tax year shall be presumed to be a resident of the state. This presumption may be overcome by evidence satisfactory to the commission that the individual maintains a permanent place of abode outside of the state and is in the state for a temporary or transitory purpose. For the purposes of this subsection, a fraction of a calendar day shall be counted as a whole day.

(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 this chapter.

(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 this chapter.

(19) "United States" includes the states, the territories of Alaska and Hawaii and the District of Columbia. [1953 c.304 §2; 1953 c.552 §1]

316.015 Adjusted gross income defined. The term "adjusted gross income" means the gross income minus:

(1) The deductions allowed by ORS 316.305 to 316.360 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 employee.

(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 employee.

(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 employee, 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 316.275 to 316.295 as losses from the sale or exchange of property. [1953 c.304 §3; 1953 c.552 §2]

316.020 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:

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

(2) 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);

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

(4) Pursuant to regulations of the commission under this section, whether or not any other act required or permitted under this chapter was done within the time prescribed therefor. [1953 c.304 §4]

316.025 Evading requirements of chapter prohibited. No person, or officer or employee of a corporation or a member or employee of a partnership, shall, with intent to evade any requirement of this chapter 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 this chapter;

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

(3) Supply any false or fraudulent information. [1953 c.304 §5]

316.030 Venue on failure to comply with chapter. The failure to do any act required by or under this chapter shall be deemed an act committed in part at the office of the commission in Oregon. [1953 c.304 §6]

316.035 Effective date of chapter. Unless referred to a vote of the people through referendum petition this chapter, except ORS 316.575, 316.580 and 316.585, shall be operative on and after January 1, 1953, and ORS 316.575, 316.580 and 316.585 shall become operative as of October 1, 1953. If referred to a vote of the people, all provisions of this chapter shall be operative on and after the first day of January next following its approval by vote of the people. [1953 c.304 §117]

316.040 Effect of subsequent repeal of chapter. In the event of repeal of this chapter, unless otherwise specifically provided in the repeal, this chapter 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. [1953 c.304 §7]

316.045 and 316.050 [Reserved for expansion]

IMPOSITION OF TAX; TAX RATES; CREDITS AGAINST TAX

316.055 Imposition of tax; credit against tax for taxpayers who have attained age 65.

(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 316.125, including his entire net income from sources 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 316.125, from all property located in the state, including interest, or any amount in lieu thereof, upon the deferred payments of the selling price received in connection with the sale of such property, and from every business, trade, profession or occupation carried on in the state, including income from money or credits and other intangible personal property used by such nonresident individual in the conduct of his business, trade, profession or occupation within the state.

(3) The taxes imposed by this section shall be levied, collected and paid annually, computed at the rates prescribed by ORS 316.060 on net incomes after deducting the proper exemptions and credits in accordance with ORS 316.455.

(4) If the taxpayer has attained the age of 65 years before the close of his tax year or period, a credit of \$6 is allowed against his tax. If a husband and wife make a joint return and each has attained the age of 65 years before the close of the tax year or period for which the return is made, a credit of \$12 is allowed against their joint tax. [1953 c.304 §8; 1953 c.552 §3]

316.060 Tax rates. (1) The rates shall be:

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

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

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

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

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

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

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

(2) The surtax rate for each bracket of taxable income prescribed in subsection (1) of this section shall be 45 percent of the normal tax rate applicable thereto. In the preparation of forms, tables and instructions, the commission may combine the normal and surtax rates or state them separately.

(3) The 1955 amendments to this section shall apply to all tax years ending after August 3, 1955, and ORS 316.060 as it read prior to amendment by section 1, chapter 596, Oregon Laws 1955, shall continue to apply to all tax years ending prior to that date. [1953 c.304 §9; 1955 c.596 §1; subsection (3) derived from 1955 c. 596 §4]

316.065 Amount of tax where joint return used. In the case of a joint return of husband and wife under ORS 316.510, the tax under ORS 316.055 shall be twice the tax that would be determined if the net income and the applicable exemptions and credits provided by ORS 316.455 were reduced by one-half. [1953 c.304 §10]

316.070 Amount of tax on compensation for services rendered for a period of 36 months or more and back pay. (1) If at least 80 percent of the total compensation for personal services covering a period of 36 calendar months or more (from the beginning to the completion of such services) is received or accrued in one tax year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

(2) For the purposes of this subsection, the term "artistic work or invention," in the case of an individual, means a literary, musical or artistic composition of such individual or a patent or copyright covering an invention of or a literary, musical or artistic composition of such individual, the work on which by such individual covered a period of 36 calendar months or more from the beginning to the completion of such composition or invention. If, in the tax year, the gross income

of any individual from a particular artistic work or invention by him is not less than 80 percent of the gross income in respect of such artistic work or invention in the tax year plus the gross income therefrom in previous tax years and the 12 months immediately succeeding the close of the tax year, the tax attributable to the part of such gross income of the tax year shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over that part of the period preceding the close of the tax year but not more than 33 calendar months.

(3) For the purposes of this section a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

(4) If the amount of the back pay received or accrued by an individual during the tax year exceeds 15 percent of the gross income of the individual for such year, the part of the tax attributable to the inclusion of such back pay in gross income for the tax year shall not be greater than the aggregate of the increases in the taxes which would have resulted from the inclusion of the respective portions of such back pay in gross income for the tax years to which such portions are respectively attributable, as determined under the regulations prescribed by the commission. For the purposes of this subsection, "back pay" means:

(a) Remuneration, including wages, salaries, retirement pay, and other similar compensation, which is received or accrued during the tax year by an employe for services performed prior to the tax year for his employer and which would have been paid prior to the tax year except for the intervention of one of the following events: (i) bankruptcy or receivership of the employer; (ii) dispute as to the liability of the employer to pay such remuneration, which is determined after the commencement of court proceedings; (iii) if the employer is the United States, a state, a territory, or any political subdivision thereof, or any agency or instrumentality of any of the foregoing, lack of funds appropriated to pay such remuneration; or (iv) any other event determined to be similar in nature under regulations prescribed by the commission; and

(b) Wages or salaries which are received or accrued during the tax year by an employe for services performed prior to the tax year for his employer and which constitute

retroactive wage or salary increases ordered, recommended, or approved by any federal or state agency, and made retroactive to any period prior to the tax year; and

(c) Payments which are received or accrued during the tax year as the result of an alleged violation by an employer of any state or federal law relating to labor standards or practices, and which are determined under regulations prescribed by the commission to be attributable to a prior tax year.

Amounts not includible in gross income under this chapter shall not constitute "back pay." [1953 c.304 §13]

316.075 Election to pay tax in accordance with table. (1) In lieu of the tax imposed by ORS 316.055, and subject to the conditions of ORS 316.365, an individual or husband and wife filing a joint return whose adjusted gross income for the tax year is not more than \$8,000 may elect for that tax year to pay a tax in accordance with a tax table, preparation of which by the 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 316.060 and 316.065 upon the taxable balance of net income after deducting from the median adjusted gross income of each such bracket the standard deduction provided by ORS 316.365 based upon such median gross income, and the applicable exemption and dependency credit provided by ORS 316.455. Such exemption shall not, however, be prorated in case the taxpayer's status changes during his tax year, but the taxpayer's exemption status shall be determined as of the last day of his tax year, unless the taxpayer's spouse dies during such tax year, in which case the determination shall be made as of the date of such death. In the case of husband and wife making separate returns, the married exemption shall be divided equally between them.

(2) Under regulations prescribed by the commission, a change of election to use, or not to use, the tax table provided in this section for the purposes of computing the tax due under this chapter for any tax year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any tax year corresponding to the tax year of the tax-

payer, the change shall not be allowed unless, in accordance with such regulations:

(a) The spouse makes a change of election with respect to the use of the table for the tax year covered in such separate return, consistent with the change of election sought by the taxpayer; and

(b) The taxpayer and his spouse consent in writing to the assessment, within such period as may be agreed upon with the commission, of any deficiency, to the extent attributable to the change of election, even though at the time of filing such consent the assessment of the deficiency would otherwise be prevented. [1953 c.304 §11; 1953 c.552 §4]

316.080 Credit for taxes paid to other states or countries. (1) Residents of this state shall be allowed a credit against the taxes imposed by this chapter for income taxes imposed by and paid to another state or country on income taxed under this chapter, 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 this chapter.

(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 316.810 and also a resident of another state or country, it shall, notwithstanding the limi-

tations contained in subsection (1) of this section, be allowed a credit against the taxes imposed by this chapter 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 this chapter on the income of the estate or trust received by the beneficiary shall be allowed a credit against the taxes imposed by this chapter 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 this chapter.

(5) Nothing contained in this section shall be construed to permit a credit against the taxes paid under this chapter for federal income taxes. [1953 c.304 §12]

316.085 to 316.100 [Reserved for expansion]

GROSS INCOME; NET INCOME

316.105 Gross income. "Gross income" includes:

(1) 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.

(2) At the election of the taxpayer, amounts received as loans from the Commodity Credit Corporation. Such election, exercised either under this subsection or under the Property Tax Relief Act of 1929, as amended, shall be adhered to with respect to all subsequent tax years unless a change to a different method is authorized by the State Tax Commission under regulations which will prevent such change of method from resulting in escapement or distortion of income. The election shall be clearly manifested in the return of the taxpayer, except that for any tax year beginning prior to January 1, 1954, the election may be manifested by written notice to the commission at or prior to the time prescribed for the filing of the taxpayer's return for the tax year of the taxpayer beginning in 1954, or if there is more than one tax year of the taxpayer beginning in 1954, for the last tax year so beginning, provided the records of the taxpayer are sufficient to permit an accurate computation of income for such years. [1953 c.304 §14; 1953 c.552 §5]

316.110 Exclusions from gross income. "Gross income" does not include the following items, which shall be exempted from taxation under this chapter:

(1) Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or other-

wise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

(2) 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 endowment contract whether in a single sum or otherwise, but if such amounts (when added to amounts received before the tax year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the tax 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 tax year until the aggregate of the amounts excluded from gross income under this chapter and under the Property Tax Relief Act of 1929, as amended, on any such contract equals the aggregate premiums or consideration paid for such annuity. If the annuity contract was purchased by the employer of the taxpayer, there shall be excluded from gross income under this subsection only the amount which equals the taxpayer's contribution from his own funds toward the purchase of the annuity, plus the contributions of the employer, made either directly or through a trust or other employee's annuity plan, which were taxable to the employee under this chapter or under the Property Tax Relief Act of 1929, as amended, for the year in which such contributions of the employer were made, or, in the event that the employee was then a nonresident of this state, which would have been so taxable had he been a resident. 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 subsection.

(3) Contributions to a trust created by an employer as part of a stock bonus, pension or profit-sharing plan which is exempt from tax under the provisions of ORS 316.840 and any amounts paid by an employer on behalf of an employee or any of his dependents under a plan or system established by an employer, whether or not at the instance of a recog-

nized bargaining agent, which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

- (a) Retirement pay or pensions, or
- (b) Sickness or accident disability, or
- (c) Medical or hospitalization expenses in connection with sickness or accident disability, or
- (d) Death.

If and when payments are made to the employee under the plan or system established, such payments shall be taxed to the employee in the year of receipt unless excluded from gross income by subsection (12) of this section. Payroll deductions constituting contributions of the employee under the plan or system shall be taxed to the employee in the year of such payroll deduction.

(4) The difference between the price paid for and the fair market value of a share of stock at the time it is transferred to the taxpayer pursuant to his exercise of an option to purchase the stock of his employer corporation, its parent or subsidiary corporation, which option was granted by reason of the taxpayer's employment by any one of such corporations and:

(a) If, at the time the option was granted, the taxpayer did not own (by application of the tests specified in subsection (2) of ORS 316.380) more than 10 percent of the total combined voting power of all classes of stock of the employer corporation, its parent or subsidiary corporation; and

(b) If, at the time the option was granted, the option price was at least 85 percent of the fair market value of the stock subject to the option.

(5) So much of the income attributable to the recovery, in whole or in part, of an amount which was allowed as a deduction from gross income on a return for a prior tax year made under this chapter or under the Property Tax Relief Act of 1929, as amended, as is equal to the amount of the prior deduction, which, as determined in accordance with the regulations prescribed by the commission, did not result in a reduction of the taxpayer's tax liability on such prior return, reduced by the amount excludable in previous tax years under the provisions of this subsection with respect to the recovery of a part of the particular prior deduction.

This subsection shall not apply to deductions allowed or allowable with respect to depreciation, depletion, or amortization.

(6) The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation as such.

(7) Income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

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

(9) 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 federal law.

(10) Pensions or retirement pay received for disability incurred in the performance of active service in the Armed Forces of the United States, in the amount of \$3,000.

(11) Compensation (other than pension or retirement pay) received for active service performed by a member of the Armed Forces of the United States in an amount not to exceed \$3,000 per annum.

(12) Except in the case of amounts attributable to and not in excess of deductions allowed under ORS 316.345, 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. [1953 c.304 §15; 1953 c.552 §6]

316.115 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 includable in the gross income of such wife, and such amounts received from income of property so transferred shall not be includable 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 tax year of the wife (or if more than one such instalment payment for such tax year is received during such tax year, the aggregate of such instalment payments) does not exceed 10 percent of the principal sum.

(2) Whenever 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, the term "husband" shall be read "wife" and the term "wife" shall be read "husband." [1953 c.304 §16]

316.120 [Reserved for expansion]

316.125 Net income. "Net Income" means the gross income of the taxpayer, as defined in ORS 316.105 to 316.115, less the deductions allowed by ORS 316.305 to 316.370. [1953 c.304 §17]

316.130 to 316.155 [Reserved for expansion]

METHODS OF ACCOUNTING AND REPORTING INCOME

316.160 Accounting periods and methods; periods for first return under chapter.

(1) 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.

(2) Regardless of the accounting period employed by the taxpayer, the first return under this chapter shall be made for the tax year beginning on the operative date of this chapter. If the taxpayer's accounting period is a fiscal year, his return for the portion of the fiscal year immediately preceding the operative date of this chapter which is required under the Property Tax Relief Act of 1929, as amended, and his return for the portion of the fiscal year beginning with the operative date of this chapter shall, under rules and regulations prescribed by the commission, be combined in one return. The tax due with respect to such return shall be determined in the following manner:

(a) There shall first be computed the tax that would have been due had the Property Tax Relief Act of 1929, as amended, remained in force to the close of the fiscal year and such tax shall be multiplied by the percentage that the number of months in the period preceding the operative date of this chapter is of 12;

(b) There shall next be computed the tax that would have been due had this chapter become operative on the beginning date of the fiscal year and such tax shall be multiplied by the percentage that the number of months in the period following the operative date of this chapter is of 12; and

(c) The tax shall be the sum of the products resulting from the application of the preceding paragraphs (a) and (b). [1953 c.304 §18]

316.165 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. [1953 c.304 §19]

316.170 Period for reporting income.

(1) The amount of all items of gross income shall be reported in the return for the tax 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.

(2) If the taxation of any gain, profit or income shall have been postponed under the provisions of the Property Tax Relief Act of 1929, as amended, for any period prior to the operative date of this chapter, such gain, profit or income shall be taxed under this chapter in the same manner and to the same extent as would have been the case had the postponement been accomplished under the provisions of this chapter. [1953 c.304 §20]

316.175 Death of taxpayer; effect on reporting income. In the case of the death of a taxpayer, gains, profits and income are to be returned for the tax 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 (whether prior or subsequent to the operative date of this chapter) up to the date of his death if not otherwise properly includable 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. (The foregoing sentence shall not apply with respect to crops not harvested within said taxable period, or livestock.) The decedent's executor or other legal representative may, at his option, exclude such accruable 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 this chapter on behalf of the estate of the decedent for the tax year 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 this chapter for the tax year 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 this chapter for the tax year 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 includable 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 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. [1953 c.304 §21]

316.180 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 under this chapter or the Property Tax Relief Act of 1929, as amended. 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 316.175 or the corre-

sponding section [ORS 315.175] in the Property Tax Relief Act of 1929, as amended, shall be allowed to, and may be claimed only by the person or taxable entity reporting such income. [1953 c.304 §22]

316.185 Dealers in personal property on an instalment basis. (1) 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 tax 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.

(2) If a taxpayer entitled to the benefits of this section elects for any tax year to report his net income on the instalment basis, then in computing his taxable income for such year (referred to in this section as "year of change") or for any subsequent year:

(a) Instalment payments actually received during any such year on account of sales or other dispositions of property made in any tax year before the year of change shall not be excluded; but

(b) The tax imposed by this chapter for any tax year (referred to in this section as "adjustment year") shall be reduced by the adjustment computed under subsection (3) of this section.

(3) In determining the adjustment referred to in paragraph (b) of subsection (2) of this section, first determine, for each tax year before the year of change, the amount which equals the lesser of:

(a) The portion of the tax for such prior tax year which is attributable to the gross profit which was included in gross income for such prior tax year and which by reason of paragraph (a) of subsection (2) of this section is includible in gross income for the tax year, or

(b) The portion of the tax for the adjustment year which is attributable to the gross profit described in paragraph (a) of subsection (3) of this section.

The adjustment referred to in paragraph (b) of subsection (2) of this section for the adjustment year is the sum of the amounts, for all tax years before the year of change, determined under the preceding sentence.

(4) For purposes of subsection (3) of this section, the portion of the tax for a

prior tax year, or for the adjustment year, which is attributable to the gross profit described in such subsection is that amount which bears the same ratio to the tax imposed by this chapter (or by the corresponding provisions of ORS chapter 315) for such tax year (computed without regard to subsection (3) of this section) as the gross profit described in subsection (3) of this section bears to the gross income for such tax year.

(5) The 1955 amendments to this section shall apply to tax years beginning on or after December 31, 1953. [1953 c.304 §23; 1955 c.129 §1; subsection (5) derived from 1955 c.129 §2]

316.190 Sales of realty and casual sales of personal property 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 tax 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 316.185. 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 tax year in which the first payment on account of the sale or other disposition is received.

(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 tax year in which the sale or other disposition was made or, if no payments are received in that year, in the first year in which payments are received. 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 ORS 316.260, shall be included in income for the tax year in which the sale or disposition was made; however, if no initial payment is received in

the year of sale or other disposition, the entire gain shall be included in the taxable year in which the initial payment is made.

(3) The 1955 amendments to this section shall be applicable to any taxable year, the return for which is open to adjustment on August 3, 1955. [Amended by 1953 c.304 §24; 1955 c.92 §1; subsection (3) derived from 1955 c.92 §2]

316.195 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 the 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 shall 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. [1953 c.304 §25]

316.200 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 the return of each partner his distributive share, whether distributed or not, of the net income of the partnership for the tax year of the partnership ending with or within the tax year for which the partner's return is made. If the partnership keeps its

books of account on a fiscal year basis, the distributive share of each partner of the net income of the partnership for the entire 12-month period preceding the close of its fiscal year ending within the first calendar year following the operative date of this chapter, shall be taxed under the provisions of this chapter and no part thereof shall be taxed under the provisions of the Property Tax Relief Act of 1929, as amended. 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. [1953 c.304 §26]

316.205 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 commission that method will be accepted as the basis of allocation. [1953 c.304 §27]

316.210 Inventories. Whenever, in the opinion of the commission, the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories 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. [1953 c.304 §28]

316.215 to 316.250 [Reserved for expansion]

DETERMINATION AND RECOGNITION OF GAIN AND LOSS

316.255 Definitions. (1) As used in this section and in ORS 316.275 to 316.295:

(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. [1953 c.304 §29]

316.260 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 316.270, and the loss shall be the excess of the adjusted basis provided in ORS 316.270 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 316.260 to 316.270 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. [1953 c.304 §30]

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

(1) If the property should have been in-

cluded 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, descent 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 316.275 to 316.295), 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 316.280 and 316.285 or corresponding sections [ORS 315.280 and 315.285] of the Property Tax Relief Act of 1929, as amended, 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 316.280 or the corresponding section [ORS 315.280] of the Property Tax Relief Act of 1929, as amended, 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. Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this subsection, be considered as money received by the taxpayer upon the exchange. This subsection shall not apply to the property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of property to it.

(9) (a) If the property was acquired after December 31, 1929, as the result of compulsory or involuntary conversion described in ORS 315.295 and the destruction, theft, seizure, requisition or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation occurred prior to the operative date of this chapter, 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 under the Property Tax Relief Act of 1929, as amended.

(b) If the property was acquired as a result of a compulsory or involuntary conversion described in subsection (1) of ORS 316.295 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.

(c) If the property was purchased by the taxpayer and such purchase resulted, under the provisions of subsection (2) of ORS 316.295 in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(d) This subsection shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by a taxpayer as his principal residence if the destruction, theft, seizure, requisition or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1952.

(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 (6) of ORS 316.280, or the corresponding section of the Property Tax Relief Act of 1929, as amended, 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.

(12) If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility under ORS 316.325 or under the corresponding section [ORS 315.325] of the Property Tax Relief Act of 1929, as amended, of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(13) If the property consists of stock (called "old stock") in respect of which the shareholder has received a distribution of stock or rights to acquire stock in the distributing corporation (called "new stock") and if the distribution did not constitute receipt of a dividend taxable under the provisions of this chapter, or under the Property Tax Relief Act of 1929, as amended, the

basis of the old and new stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations prescribed by the commission. A similar allocation of basis shall apply with respect to a tax-free distribution described in subsection (7) of ORS 316.280. [1953 c.304 §31; 1953 c.552 §7]

316.270 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 316.265, 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 prior years made under this chapter or under the Property Tax Relief Act of 1929, as amended, if the adjustment of such return is barred.

(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, made under this chapter or under the Property Tax Relief Act of 1929, as amended.

(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 316.265 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.

(5) Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under subsection (7) of ORS 316.110. [1953 c.304 §32]

316.275 Recognition of gain or loss. Upon the sale or exchange of property the entire amount of the gain or loss, as determined under ORS 316.260 to 316.270 shall be recognized, except as provided in ORS 316.280 to 316.295. [1953 c.304 §33]

316.280 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. Where the transferee assumes a liability of a transferor, or where the property of a transferor is transferred subject to a liability, then for the purpose only of determining whether the amount of stock or securities received by each of the transferors is in the proportion required by this subsection, the amount of such liability shall be considered as stock or securities received by such transferor.

(5) Where upon an exchange the taxpayer receives as part of the consideration property which would be permitted by subsection (4) of this section to be received without the recognition of gain if it were the sole consideration, and as part of the consideration another party to the exchange assumes a liability of the taxpayer or acquires from the taxpayer property subject to a liability, such assumption or acquisition shall not be considered as "other property or money" received by the taxpayer within the meaning of ORS 316.285 or 316.290 and shall not prevent the exchange from being within the provision of subsection (4) of this section.

(6) (a) If property (hereinafter in this subsection called "old residence") used by the taxpayer as his principal residence is sold by him and, within a period beginning one year prior to the date of such sale and ending one year after such date, property (hereinafter in this subsection called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's adjusted sales price of the old residence exceeds the taxpayer's cost of purchasing the new residence.

(b) For the purposes of this subsection:

(A) An exchange by the taxpayer of his residence for other property shall be considered as a sale of such residence, and the acquisition of a residence upon the exchange of property shall be considered as a purchase of such residence.

(B) If the taxpayer's residence (as a result of its destruction in whole or in part, theft or seizure) is compulsorily or involuntarily converted into property or into money, such destruction, theft or seizure shall be considered as a sale of the residence; and if the residence is so converted into property which is used by the taxpayer as his resi-

dence, such conversion shall be considered as a purchase of such property by the taxpayer.

(C) In the case of an exchange or conversion described in subparagraph (A) or (B), in determining the extent to which the adjusted sales price of the old residence exceeds the taxpayer's cost of purchasing the new residence, the amount realized by the taxpayer upon such exchange or conversion shall be considered the adjusted sales price of the old residence.

(D) A residence any part of which was constructed or reconstructed by the taxpayer shall be considered as purchased by the taxpayer. In determining the taxpayer's cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction and improvements made which are properly chargeable to capital account, during the period specified in this subsection.

(E) If a residence is purchased by the taxpayer prior to the date of his sale of the old residence, the purchased residence shall not be treated as his new residence if sold or otherwise disposed of by him prior to the date of the sale of the old residence.

(F) If the taxpayer, during the period described in this subsection, purchases more than one residence which is used by him as his principal residence at some time within one year after the date of the sale of the old residence, only the last of such residences so used by him after the date of such sale shall constitute the new residence. If within the one year referred to in the preceding sentence property used by the taxpayer as his principal residence is destroyed, stolen, seized, requisitioned or condemned, or is sold or exchanged under threat or imminence thereof, then for the purposes of the preceding sentence such one year shall be considered as ending with the date of such destruction, theft, seizure, requisition, condemnation, sale or exchange.

(G) In the case of a new residence the construction of which was commenced by the taxpayer prior to the expiration of one year after the date of the sale of the old residence, the period specified in this subsection, and the one year referred to in subparagraph (F) shall be considered as including a period of 18 months beginning with date of the sale of the old residence.

(H) The term "residence" means the principal place of abode of the taxpayer situated in the State of Oregon.

(I) The term "adjusted sales price" means the amount realized, reduced by the aggregate of the expenses for work performed on the old residence in order to assist in its sale. This reduction applies only to the following expenses: (i) For work performed during the 90-day period ending on the day on which the contract to sell the old residence is entered into; (ii) which are paid on or before the thirtieth day after the date of the sale of the old residence; (iii) which are not allowable as deductions in computing taxable income and which are not taken into account in computing the amount realized from the sale of the old residence. The reduction provided for work performed on the old residence applies to expenses for work performed in any taxable year (whether beginning before, on or after January 1, 1954), but only in the case of a sale or exchange of an old residence which occurs after December 31, 1953.

(c) The provisions of this subsection shall not be applicable with respect to the sale of the taxpayer's residence if within one year prior to the date of such sale the taxpayer sold at a gain other property used by him as his principal residence, and any part of such gain was not recognized by reason of the provisions of this subsection. For the purposes of the preceding sentence the destruction, theft, seizure, requisition or condemnation of property or the sale or exchange of property under threat or imminence thereof, shall not be considered as a sale of such property.

(d) The 1955 amendments to this subsection shall first apply to tax years beginning on or after January 1, 1954.

(7) If there is distributed, in pursuance of a plan of reorganization, to a shareholder of a corporation which is a party to the reorganization, stock (other than preferred stock) in another corporation which is a party to the reorganization, without the surrender by such shareholder of stock, no gain to the distributee from the receipt of such stock shall be recognized unless it appears that:

(a) Any corporation which is a party to such reorganization was not intended to continue the active conduct of a trade or business after such reorganization; or

(b) The corporation whose stock is distributed was used principally as a device for the distribution of earnings and profits to the shareholders of any corporation a party to the reorganization. [1953 c.304 §34;

1953 c.552 §8; 1955 c.256 §1; paragraph (d) of subsection (6) derived from 1955 c.256 §2]

316.285 Gains from exchanges not solely in kind. (1) If an exchange would be within the provisions of subsections (1), (2), (3) or (4) of ORS 316.280, 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. [1953 c.304 §35]

316.290 Loss from exchanges not solely in kind. If an exchange would be within the provisions of subsections (1), (2), (3) or (4) of ORS 316.280, 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. [1953 c.304 §36]

316.295 Involuntary conversion. (1) If property (as a result of its destruction in whole or in part, theft, seizure or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted:

(a) Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(b) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in subsection (2) of this section occurred on or after the operative date of this chapter) the gain, if

any, shall be recognized except to the extent hereinafter provided in subparagraphs (A) and (B):

(A) If the taxpayer during the period specified in subparagraph (B) following, for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more tax years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the commission may by regulation prescribe. For the purposes of this paragraph, (i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition, and (ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (9) of ORS 316.265, the unadjusted basis of such property or stock would be its cost within the meaning of ORS 316.265.

(B) The period referred to in the preceding subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending, (i) one year after the close of the first tax year in which any part of the gain upon the conversion is realized, or (ii) subject to such terms and conditions as may be specified by the commission, at the close of such later date as the commission may designate upon application of the taxpayer made at such time and in such manner as the commission may by regulations prescribe.

(2) For the purposes of this section, the term "disposition of the converted property" means the destruction, theft, seizure, requisition or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

(3) This section shall not apply in the case of property used by the taxpayer as his principal residence, if the disposition of such converted property occurred on or after

the operative date of this chapter. [1953 c.304 §37]

316.300 [Reserved for expansion]

DEDUCTIONS ALLOWED IN COMPUTING NET INCOME

316.305 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) If amounts deductible under subsection (1) of this section are paid:

(a) Under an established stock bonus, pension, profit-sharing or annuity plan, or similar plan or method of employer contributions having the effect of such a plan, and if the employees' rights to or derived from the employer's contributions are nonforfeitable at the time the contributions are made, or

(b) In the form of contributions to a trust exempt from tax under the provisions of ORS 316.840,

such amounts shall be deductible in the year paid to the fund or trust. In all other cases of deferred payment of compensation, the employer may deduct only such amounts as are actually paid to his employees and only in the year such amounts are paid directly to them.

(3) In the case of an individual or trust, all the ordinary and necessary expenses paid or incurred during the tax year for the production or collection of income subject to taxation under this chapter, or for the management, conservation or maintenance of property held for the production of such income. [1953 c.304 §38]

316.306 Amounts paid to employees' plan or trust in excess of current contribution. For taxable years beginning on and after January 1, 1955, there shall be allowed, in addition to the current contributions accruing during the year to a plan or an exempt employees' trust, which are allowed as a deduction under subsection (2) of ORS 316.305, a deduction for a reasonable amount transferred to or paid to the plan or exempt employees' trust in excess of such current contributions when such amount (1) has not theretofore been allowable as a deduction, (2) is paid in recognition of past service and (3) is apportioned over a period of 10 consecutive years beginning with the year in which the transfer or payment is made. [1955 c.608 §2]

316.310 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 this chapter. [1953 c.304 §39]

316.315 Taxes. (1) 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:

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

(b) Gasoline taxes when not a business expense.

(c) Taxes imposed by this chapter or by any law of the State of Oregon upon or measured by net income.

(d) 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.

(e) Taxes paid pursuant to the Self-Employment Contribution Act, subchapter E, Internal Revenue Code of 1939 and Subtitle A, chapter 2, Internal Revenue Code of 1954.

(f) Federal income taxes on income not taxed under this chapter or under the Property Tax Relief Act of 1929, as amended.

(g) Except as provided in subsection (3) of this section, taxes which became a

lien upon property at a date prior to the acquisition of such property by the taxpayer.

(h) Taxes on real property, to the extent that subsection (3) of this section requires such taxes to be treated as imposed on another taxpayer.

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

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

(2) (a) If the net income of the taxpayer is computed under an accrual method of accounting, then, at the election of the taxpayer, any real property tax which is related to a definite period of time shall be accrued ratably over that period.

(b) Paragraph (a) of this subsection shall not apply to any real property tax, to the extent that such tax was allowable as a deduction for a tax year which began before January 1, 1954. In the case of any real property tax which would, but for this subsection, be allowable as a deduction for the first tax year of the taxpayer which begins after December 31, 1953, then, to the extent that such tax is related to any period before the first day of such first tax year, the tax shall be allowable as a deduction for such first tax year.

(c) A taxpayer may, without the consent of the commission, make an election under this subsection for its first tax year which begins after December 31, 1953, in which the taxpayer incurs real property taxes. Such an election shall be made not later than January 1, 1956, or the time prescribed by this chapter for the filing of the return for such year, including extensions thereof, whichever date occurs last. A taxpayer may, with the consent of the commission, make an election under this subsection at any time.

(3) (a) For purposes of subsection (1) of this section, if real property is sold during any real property tax year, so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and so much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(b) In the case of any sale of real property, if a taxpayer may not, by reason of

his method of accounting, deduct any amount for taxes unless paid, and the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year, then for purposes of subsection (1) of this section the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (a) of this subsection, is treated as imposed on the taxpayer. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(c) Paragraph (a) of this subsection shall apply to tax years ending after December 31, 1953, but only in the case of sales after December 31, 1953.

(d) Paragraph (a) of this subsection shall not apply to any real property tax, to the extent that such tax was allowable as a deduction to the seller for a tax year which ended before January 1, 1954.

(e) In the case of any sale of real property, if the taxpayer's net income for the tax year during which the sale occurs is computed under an accrual method of accounting, and if no election under subsection (2) of this section applies, then, for purposes of subsection (1) of this section, that portion of such tax which is treated, under paragraph (a) of this subsection, as imposed on the taxpayer, and may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any tax year, shall be treated as having accrued on the date of the sale.

(4) The 1955 amendments to this section shall be applicable to tax years ending after December 31, 1953. [1953 c.304 §10; 1955 c.285 §1; subsection (4) derived from 1955 c.285 §2]

316.320 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 fire, storm, shipwreck or other casualty, or from theft.

(2) The basis for determining the amount of deduction for losses sustained under para-

graphs (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 316.260 to 316.270.

(3) Losses from wagering transaction shall be allowed only to the extent of the gains from such transactions. [1953 c.304 §41]

316.325 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. [1953 c.304 §42]

316.330 Bad debts. (1) In computing net income there shall be allowed as a deduction any debt which becomes worthless within the tax year, and charged off in accordance with regulations prescribed by the commission (or, in the discretion of the commission, a reasonable addition to a reserve for business bad debts.) The basis for determining the amount of the deduction for a bad debt shall be the adjusted basis provided in ORS 316.260 to 316.270 for deter-

mining the loss from the sale or other disposition of property.

(2) When satisfied that a business debt is recoverable only in part, the commission may allow as a deduction an amount not in excess of the part of such debt charged off within the tax year.

(3) For the purposes of this section, a "business debt" means a debt created or acquired in connection with a taxpayer's trade or business, or a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(4) The 1955 amendments to this section are applicable to tax years beginning after December 31, 1954. [1953 c.304 §43; 1955 c.580 §1]

316.335 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, or property held for the production of income subject to taxation under this chapter, and in the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion. Except in the case of metal mines in respect of which percentage depletion is claimed as provided in subsection (2) of this section, and in the case of property acquired before January 1, 1930, the basis upon which the deductions specified in this subsection are to be allowed in respect of any property shall be the adjusted basis provided in ORS 316.260 to 316.270 for the purpose of determining the gain upon the sale or other disposition of such property. In the case of property acquired before January 1, 1930, the basis upon which the deductions specified in this subsection are to be allowed shall be the cost of such property (or, in the case of property acquired other than by purchase, the fair market value at the date of acquisition) less depreciation properly chargeable against such property prior to January 1, 1930, and as adjusted in accordance with ORS 316.270. The reasonable allowance under this subsection shall be made under rules and regulations to be prescribed by the commission, except as hereinafter provided.

(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 tax 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 this chapter, the taxpayer must 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 tax year computed with or without reference to percentage depletion. An election once exercised cannot thereafter be changed by the taxpayer, and the depletion allowance in respect to each such property will for all succeeding tax years be computed in accordance with the election so made.

(3) In the case of property held by one person for life with remainder to another person, the deduction specified in this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction specified in this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of leases, the allowable deduction specified in this section may be equitably apportioned between the lessor and lessee. [1953 c.304 §44]

316.340 Contributions and gifts. (1) In computing net income there shall be allowed as deductions, to an amount not in excess of 20 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 a corporation, trust, community chest, fund or foundation 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;

(c) 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; and

(d) To a domestic fraternal society,

order or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals.

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

(3) If in the tax year and in each of the 10 preceding tax years the amount of the contributions or gifts described in this section plus the amount of all taxes on or measured by income paid during such year in respect of such year or preceding tax years, exceeds 90 percent of the taxpayer's net income for each such year, the limitation contained in subsection (1) shall not be applicable.

(4) The 1955 amendments to this section are applicable to tax years beginning after December 31, 1954. [1953 c.304 §45; 1953 c.552 §9; 1955 c.589 §1]

316.345 Extraordinary medical expenses; expense of child care paid by working parent. (1) In computing net income there shall be allowed as deductions, expenses paid during the tax 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 subsection (1) of 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 deduction shall be \$5,000.

(3) The term "medical care", as used in subsection (1) of this section, includes amount 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.

(4) A taxpayer whose adjusted gross income for the tax year is \$3,000 or less is allowed a deduction of expenses not in excess of \$720 paid for the care of his dependent children, if such expenses are made necessary solely by the fact that the taxpayer is gainfully employed and unable for

that reason to give such care. For the purposes of this deduction, a husband and wife living together shall be treated as one taxpayer, whether filing joint or separate returns. [1953 c.304 §46; 1953 c.552 §10]

316.350 Bond premiums. (1) In computing net income, at the election of the taxpayer as hereinafter provided, there shall be allowed as a deduction with respect to a bond the interest on which is taxable under this chapter, the yearly amortizable bond premium.

(2) The amount of the bond premium, in the case of the holder of the bond, shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond. In no case shall the amount of the bond premium on a convertible bond include any amount attributable to the conversion features of the bond. The amortizable bond premium of the tax year shall be the amount of the bond premium attributable to such year in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, or if such method is not reasonable, in accordance with regulations prescribing reasonable methods of amortizing bond premium prescribed by the commission.

(3) The election authorized in subsection (1) of this section shall be made in accordance with such regulations as the commission shall prescribe. If the election is made with respect to any bond of the taxpayer, it shall also apply to all bonds held by the taxpayer at the beginning of the first tax year to which the election applies and to all bonds thereafter acquired by him and the election shall be binding for all subsequent tax years with respect to bonds of the taxpayer, unless, upon application by the taxpayer, the commission permits him, subject to such conditions as the commission deems necessary, to revoke such election. The election authorized under this section in the case of a partnership shall be exercisable with respect to the bonds of the partnership only by the partnership. In the case of bonds held by a common trust fund, as defined in ORS 316.855, the election shall be exercisable with respect to such bonds only by the common trust fund.

(4) As used in this section, the term "bond" means any bond, debenture, note or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. [1953 c.304 §47]

316.355 Accounting period during which deductions may be taken. The deductions specified in ORS 316.305 to 316.350 and elsewhere in this chapter shall be taken in accordance with the method of accounting employed by the taxpayer for the purpose of computing net income under this chapter, but the same item shall not be allowed as a deduction in more than one return; provided, however, if a deduction is erroneously claimed in a return the adjustment of which is barred, to the extent that such erroneous deduction did not result in tax benefit by the reduction of taxable net income for such barred year, it may, to that extent, be deducted in the proper year if the return for that year is not also barred to adjustment. [1953 c. 304 §48]

316.360 Deductions allowed nonresident taxpayers. (1) Subject to subsection (2) of this section, in the case of a nonresident taxpayer the deductions allowed by ORS 316.305 to 316.350 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 under this chapter; or

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

(2) The deduction prescribed in ORS 316.340, 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 316.340,

or a chapter or branch thereof, located within the State of Oregon. [1953 c.304 §49]

316.365 Optional standard deduction.

(1) 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 this chapter except those which under ORS 316.015 are to be subtracted from gross income in computing adjusted gross income.

(c) The optional standard deduction shall not be allowed to estates, trust, individuals who are not residents of this state for the full 12 months of the tax year, individuals filing returns for a period of less than 12 months in order to effect a change in the accounting period, or a husband or wife 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 tax year, except that if one of the spouses dies during the tax 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 \$8,000, 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 \$8,000 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 316.075.

(2) Under regulations prescribed by the commission, a change of election to take, or not to take, the standard deduction provided in this section for any tax year may be made after the filing of the return for such year and within the period specified in ORS 316.615 for the filing of a timely claim for refund with respect to such return. If the spouse of the taxpayer filed a separate return for any tax year corresponding to

the tax year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations:

(a) The spouse makes a change of election with respect to the use of the standard deduction for the tax year covered in such separate return, consistent with the change of election sought by the taxpayer; and

(b) The taxpayer and his spouse consent in writing to the assessment, within such period as may be agreed upon with the commission, of any deficiency, to the extent attributable to the change of election, even though at the time of filing of such consent the assessment of the deficiency would otherwise be prevented. [1953 c.304 §50; 1953 c.552 §11]

316.370 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 316.115 amounts described therein as includable in the gross income of his wife, (or in the case the wife is not a resident of Oregon, such amounts which would be includable in her gross income under this chapter if she were a resident of Oregon), payment of which is made within the husband's tax year. If the amount of any such payment is not includable in such husband's gross income, no deduction shall be allowed under this section with respect to such payment.

(2) Subsection (2) of ORS 316.115 applies to this section. [1953 c.304 §51]

316.375 Items not deductible. In computing net income no deductions shall in any case be allowed in respect of:

(1) Personal, living or family expenses, except extraordinary medical expenses deductible under ORS 316.345.

(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 under this chapter or under the Property Tax Relief Act of 1929, as amended.

(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.

(5) Amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the commission, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable. [1953 c.304 §52]

316.380 Certain losses not deductible.

(1) In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly:

(a) Between members of a family, as defined in paragraph (d) of subsection (2) of this section;

(b) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(c) Between a grantor and a fiduciary of any trust;

(d) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or

(e) Between a fiduciary of a trust and a beneficiary of such trust.

(2) For the purposes of determining, in applying subsection (1) of this section, the ownership of stock:

(a) Stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust, shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries;

(b) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(c) An individual owning (otherwise than by the application of paragraph (b) of this subsection) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(d) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants; and

(e) Stock constructively owned by a person by reason of the application of paragraph (a) of this subsection shall, for the purpose of applying paragraph (a), (b) or (c) of this subsection, be treated as actually

owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (b) or (c) of this subsection shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock. [1953 c.304 §53]

316.385 to 316.450 [Reserved for expansion]

EXEMPTIONS AND CREDITS

316.455 Exemptions and credits. (1)

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, \$500.

(b) In the case of a married individual living with husband or wife, \$1,000. 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. For the purposes of this paragraph, the determination of whether an individual is a married individual living with husband or wife shall be made as of the last day of the tax year of the taxpayer, unless one of the spouses dies during the tax year of the taxpayer, in which case the determination shall be made as of the date of such death.

(c) A credit of \$500 for each dependent individual other than husband or wife. Dependency credits shall be allowed in the full amount, without proration, in the case of a taxpayer furnishing chief support to a dependent individual who was or becomes a dependent individual during the tax year even though the status of dependent individual does not exist as of the close of the tax year. However, the credit for a dependent individual shall not be allowed to any taxpayer for any dependent individual for whom a personal exemption has been allowed, for the tax year beginning in the calendar year in which the taxpayer's tax year begins, under paragraph (b) of this subsection as a husband and wife living together, whether a joint return or separate returns are made by such dependent individual and his spouse.

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

(d) Whose gross income for the calendar year in which the tax year of the taxpayer begins is less than \$500.

(3) The personal exemptions and credits shall be apportioned, under rules and regulations prescribed by the commission, in accordance with the number of months before and after a change in the status of the taxpayer during the tax year by reason of:

(a) The death of the taxpayer.

(b) The taxpayer becoming a resident of this state.

(c) The taxpayer becoming a nonresident of this state.

(d) The taxpayer becoming subject to the personal income taxation laws of this state.

(e) The taxpayer ceasing to be subject to the personal income taxation laws of this state. For the purpose of such apportionment, a fractional part of a month shall be disregarded unless it amounts to more than one-half 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.

(4) An additional exemption of \$500 is allowed the taxpayer if he is blind at the close of his taxable year or period. If a husband and wife make a joint return, an exemption of \$500 is allowed for each spouse who is blind at the close of the taxable year or period for which the joint return is made. For the purposes of this paragraph, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) To avoid hardship in certain instances there shall also be allowed an additional, flexible personal exemption as follows:

(a) In the case of a single individual, or of a married individual not living with husband or wife, the amount by which \$1,000 exceeds adjusted gross income.

(b) In the case of a married individual living with husband or wife, the amount by which \$1,500 exceeds adjusted gross income. A husband or wife living together shall be allowed but one such exemption, and if they make separate returns it may be taken by either or it may be equally divided between them. The determination of the status of the taxpayer shall be made as provided in paragraph (b) of subsection (1) of this section.

(6) The 1955 amendments to this section shall apply to all tax years ending after August 3, 1955, and ORS 316.455 as it read prior to amendment by section 2, chapter 596, Oregon Laws 1955, shall continue to apply to all tax years ending prior to that date. [1953 c.304 §54; 1953 c.552 §12; 1955 c.596 §2; subsection (6) derived from 1955 c.596 §4]

316.460 to 316.500 [Reserved for expansion]

RETURNS AND PAYMENT OF TAX

316.505 Persons required to make returns. (1) Every single individual, or married individual not living with husband or wife, having during the tax year a net income of \$500 or over; every married individual, living with husband or wife, having during the tax year a net income of \$1,000 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.

(3) The 1955 amendments to this section shall apply to all tax years ending after August 3, 1955, and ORS 316.505 as it read prior to amendment by section 3, chapter

596, Oregon Laws 1955, shall continue to apply to all tax years ending prior to that date. [1953 c.304 §55; 1953 c.552 §13; 1955 c.596 §3; subsection (3) derived from 1955 c.596 §4]

316.510 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 tax years; except that if such tax 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 tax year of each, but this exception does not apply if the surviving spouse remarries before the close of his tax 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 tax 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 tax 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) If an individual has filed a separate return for a tax year for which a joint return could have been made by him and his spouse under this section, and the time prescribed in this chapter for filing the return for such tax year has expired, such

individual and his spouse may nevertheless make a joint return for such tax year at any time within three years from the last date prescribed in this chapter for filing the return for such tax year determined without regard to any extension of time granted for filing the return of either spouse. A joint return made in accordance with this subsection shall constitute the return of husband and wife for such tax year and all payments, credits or refunds made or allowed with respect to the separate return of either spouse for such tax year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. Any election made by either spouse in his separate return for such tax year with respect to the treatment of any income, deduction or credit shall not be changed in making the joint return if such election would have been irrevocable if the joint return had not been made.

(a) If the tax determined to be due on the joint return filed in accordance with this subsection exceeds the aggregate of the amounts of tax theretofore assessed upon the separate returns of the spouses for the same tax year, the excess shall be treated as a deficiency in respect of which there shall be assessed the appropriate interest charges and penalties as specified in ORS 316.605.

(b) If the tax determined to be due upon the joint return filed in accordance with this subsection is less than the aggregate of the amounts of tax theretofore paid with respect to the separate returns of the spouses for the same tax year, the difference shall be refunded with interest, subject to the provisions of ORS 316.615.

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

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

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

(7) 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. [1953 c.304 §56]

316.515 Return of minor. A minor shall file his own return and include therein all items of income, including income attribut-

able to his personal services, and such income shall not be included on the return of his parent. All expenditures by the parent or the minor attributable to such income shall be deemed to have been paid or incurred by the minor. However, any tax assessed against the minor, to the extent attributable to income from personal services, shall, if not paid by the minor, for all purposes be considered as having also been properly assessed against the parent. For the purposes of this section the term "parent" includes an individual who is entitled to the services of a minor by reason of having parental rights and duties in respect of such minor. [1953 c.304 §57]

316.520 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. [1953 c.304 §58]

316.525 Return for decedent; collecting tax from estate. The return of an individual who, while living, was subject to the tax imposed by this chapter, and who has died without 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. [1953 c.304 §59]

316.530 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 this chapter upon the fiduciary, which have been 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 be-

half of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this chapter 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. [1953 c.304 §60]

316.535 Information returns. (1) Fiduciaries required to make returns under this chapter, 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 employees 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. [1953 c.304 §61]

316.540 Return of partnership. Every partnership shall make a return for each tax 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 distributive share of each individual. The return may be sworn to by any one of the partners. [1953 c.304 §62]

316.545 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 this chapter. [1953 c.304 §63]

316.550 Mandamus to compel return. If a taxpayer fails to file a return within 60 days of the time prescribed by this chapter, 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 316.665 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. [1953 c.304 §64]

316.555 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 this chapter. If from a supplementary return, or otherwise, the commission finds that any items of income, taxable under this chapter, 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 this chapter whether or not the commission required a return or a supplementary return under this section. [1953 c.304 §65]

316.560 Commission requiring additional facts. When 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. [1953 c.304 §66]

316.565 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. [1953 c.304 §67]

316.570 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 316.575.

(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. [1953 c.304 §68]

316.575 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 two 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 this chapter. No employe shall have any right of action against his em-

ployer 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 316.585 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 when such employe is not a resident of Oregon as defined in ORS 316.010 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 a part-time employe whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops if the total amount paid to such employe is less than \$100 annually.

(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 316.630 and 316.635 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 316.620, 316.645 to 316.655, and subsection (1) of ORS 316.990, 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.

(6) The 1955 amendments to this section shall first become effective on January 1, 1956. [1953 c.304 §69; 1955 c.595 §1; subsection (6) derived from 1955 c.595 §4]

NOTE: Until January 1, 1956, ORS 316.575 as compiled in the 1953 edition will remain in effect.

316.580 Refunds to employees. (1) When the total amount deducted under ORS 316.575 exceeds the amount of the tax on the employee's entire income as computed under this chapter, or when his income is not taxable under this chapter, the commission shall, after auditing the annual return filed by the employee in accordance with ORS 316.545, refund the amount of the excess deducted, with interest thereon as provided by ORS 316.615. No refund shall be made to an employee 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 the 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 subject to the same restrictions pursuant to which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes. [1953 c.304 §70; 1955 c.595 §2]

316.585 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 employees, the amount deducted therefrom in accordance with the provisions of ORS 316.575, and such other information as the commission may require. The employer is charged with the duty of advising the employee 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 employee 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. [1953 c.304 §71; 1955 c.595 §3]

316.590 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. [1953 c.304 §72]

316.595 and 316.600 [Reserved for expansion]

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

316.605 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. There shall be set forth in or attached to the notice of deficiency and proposed assessment or any amendment thereof or supplement thereto a sufficient explanation of each proposed adjustment to the return adequate to apprise the taxpayer of the nature of each adjustment, and reference shall be made in the explanation of each proposed adjustment to the statute, regulation or commission ruling upon which the proposed adjustment is based. Each notice of deficiency and proposed assessment shall bear a certificate by the auditor who audited the return that he has audited the return and that the proposed adjustments to the return are made in good faith and not for the purpose of extending the period of assessment. 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 this chapter, 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 this chapter 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 this chapter must be credited first to penalty, then to interest accrued, and then to tax due. [1953 c.304 §73; 1955 c.590 §1]

316.610 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, 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. If the Commissioner of Internal Revenue or other authorized officer of the Federal Government shall make a correction or additional assessment of income tax for federal income tax purposes, then a correction or additional assessment of income tax hereunder for the corresponding tax year may be made within one year after such federal correction or additional assessment shall have become final, or within the applicable three or five year period hereinbefore prescribed, whichever period expires the later.

(2) If, prior to the expiration of the three-year period, (or the five-year period, if applicable) prescribed by subsection (1) of this section, the commission and the taxpayer consent in writing to the assessment of the tax for the tax year involved after the expiration of such prescribed period, the tax may be assessed or any tax overpaid for said

year shall be refunded 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 the applicable period prescribed in subsections (1) and (2) of this section shall be compliance therewith although the tax is assessed after such period.

(4) Notwithstanding other provisions of this section, the period for the assessment of any deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's principal residence, as provided in subsection (6) of ORS 316.280, shall not expire prior to the expiration of three years from the date the commission is notified by the taxpayer of:

(a) The cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain; or

(b) The taxpayer's intention not to purchase a new residence; or

(c) A failure to purchase a new residence within the period prescribed in subsection (6) of ORS 316.280. [1953 c.304 §74; 1953 c.552 §14]

316.615 Refunds. (1) 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 employee of a tax withheld by an employer shall be paid for any period prior to the time the employee 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 316.585, was filed or was due, whichever is the later. The amount of the refund, exclusive 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 this chapter, 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) Notwithstanding any provision to the contrary in ORS 316.660 or subsection (1) of this section, 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 shall be made at any time prior to the expiration of the period agreed upon and no refund shall be made or allowed after the expiration of the period agreed upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed upon in compliance with the manner prescribed by the commission. The commission shall have the power to consent to such refund only where the taxpayer has consented to assessment of additional tax, if such be determined upon audit, after the expiration of the applicable three- or five-year period prescribed in subsection (1) of ORS 316.610. The 1955 amendments to this subsection are applicable to any tax year the return for which is open to adjustment on August 3, 1955.

(3) If the claim for credit or refund relates to an overpayment on account of the deductibility by the taxpayer under paragraph (a) or (b) of subsection (1) of ORS 316.320 or under ORS 316.330, on account of the worthlessness of a share of stock in a corporation, of the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the three-year period of limitation prescribed in subsection (1) of this section, the period shall be seven years from the date prescribed by law for the filing of the return for the year with respect to which the claim is made; provided, however, that if the claim is made in reliance upon this subsection after the expiration of the three-year period prescribed in subsection (1), no interest shall be allowed with respect to any credit or refund determined to be due upon such claim for the period beginning at the close of the three-year period prescribed in subsection (1) and ending at the expiration of six months after the date

on which the claim is filed. [1953 c.304 §75; 1953 c.552 §15; 1955 c.583 §1]

316.620 Determining and assessing income on failure to file return after notice.

(1) If any taxpayer fails to file any return required by this chapter, the commission shall, upon discovery of such fact, notify the taxpayer of the delinquency and require the filing of a correct return within 30 days after the date of mailing of the notice. If the taxpayer thereupon files such a return prior to the mailing of a notice of assessment by the commission, as provided in this section, the return shall be treated as any other delinquent return.

(2) In case of a failure by the taxpayer to file such a return within the time specified in subsection (1) of this section, the commission shall determine the income of the taxpayer according to the best of its information and belief, assess the tax thereon, and notify the taxpayer of the determination and assessment. In addition to the tax the commission shall also assess and collect: (a) Interest on such tax at the rate of one-half of one percent per month computed from the original due date of the return until paid, and (b) a penalty of 100 percent of such tax, except that if it is shown that the failure to file the return within such period is due to reasonable cause and not due to wilful neglect or fraud, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(3) A taxpayer shall be deemed to have been notified under this section when the commission shall have mailed a written notice to the last-known address of the taxpayer. [1953 c.304 §76; 1955 c.355 §1]

316.625 Examining books, records or persons. (1) The commission, for the purpose 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 re-

quire 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 this chapter.

(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. [1953 c.304 §77]

316.630 Warrant for collection of taxes.

(1) If any tax imposed by this chapter 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 termination of the tax year by the commission under the provisions of ORS 316.640), 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 war-

rant 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 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. [1953 c.304 §78]

316.635 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 316.630 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 30 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 316.630 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. [1953 c.304 §79]

316.640 Tax as debt; termination of taxable period by commission and immediate assessment of tax. (1) Every tax imposed

by this chapter, 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 tax year or the tax 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 tax 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 this chapter. 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. [1953 c.304 §80]

316.645 Penalty and interest on delinquencies. If a taxpayer fails to file a return of income at the time required by or under this chapter, 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. [1953 c.304 §81]

316.650 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 this chapter. [1953 c.304 §82; 1953 c.552 §16]

316.655 Cancellation or reduction of uncollectible taxes. (1) 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 collecting the portion of the assessment which it believes is collectible, cancel the remainder of the assessment. Each such cancellation shall be evidenced by a written record in the files of the commission which shall be signed by all three members of the commission and two of said commissioners shall concur in such cancellation of assessment. Such record shall set forth:

- (a) The name of the taxpayer against whom the liability was assessed;
- (b) The amount of the assessed liability;
- (c) The amount of the liability paid;
- (d) The amount of the liability canceled;
- (e) A sworn statement of the taxpayer or his personal representative setting forth the complete financial responsibility of the taxpayer or his estate, and containing a full disclosure of all matters bearing upon the ability of the taxpayer or his estate to pay the full amount of the liability assessed; and

- (f) The written recommendation of an assistant to the Attorney General regularly employed by the commission that the liability be reduced in the amount shown by the record.

(2) Notwithstanding the provisions of ORS 316.740, a full and true copy of the record of each canceled assessment, certified as such by one commissioner, shall be filed with the Governor and thereafter preserved by him as a public record. A summary (omitting the names of the taxpayers involved) of the amount of tax, penalty and

interest reduced and canceled during the biennium pursuant to this section shall be contained in each biennial report made by the commission to the Legislative Assembly. [1953 c.304 §83; 1953 c.552 §17]

316.660 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 316.615. Where there has been an overpayment of any tax imposed by this chapter, 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 this chapter, 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. [1953 c.304 §84]

316.665 Appeal from commission. (1) An appeal from the determination of the commission upon the application made by the taxpayer for refund or revision of any tax, as provided for in ORS 316.660, may be taken by the taxpayer by filing a complaint against the commission in the circuit court of the county in which the taxpayer resides or has his principal place of business or in which is located the office of the commission and by serving a true copy thereof upon the commission by registered mail within 60 days after notice by the commission of its determination has been received by the taxpayer, given as provided in ORS 316.660. 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 at the rate of one-half of one percent a month until refunded. Such appeal shall proceed in the manner of a suit in equity and shall be a trial de novo except that the issues of fact and law shall be restricted to those raised by the parties in the appeal to the commission. If the court finds that other issues are important to a full determination of the controversy, it may remand the whole matter to the commission for further determination and the issuance of a new order. 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.

(2) If the commission fails to notify the taxpayer of its determination of a claim for refund of tax filed by the taxpayer according to the provisions of ORS 316.615, within 12 months after the claim was filed, the taxpayer may bring suit for the refund by filing a complaint against the commission in the circuit court of the county in which the taxpayer resides or has his principal place of business or in which is located the office of the commission. In such suit a copy of the complaint shall be served with the summons as in a suit in equity. 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 at the rate of one-half of one percent a month until refunded. Such suit shall proceed in the manner of a suit in equity and shall be restricted to a determination of the matters contained in the claim for refund of tax and the commission's defenses against the claim. 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. [1953 c.304 §85; 1953 c.552 §18; 1955 c.588 §1]

316.670 When appeal stays collection proceedings. Unless otherwise ordered by a court of competent jurisdiction, an appeal to the commission under ORS 316.660, or an appeal to the court under ORS 316.665, shall not stay proceedings to collect any unpaid tax if the commission believes that collection of the tax will be jeopardized by delay. [1953 c.304 §86]

316.675 Action to recover tax. In addition to all other remedies specified in this chapter, 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 this chapter, if the action for recovery is commenced within three years from the time the tax is assessed. [1953 c.304 §87; 1953 c.552 §19]

316.680 to 316.700. [Reserved for expansion]

ADMINISTRATIVE PROVISIONS

316.705 Commission to administer and enforce law; enforcement districts. The commission shall administer and enforce the tax imposed by this chapter. 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. [1953 c.304 §88]

316.710 Deputies, agents, auditors and employees. (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 employees 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 employees shall be fixed by the commission.

(2) All such deputy commissioners, agents and employees 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 officers, agents and employees 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. [1953 c.304 §89]

316.715 Administering oaths and taking acknowledgments. All officers empowered by law to administer oaths, the commissioner and all deputy commissioners, agents, auditors and such other employees as the commission may designate, shall have the power to administer an oath to or take the acknowledgment of any person in respect of any return or report required by this chapter or the rules and regulations of the commission. [1953 c.304 §90]

316.720 Rules and regulations. The commission may, from time to time, make such rules and regulations, not inconsistent with this chapter, that it considers necessary to enforce this chapter. [1953 c.304 §91]

316.725 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. [1953 c.304 §92]

316.730 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 employee. [1953 c.304 §93]

316.735 Preservation of reports and returns. Reports and returns shall be preserved for four years and thereafter until the commission orders them destroyed. [1953 c.304 §94]

316.740 Divulging particulars of returns and reports prohibited. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commission, any deputy, agent, auditor or other officer or employee, 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 this chapter. 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 this chapter. [1953 c.304 §95]

316.745 Officials to whom information may be furnished. Notwithstanding ORS 316.740, 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 this chapter, 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 this chapter. [1953 c.304 §96]

316.750 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 this chapter, 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. [1953 c.304 §97]

316.755 Statistics. The commission shall prepare and publish annually statistics, reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers and other facts considered pertinent and valuable. [1953 c.304 §98]

316.760 Rewards for information. The commission may pay rewards to persons, other than officers or employees of the commission, furnishing information that leads to the recovery of tax from other persons guilty of violating the provisions of this chapter. 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 this chapter. [1953 c.304 §99]

316.765 to 316.785 [Reserved for expansion]

316.790 Distribution of revenue. All costs incurred in the administration of this chapter shall be paid out of the revenue from the tax imposed by this chapter, and the net revenue, after deducting said administrative costs and refunds, shall be paid over to the State Treasurer and held by him in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred. A working balance of unreceipted revenue from the tax imposed by this chapter 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 the sum of \$1,000,000. [1953 c.304 §116]

316.795 and 316.800 [Reserved for expansion]

ESTATES AND TRUSTS

316.805 Tax on income. The taxes imposed by this chapter 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 316.815 to be deducted from the net income upon which the tax is to be paid by the fiduciary. [1953 c.304 §100]

316.810 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 316.830 and 316.835.

(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. [1953 c.304 §101]

316.815 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 tax 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, trust, community chest, fund or foundation 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 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 tax 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.

(6) The 1955 amendments to this section are applicable to tax years beginning after December 31, 1954. [1953 c.304 §102; 1955 c.582 §1]

316.820 Exemptions. For the purpose of the taxes imposed by this chapter, 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. [1953 c.304 §103]

316.825 Tax year. If the tax 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 316.815 to include in computing his net income, shall be based upon the income of the estate or trust for any tax year of the estate or trust ending within his tax year. [1953 c.304 §104]

316.830 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. [1953 c.304 §105]

316.835 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." [1953 c.304 §106]

316.840 Employee's trust. A trust forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of some of his employees or their beneficiaries, to which contributions are made by such employer, employee, or both, for the purpose of distributing to such employees or their beneficiaries the earnings and principal of the fund accumulated by the

trust in accordance with such plan, shall not be taxable under this chapter. [1953 c.304 §107]

316.845 and 316.850 [Reserved for expansion]

COMMON TRUST FUNDS

316.855 Definitions. As used in this chapter:

(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 cofiduciary or cofiduciaries, 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. [1953 c.304 §108]

316.860 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 this chapter, but the participants in common trust funds shall be subject to taxation as provided in ORS 316.855 to 316.885. [1953 c.304 §109]

316.865 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 under this chapter if received directly by the participant. [1953 c.304 §110]

316.870 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 this chapter. [1953 c.304 §111]

316.875 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. [1953 c.304 §112]

316.880 Tax year. If the tax 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 tax year, shall be based upon the net income of the common trust fund for any tax year of the common trust fund ending within or with the tax year of the participant. [1953 c.304 §113]

316.885 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 tax 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 commission at such time as is designated by the commission. [1953 c.304 §114]

316.890 to 316.985 [Reserved for expansion]

PENALTIES

316.990 Penalties. (1) A person or an officer or employe of a corporation or a member or employe of a partnership who violates ORS 316.025 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 this chapter.

(2) Violation of ORS 316.730, 316.735 or 316.740 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. [1953 c.304 §115]

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