

## Chapter 317

### 1955 REPLACEMENT PART

## Corporation Excise Tax

#### GENERAL PROVISIONS

- 317.005 Short title
- 317.010 Definitions
- 317.015 Evading requirements of chapter prohibited
- 317.020 Venue on failure to comply with chapter
- 317.025 Omission of previously enacted savings clauses not intended as repeal
- 317.030 License fees not repealed
- 317.035 Effect of subsequent repeal of chapter

#### IMPOSITION OF TAX; OFFSET AGAINST TAX

- 317.055 Tax on national banking associations and production credit associations
- 317.060 Tax on state banks and financial institutions
- 317.065 Taxes referred to in ORS 317.055 and 317.060 in lieu of all taxes except taxes on real property
- 317.070 Tax on mercantile, manufacturing and business corporations
- 317.074 Tax on public utilities
- 317.080 Exempt corporations
- 317.085 Offset of personal property taxes against excise tax
- 317.090 Minimum tax
- 317.095 Computation of tax upon change of taxable status or tax rate

#### GROSS INCOME; EXCLUSIONS FROM GROSS INCOME

- 317.105 Gross income
- 317.110 Exclusions from gross income

#### NET INCOME; METHODS OF ACCOUNTING AND REPORTING

- 317.155 Net income
- 317.160 Accounting periods and methods
- 317.165 Dealers in personal property on an instalment basis
- 317.170 Sales of realty and casual sales of personalty on instalment basis
- 317.175 Change to instalment basis
- 317.180 Allocating income earned both within and without state
- 317.185 Inventories
- 317.190 Dissolution of taxpayer; effect on reporting income
- 317.195 Dissolution of taxpayer; effect on deductions allowed

#### DETERMINATION AND RECOGNITION OF GAIN AND LOSS

- 317.205 "Reorganization," "a party to a reorganization" and "control" defined
- 317.210 Computation of gain or loss
- 317.215 Unadjusted basis
- 317.220 Adjusted basis; substituted basis
- 317.225 Recognition of gain or loss
- 317.230 Exchanges solely in kind
- 317.235 Gain from exchanges not solely in kind
- 317.240 Loss from exchanges not solely in kind
- 317.242 Gain from certain stock distributions in pursuance of a plan of reorganization

- 317.245 Property received by corporation on complete liquidation of another corporation
- 317.247 Complete liquidation of corporation and distribution of all its assets
- 317.249 Involuntary conversion after December 31, 1952
- 317.250 Involuntary conversion prior to January 1, 1953

#### DEDUCTIONS ALLOWED IN COMPUTING NET INCOME

- 317.255 Expenses
- 317.256 Amounts paid to employees' plan or trust in excess of current contribution
- 317.260 Interest
- 317.262 Bond premiums
- 317.265 Taxes
- 317.270 Losses
- 317.275 Loss from wash sales of securities
- 317.280 Bad debts
- 317.285 Depreciation
- 317.290 Depletion
- 317.295 Contributions and gifts
- 317.300 Items not deductible

#### RETURNS AND PAYMENT OF TAX

- 317.355 Returns
- 317.360 Consolidated return of affiliated corporations
- 317.365 Mandamus to compel return
- 317.370 Estimated return by commission
- 317.375 Determining net income where tax evasion arrangements exist
- 317.380 Furnishing copy of federal return or report
- 317.390 Payment of tax
- 317.395 Date return considered filed or advance payment considered made

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

- 317.405 Penalties and interest on deficiencies
- 317.410 Additional assessment
- 317.415 Refunds
- 317.420 Determining and assessing income on failure to file return after notice
- 317.425 Examining books, records or persons
- 317.430 Warrant for collection of taxes
- 317.435 Release of tax lien
- 317.440 Tax as debt
- 317.445 Termination of taxable period by commission
- 317.450 Penalty and interest on delinquencies
- 317.455 Waiver, reduction or compromise of penalties and interest
- 317.460 Reduction or compromise of uncollectible taxes
- 317.465 Appeal to commission
- 317.470 Appeal from commission
- 317.475 When appeal stays collection proceedings
- 317.480 Action to recover tax

**ADMINISTRATIVE PROVISIONS**

- 317.505 Commission to administer and enforce law; rules and regulations  
 317.510 Requiring additional reports and information  
 317.515 Paying collections to State Treasurer  
 317.520 Recognizing representative of taxpayer  
 317.525 Representation by former officer or employee of commission  
 317.530 Preservation of reports and returns

- 317.535 Divulging particulars of returns and reports prohibited  
 317.540 Officials to whom information may be furnished  
 317.545 Certificate of commission as evidence  
 317.550 Rewards for information  
 317.590 Disposition of revenue

**PENALTIES**

- 317.990 Penalties

## CROSS REFERENCES

Corporation net income tax, Ch. 318

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

"Intangible personal property" or "intangibles" defined, 307.020

State Tax Commission, Ch. 306

**317.020**

Venue on appeal from commission, 317.470

**317.060**

Foreign financial corporations, taxation of income derived from ownership of property in state, 57.824

Savings and loan associations, annual license fee in lieu of other fees, 722.190

**317.080**

Common trust funds exempted from taxation, 316.860

Credit unions, taxation of, 723.020

Nonprofit district improvement companies, exemption of, 554.320

Nonprofit mutual or cooperative electric distribution systems, gross earnings tax on, 308.805

**317.110**

Housing authority bonds, exemption of income from, 456.230

**317.395**

Date of receipt of payment or return, determination of, 291.578

**317.415**

Refunds, 306.260 to 306.280

**317.425**

Witness fees and mileage, 306.200

**317.480**

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

**317.505**

Declaratory rulings respecting regulations, 306.710  
 Making and filing rules and regulations, Ch. 183

**317.545**

Certificate as to mailing notice of assessment and findings, 317.445

**317.590**

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

**GENERAL PROVISIONS**

**317.005 Short title.** This chapter may be cited as the Corporation Excise Tax Law of 1929.

**317.010 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 cancellation or redemption of all 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 cancellation or redemption of a part of its stock.

(6) "Dividend" means any distribution (except distributions 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 taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable 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) "Doing business" means any transaction or transactions in the course of its activities conducted within the state by a national banking association, or any other corporation; provided, however, that a foreign corporation whose activities in this state

are confined to purchases of personal property, and the storage thereof incident to shipment outside the state, shall not be deemed to be doing business unless such foreign corporation is an affiliate of another foreign or domestic corporation which is doing business in Oregon. Whether or not corporations are affiliated shall be determined as provided in ORS 317.360.

(8) "Excise tax" means a tax measured by or according to net income imposed upon national banking associations, all other banks, and financial, mercantile, manufacturing and business corporations for the privilege of carrying on or doing business in this state.

(9) "Financial institution" or "financial corporation" means every corporation whose principal business is lending money in direct competition with national and state banks.

(10) "Fiscal year" means an accounting period of 12 months or portion thereof ending on the last day of any month other than December.

(11) "Paid," for the purpose of deductions under this chapter, means "accrued or paid" or "incurred or paid." The words "accrued or paid," "incurred or paid" and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(12) "Received," for the purpose of the computation of net income under this chapter, means "accrued or received." The words "accrued or received" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(13) "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.

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

(15) "Taxpayer" includes every national banking association, bank, building and loan association, savings and loan association, mutual savings bank, and financial, manufacturing, mercantile or business corporation subject to the tax imposed by this chapter.

(16) "Taxable 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. "Taxable year" includes, in the case of a return made for a fractional part of a year, the period for which such return is made. The first taxable year, to be called the taxable year 1929, shall be the calendar year 1929.

The 1953 amendments to this section are applicable to any tax year, the return for which is open to adjustment on July 21, 1953. [Amended by 1953 c.385 §9]

**317.015 Evading requirements of chapter prohibited.** No person, or officer or employee of a corporation, 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 the provisions of this chapter;

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

(3) Supply any false or fraudulent information.

**317.020 Venue on failure to comply with chapter.** The failure to do any act required by or under the provisions of this chapter shall be deemed an act committed in part at the office of the commission in Oregon.

**317.025 Omission of previously enacted savings clauses not intended as repeal.** The omission from the Oregon Revised Statutes of those statutes which were part of Acts amending the statutes that constitute the source of this chapter and which provided savings clauses for the statutes amended, is not intended as a repeal of them. Such statutes shall, in so far as they are applicable, continue to be so applicable.

**317.030 License fees not repealed.** Nothing in this chapter shall be construed to repeal the present capital stock tax or annual corporation license fee otherwise provided for by law.

**317.035 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.

**317.040 to 317.050** [Reserved for expansion]

### IMPOSITION OF TAX; OFFSET AGAINST TAX

**317.055 Tax on national banking associations and production credit associations.** Every national banking association and every production credit association organized under federal statute and not exempt from taxation by federal law located within the limits of this state shall pay annually to the state an excise tax according to or measured by its net income, to be computed, in the manner provided by this chapter at the rate of five percent upon the basis of its net income for the year 1930, and at the rate of eight percent upon the basis of its net income for the year 1931, and for each year thereafter.

**317.060 Tax on state banks and financial institutions.** Every bank, other than a national banking association, and every financial corporation, building and loan association, savings and loan association and mutual savings bank, located within the limits of this state, shall annually pay to the state, for the privilege of carrying on or doing of business by it within this state, an excise tax according to or measured by its net income to be computed in the manner provided by this chapter at the rate of five percent upon the basis of its net income for the year 1930, and at the rate of eight percent upon the basis of its net income for the year 1931 and for each year thereafter.

**317.065 Taxes referred to in ORS 317.055 and 317.060 in lieu of all taxes except taxes on real property.** The tax referred to in ORS 317.055 and 317.060 is in lieu of all other state, county and municipal taxes, upon the corporations and associations therein mentioned except taxes upon their real property.

**317.070 Tax on mercantile, manufacturing and business corporations.** Every mercantile, manufacturing and business corporation doing or authorized to do business within this state, except as provided in ORS 317.080 to 317.090, shall annually pay to this state, for the privilege of carrying on or doing business by it within this state, an

excise tax according to or measured by its net income, to be computed in the manner provided by this chapter, at the rate of five percent upon the basis of its net income for the year 1930, and at the rate of eight percent upon the basis of its net income for the year 1931 and for each year thereafter.

**317.074 Tax on public utilities.** (1) Every corporation and company the property of which is assessed by the State Tax Commission under ORS 308.505 to 308.660 and which does or is authorized to do business within this state, shall annually pay to this state, for the privilege of carrying on or doing business by it within this state, an excise tax according to or measured by its net income (which net income shall be computed in the manner provided in this section) at the rate of four percent upon the basis of its net income for the taxable year, but such tax shall not be less than a minimum of \$10 for each taxable year or other taxable period.

(2) Each corporation referred to in this section is entitled to an offset against the tax imposed by this section in the amount of taxes assessed to and paid by it upon its personal property located in this state and assessed by the county assessor and upon its property having a situs in this state and assessed by the commission under ORS 308.515, but the offset shall not exceed 50 percent of the excise tax. All such taxes upon property assessed by the commission, to the extent not usable as an offset against the excise tax, shall be allowed as a deduction in computing net income.

(3) Net income of every corporation subject to this section shall be arrived at in the following manner:

(a) Determine the taxable income in accordance with the Corporation Income Tax Laws of the United States in effect on April 20, 1955, except that the taxpayer shall not be allowed the deduction provided in section 462 of the Internal Revenue Code of 1954.

(b) Add any taxes which are not deductible under ORS 317.265 but which have been deducted in determining such taxable income.

(c) Add taxes used as an offset pursuant to subsection (2) of this section.

(d) Subtract, under rules and regulations adopted by the commission, all net income derived from (A) property, other than property having a situs in this state as defined in ORS 308.505, which is not used in

operations conducted partly within and partly without this state, and (B) business or service conducted outside this state and not connected directly with a business or service described in subsection (1) of ORS 308.515 in which the corporation is engaged in this state.

(4) If the net income arrived at in accordance with subsection (3) of this section shall have been derived from business done both within and without the state, such net income shall be allocated as follows:

(a) All net income from properties in this state which are assessed by the county assessor, and all net income from intangibles having a situs in this state, shall be allocated to this state.

(b) The remainder of such net income shall be allocated to this state in accordance with ORS 317.180 under rules and regulations adopted by the commission which shall fairly and accurately reflect the net income of the business done within the state consistent with ORS 308.550 and 308.555. It shall be satisfactory compliance with ORS 317.180 for any corporation referred to in this section which owns, leases, operates over or uses rail, wire, pipe or pole lines, operational routes or property within and without this state, if it shall so elect upon returns filed with the commission under rules and regulations adopted by the commission, to allocate to this state such proportion of its income from operating properties which the number of miles of rail, wire, pipe or pole lines or operational routes in this state controlled or used by the corporation, as owner, lessee, or otherwise, bears to the entire mileage of rail, wire, pipe or pole lines or operational routes controlled or used by the corporation as owner, lessee, or otherwise.

(5) If a corporation referred to in this section computes its taxable income under the corporation income tax laws of the United States upon the basis of a consolidated return, net income for the purpose of this section may, with the approval of the commission under rules and regulations which determine income properly attributable to this state and taxable under this section, be based upon such consolidated return.

(6) This section shall apply only to taxable years ending on and after August 3, 1955. [1955 c.592 §2; subsection (6) derived from 1955 c.592 §6]

**317.075** [Repealed by 1955 c.592 §4]

**317.080 Exempt corporations.** The following corporations are exempt from the taxes imposed by this chapter:

(1) Labor, agricultural or horticultural organizations no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(2) Fraternal beneficiary societies, orders or associations (a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (b) providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents.

(3) Cemetery companies which are owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, 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.

(5) Business leagues, chambers of commerce, real estate boards or boards of trade, not organized for profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(6) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(7) Clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(8) Farmers' or other mutual hail, cyclone, fire or life insurance companies, mu-

tual ditch or irrigation companies, mutual or cooperative telephone companies or like organizations of a purely local character, but only if 85 percent or more of the income of which companies consists of assessments, dues and fees collected from the members for the sole purpose of meeting expenses.

(9) Farmers' and fruit growers' associations, organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent per year, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association. Exemption shall not be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchase made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

(10) Corporations organized by an association exempt under subsection (9) of this section, or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers,

and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent per year, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof. Exemption shall not be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.

(11) Insurance companies and interinsurance and reciprocal exchanges, upon which a tax on premiums is levied; and, for taxable years beginning after December 31, 1954, with respect to its income as a corporate attorney in fact for a reciprocal or interinsurance exchange, corporations acting as attorneys in compliance with ORS 749.010 to 749.150.

(12) State and federal credit unions so long as the interest or dividends paid on shares do not exceed eight percent per year. The 1955 amendments to this section shall apply only to taxable years ending on and after August 3, 1955. The exemptions removed by the 1955 amendments to this section shall continue in full effect for prior taxable years, and for the portion of the then current taxable year prior to August 3, 1955. [Amended by 1953 c.207 §1; 1953 c.653 §3; 1955 c.592 §5; last sentence derived from 1955 c.592 §6]

**317.085 Offset of personal property taxes against excise tax.** (1) Each corporation mentioned in ORS 317.070 is entitled to an offset against the tax imposed by that section in the amount of taxes assessed to and paid by it upon its personal property located in this state, but for taxable years beginning after December 31, 1938, the offset shall not exceed 50 percent of the excise tax. For the years 1929, 1930, 1931 and 1932, the offset shall not exceed 90 percent of the excise tax due. For the year 1933 and for each taxable year thereafter beginning prior to January 1, 1939, the offset shall not exceed 75 percent of the excise tax.

(2) The amount of the offset shall not be diminished by any discount allowed, nor increased by any interest charged under ORS 311.505 or 311.515.

(3) For the purpose of the offset provided in this section there shall be included only taxes assessed to and paid upon property properly classified as tangible personal property under the definition contained in ORS 307.020, as to personal property locally assessed, and as personal property under the definition contained in ORS 308.510, as to personal property assessed by the State Tax Commission, but taxes paid on property improperly assessed as tangible personal property shall not be included in the offset. In the case of a corporation the property of which is assessed by the commission without the segregation of real and personal property, for the purpose of the offset the personal property taxes paid shall be considered to be that percentage of the total taxes paid on such assessment which the value of the taxable personal property bears to the value of the total taxable property. The offset provided in this section shall not include any personal property taxes due prior to January 1, 1929.

(4) For tax years beginning after December 31, 1942, any discount applied under OCLA 110-1523, as amended by section 1, chapter 438, Oregon Laws 1943, and any other discount authorized under any section of the excise tax law, shall be computed upon the amount of excise tax payable after offsetting the allowable amount of personal property taxes paid.

**317.090 Minimum tax.** Each taxpayer named in ORS 317.055, 317.060 and 317.070 shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a minimum tax of \$10; except that before January 1, 1932, the minimum tax is \$25. The minimum tax shall not be apportionable (except in the case of a change of accounting periods) and, for tax years beginning December 31, 1944, shall not be reduced by reason of any discount under OCLA 110-1523, as amended by section 1, chapter 438, Oregon Laws 1943, or any other discount authorized under any section of the excise tax law, but shall be payable in full for any part of the year during which a corporation is subject to tax.

**317.095 Computation of tax upon change of taxable status or tax rate.** (1) If

the taxable status of a corporation under this chapter changes, or if any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year, and the tax for such taxable year shall be the sum of that proportion of each such tentative tax which the number of days in each such period bears to the number of days in the entire taxable year. A corporation shall be deemed to have changed its taxable status on the effective date of the Act under which it first becomes subject to the provisions of this chapter, and a corporation which at any time ceases to be subject to this chapter shall be deemed to have changed its taxable status at that time.

(2) This section shall apply only to taxable years ending on and after August 3, 1955. [1955 c.592 §3; subsection (2) derived from 1955 c.592 §6]

**317.100** [Reserved for expansion]

## **GROSS INCOME; EXCLUSIONS FROM GROSS INCOME**

**317.105 Gross income.** "Gross income" as used in this chapter includes:

(1) Gains, profits and income derived from the business, of whatever kind and in whatever form received.

(2) Gains, profits or income from dealings in real or personal property.

(3) Gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or other income of whatever character otherwise received in carrying on the business.

(4) All interest received on bonds, securities or other evidence of indebtedness, and all dividends received on stock including stock dividends, and all other income from money or credits.

**317.110 Exclusions from gross income.** "Gross income" does not include the following items which are exempted from taxation under this chapter:

(1) The proceeds of life insurance policies paid upon the death of the insured, nor the amount received by the insured as a return of premiums paid by the insured under life or fire insurance, endowment or annuity

contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(2) The amount received as dividends from a corporation subject to tax under this chapter, by a corporation organized to hold stock in other corporations and holding 30 percent or more of the stock of the corporation which paid the dividend, but only to the extent that the income of the corporation which paid the dividend has been included in the measure of the tax paid by the latter corporation under this chapter.

(3) The amount received as dividends from a corporation by a corporation authorized to hold stock in other corporations and holding 50 percent or more of the voting stock of the corporation which paid the dividend.

(4) Dividends distributed in complete or partial liquidation of a corporation to the extent that they comprise a return of capital to the stockholder.

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

(6) 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 as is equal to the amount of the prior deduction, which, as determined in accordance with 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. This subsection is applicable to tax years beginning after December 31, 1952.

(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. This subsection is applicable to any tax year the return for which is open to adjustment on July 21, 1953. [Amended by 1953 c.385 §9]



**317.115 to 317.150** [Reserved for expansion]

### **NET INCOME; METHODS OF ACCOUNTING AND REPORTING**

**317.155 Net Income.** "Net income" as used in this chapter means the gross income less the deductions allowed.

**317.160 Accounting periods and methods.** The net income shall be computed upon the basis of the taxpayer's annual accounting period, fiscal year or calendar year, as the case may be, in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if such method employed does not clearly reflect the net income the computation shall be made in accordance with such method as the commission may prescribe to reflect the net 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.

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

**317.170 Sales of realty and casual sales of personalty on instalment basis.** (1) In the case of (a) a casual sale or other casual disposition of personal property (other than property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding \$1,000, or (b) a sale or other disposition of real property, if in either case the initial payments do not exceed 30 percent of the selling price, the income may, under regulations prescribed by the commission, be returned on the basis and in the manner prescribed in ORS 317.165 and 317.175. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the 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 taxable 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 in subsection (1) of ORS 317.210, shall be included in income for the taxable 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 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 1955 c.99 §1; subsection (3) derived from 1955 c.99 §2]

### **317.175 Change to instalment basis.**

(1) If a taxpayer entitled to the benefits of ORS 317.165 elects for any taxable year to report its net income on the instalment basis, then in computing its 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 disposition 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 taxable year (referred to in this section as "adjustment year") shall be reduced by the adjustment computed under subsection (2) of this section.

(2) In determining the adjustment referred to in paragraph (b) of subsection (1) of this section, first determine, for each taxable year before the year of change, the amount which equals the lesser of:

(a) The portion of the tax for such prior taxable year which is attributable to the gross profit which was included in gross income for such prior taxable year and which by reason of paragraph (a) of subsection (1) of this section is includible in gross income for the taxable 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 (2) of this section.

The adjustment referred to in paragraph (b) of subsection (1) of this section for the adjustment year is the sum of the amounts, for all taxable years before the year of change, determined under the preceding sentence.

(3) For purposes of subsection (2) of this section, the portion of the tax for a prior taxable 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 for such taxable year (computed without regard to subsection (2) of this section) as the gross profit described in subsection (2) of this section bears to the gross income for such taxable year.

(4) The 1955 amendments to this section shall apply to tax years beginning on and after December 31, 1953. [Amended by 1955 c.128 §1; subsection (4) derived from 1955 c.128 §2]

**317.180 Allocating income earned both within and without state.** (1) If the gross income of a corporation 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. 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) 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 the income earned from sources both within and without the state. Any taxpayer may submit an alternative basis of apportionment with respect to its own income and explain that basis in full in its return. If approved by the tax commission that method will be accepted as the basis of allocation.

**317.185 Inventories.** Whenever the use of inventories is necessary to clearly determine the income of any taxpayer, inventory 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 and most clearly reflecting the income.

**317.190 Dissolution of taxpayer; effect on reporting income.** In the case of the dissolution 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 have been reported at an earlier period in accordance with the approved method of accounting followed by the taxpayer. If a taxpayer is dissolved, there shall also be included in computing net income of the taxpayer for the taxable period in which it is dissolved amounts accrued up to the date of dissolution if not otherwise properly includible in respect of such period or a prior period, regardless of the fact that the taxpayer may have kept its books and made its returns on the basis of cash receipts and disbursements. This section shall not apply with respect to crops not harvested within said taxable period or to livestock. [1955 c.205 §2]

**317.195 Dissolution of taxpayer; effect on deductions allowed.** In the case of the dissolution of a taxpayer there shall be allowed as deductions for the taxable period in which the taxpayer dissolved, regardless of the fact that the taxpayer may have kept its books and made its returns on the basis of cash receipts and disbursements, amounts accrued up to the date of dissolution if not otherwise properly allowable in respect of such period or a prior period under this chapter. [1955 c.205 §3]

**317.200** [Reserved for expansion]

## **DETERMINATION AND RECOGNITION OF GAIN AND LOSS**

**317.205 "Reorganization," "a party to a reorganization" and "control" defined.** As used in this section and in ORS 317.225 to 317.250:

(1) "Reorganization" means:

(a) A statutory merger or consolidation;

or

(b) 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

(c) 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

(d) A recapitalization; or

(e) A mere change in identity, form or place of organization, however effected.

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

(3) "Control" means 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 in the corporation.

#### **317.210 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 317.220, and the loss shall be the excess of the adjusted basis provided in ORS 317.220 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 317.210 to 317.220 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.

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

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

(2) If the property was acquired by purchase after December 31, 1928, the basis shall be the cost of the property.

(3) If the property was acquired by purchase before January 1, 1929, the basis for computing profit shall be the cost of the property or the fair market value thereof on January 1, 1929, 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, 1929, 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, 1929, exceeds the amount realized and no loss shall be deemed to have been sustained if the cost or fair market value on January 1, 1929, 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, 1929, 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, 1929, 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, 1929, 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, 1929, 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, 1929, is less than the amount realized.

(5) If the property was acquired by gift or transfer in trust after December 31, 1928, (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 the commission is able to obtain, such property was acquired by such donor or last preceding owner.

(6) If the property was acquired before January 1, 1929, upon an exchange (whether or not an exchange as to which no gain or loss would be recognized under ORS 317.225 to 317.250), 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.

(7) (a) If the property was acquired after December 31, 1928, upon an exchange described in ORS 317.230, 317.235 or 317.240, 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 317.230 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. The 1953 amendment to this paragraph is applicable to any tax year, the return for which is open to adjustment on July 21, 1953.

(b) The provisions of paragraph (a) of this subsection do not apply to 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 the property to it.

(c) If the property was acquired after December 31, 1928, by a corporation by the issuance of its stock or securities in connection with a transaction described in subsection (3) of ORS 317.230 (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities) or as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor.

(8) If the property was acquired after December 31, 1928, as the result of a compulsory or involuntary conversion described in ORS 317.250 or paragraph (a) of subsection (1) of ORS 317.249, 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. If the property was purchased by the taxpayer and such purchase resulted, under the provisions of paragraph (b) of subsection (1) of ORS 317.249, 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. The 1953 amendments to this subsection are applicable to tax years beginning after December 31, 1952.

(9) If the property was acquired by a corporation upon a distribution in complete liquidation of another corporation within the meaning of ORS 317.245, the basis shall be the same as it would be in the hands of the transferor. However, if such acquisition occurred prior to August 2, 1951, the basis shall be as determined by the law in effect on the date of such acquisition.

(10) 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 317.270 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. This subsection is applicable to any tax year, the return for which is open to adjustment on July 21, 1953.

(11) 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 this chapter, 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 ORS 317.242. This subsection is applicable to any tax year, the return for which is open to adjustment on July 21, 1953. [Amended by 1953 c.385 §9]

**317.220 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 317.215, 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 its tax returns for the prior years, if the adjustment of such returns is barred.

(b) In respect to any period (whether before or after January 1, 1929), for exhaustion, wear and tear, obsolescence, amortization and depletion, to the extent actually sustained (but not less than the total amount actually allowed upon returns to the State of Oregon during the period after December 31, 1928).

(c) In the case of stock (to the extent not provided for in paragraphs (a) and (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 317.215, 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 corporation 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 corporation 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 317.110.

(6) The 1953 amendments to this section are applicable to any tax year, the return for which is open to adjustment on July 21, 1953. [Amended by 1953 c.385 §9]

**317.225 Recognition of gain or loss.** Upon the sale or exchange of property the entire amount of the gain or loss, as determined under ORS 317.210, shall be recognized, except as provided in ORS 317.230 to 317.250.

**317.230 Exchanges solely in kind.** No gain or loss shall be recognized:

(1) 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) 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.

(3) If a corporation, a party to a reorganization, exchanges property in pursuance of the plan of reorganization solely for stock or securities in another corporation, a party to the reorganization. Where upon such an exchange the taxpayer receives as part of the consideration property which would be permitted by this subsection 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 317.240 and subsection (3) of ORS 317.235 and shall not prevent the exchange from being within the provisions of this paragraph. The 1953 amendment to this section is applicable to any tax year, the

return for which is open to adjustment on July 21, 1953.

(4) 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. [Amended by 1953 c.385 §9]

**317.235 Gain from exchanges not solely in kind.** (1) If an exchange would be within the provisions of subsection (1), (2) or (4) of ORS 317.230, 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 a 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 its 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.

(3) If an exchange would be within the provisions of subsection (3) of ORS 317.230 if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such subsection to be received without recognition of gain, but also of other property or money, then:

(a) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(b) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation 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 so received, which is not so distributed.

**317.240 Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsections (1), (2), (3) or

(4) of ORS 317.230 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.

**317.242 Gain from certain stock distributions in pursuance of a plan of reorganization.** (1) 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.

(2) This section is applicable to tax years beginning after December 31, 1952. [1953 c.385 §9]

**317.245 Property received by corporation on complete liquidation of another corporation.** No gain or loss shall be recognized upon the receipt by a corporation of property, including money, distributed in complete liquidation of another corporation. For the purposes of this section a distribution shall be considered to be in complete liquidation only if:

(1) The corporation receiving the property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the per-

centage of such class owned at the time of the receipt of the property; and

(2) No distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1928; and either

(3) The distribution is by such other corporation in complete cancelation or redemption of all its stock and the transfer of all the property occurs within the taxable year; in such case the adoption by the stockholders of the resolutions under which is authorized the distribution of all the assets of such corporation in complete cancelation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolutions; or

(4) Such distribution is one of a series of distributions by such other corporation in complete cancelation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subsection (1) of this section until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation. If such transfer of all the property does not occur within the taxable year the commission may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as it may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under subsection (1) of this section until the completion of such transfer, the assessment and collection of all excise taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributed to property so received.

**317.247 Complete liquidation of corporation and distribution of all its assets.** (1) If, on or after January 1, 1955, a corporation adopts a plan of complete liquidation with respect to which ORS 317.245 does not apply, and within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are

distributed in complete liquidation, less assets retained to meet claims, then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

(2) For the purposes of subsection (1) of this section, the term "property" does not include:

(a) Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business.

(b) Instalment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in subsection (1) of this section) of stock in trade or other property described in paragraph (a) of this subsection.

(c) Instalment obligations acquired in respect of property (other than property described in paragraph (a) of this subsection) sold or exchanged before the date of the adoption of such plan of liquidation.

(3) Notwithstanding any other provisions of this section, if substantially all of the property described in paragraph (a) of subsection (2) of this section which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for the purposes of subsection (1) of this section the term "property" includes:

(a) Such property so sold or exchanged; and

(b) Instalment obligations acquired in respect of such sale or exchange. [1955 c.354 §2]

**317.249 Involuntary conversion after December 31, 1952.** (1) If, after December 31, 1952, 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, the gain, if any, shall be recognized except to the extent provided in subsection (2) of this section.



(2) If the taxpayer, during the period specified in subsection (3) of this section, 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 subsection, 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 the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (8) of ORS 317.215, the unadjusted basis of such property or stock would be its cost within the meaning of ORS 317.210 to 317.220.

(3) The period referred to in subsection (2) of this section 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:

(a) One year after the close of the first tax year in which any part of the gain upon the conversion is realized; or

(b) 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.

(4) 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.

(5) This section is applicable to tax years beginning after December 31, 1952. [1953 c.385 §9]

1953, property (as a result of its destruction in whole or in part or its theft or seizure, or as a result of exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the commission, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized.

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

(3) The 1953 amendment to this section is applicable to tax years beginning after December 31, 1952. [Amended by 1953 c.385 §9]

#### DEDUCTIONS ALLOWED IN COMPUTING NET INCOME

**317.255 Expenses.** (1) In computing net income there shall be allowed as a deduction all the ordinary and necessary expenses paid during the taxable year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the business, of property to which the taxpayer has not taken or is not taking title or in which it has no equity. If the salaries or other compensation is 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 employee's 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 an employees' trust exempt from taxes on or measured by net income under the laws of this state,

such amounts are deductible in the year paid to the trust or fund. In all other cases of deferred payment of compensation, the taxpayer may deduct only such amounts as are actually paid to its employees and only in

**317.250 Involuntary conversion prior to January 1, 1953.** (1) If, prior to January 1,



the year such amounts are paid directly to them.

(2) The 1953 amendments to this section are applicable to any tax year, the return for which is open to adjustment on July 21, 1953. [Amended by 1953 c.385 §9]

**317.256 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 paragraph (a) or (b) of subsection (1) of ORS 317.255, a deduction for a reasonable amount transferred 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.609 §2]

**317.260 Interest.** In computing net income there shall be allowed as a deduction all interest paid during the taxable year on indebtedness. The interest deductions upon deposits or withdrawable shares in building and loan associations, savings and loan associations and mutual savings banks shall not include the income on nonwithdrawable shares, nor amounts credited to undivided profits or surplus or contingent fund. The net income of each such bank or association, as returned under this chapter, shall not be less than the total amount so credited, or required by the law governing such bank or association to be credited, in the taxable year to such undivided profits, surplus and contingent fund.

**317.262 Bond premiums.** (1) In computing net income, at the election of the taxpayer as provided in subsection (3) of this section, 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 it 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 it, subject to such conditions as the commission deems necessary, to revoke such election.

(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 its trade or business.

(5) This section is applicable to tax years beginning after December 31, 1952. [1953 c.385 §9]

**317.265 Taxes.** (1) In computing net income there shall be allowed as deductions taxes paid during the taxable year, except:

(a) Taxes imposed by this chapter.

(b) Taxes upon or measured by net income or profits and imposed by the United States, any foreign country, this state or any state or territory. However, taxes and license fees imposed by counties, cities and

other political subdivisions of this state and other states are deductible regardless of the subject or measure of the tax or license fee. Taxes paid to a foreign country upon dividends, interest or royalties arising from sources within such foreign country are deductible.

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

(d) Taxes which became due and payable before January 1, 1929.

(e) 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.

(f) Taxes upon personal property for which an offset is allowed under ORS 317.085.

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

(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 taxable 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 taxable 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 taxable year, the tax shall be allowable as a deduction for such first taxable year.

(c) A taxpayer may, without the consent of the commission, make an election under this subsection for its first taxable 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 its 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 taxable 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 taxable 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 taxable 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 taxable year, shall be treated as having accrued on the date of the sale.

(4) The 1955 amendments to this section which pertain to the deduction of taxes and license fees imposed by counties, cities and other political subdivisions are applicable to any taxable year the return for which is open to adjustment on August 3, 1955. All

other 1955 amendments to this section are applicable to taxable years ending after December 31, 1953. [Amended by 1955 c.422 §1; subsection (4) derived from 1955 c.422 §2]

**317.270 Losses.** In computing net income there shall be allowed as deductions losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in business. The basis for determining the amount of deduction for losses sustained under this section shall be computed according to the method prescribed for arriving at the adjusted basis in ORS 317.210 to 317.220.

**317.275 Loss from wash sales of securities.** In 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 corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business. 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. 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 non-deductibility of the loss shall be determined under rules and regulations prescribed by the commission.

**317.280 Bad debts.** (1) In computing net income there shall be allowed as a deduction any debt which becomes worthless within the taxable 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 bad debts).

(2) When satisfied that the 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 taxable year.

(3) The basis for determining the amount of the deduction for a bad debt shall be the adjusted basis provided in ORS 317.220 for determining the loss from the sale or other disposition of property.

(4) The 1953 amendments to this section are applicable to any taxable year the return for which is open to adjustment on July 21, 1953.

(5) The 1955 amendments to this section are applicable to taxable years beginning after December 31, 1954. [Amended by 1953 c.385 §9; 1955 c.584 §1]

**317.285 Depreciation.** (1) In computing net income there shall be allowed as a deduction a reasonable allowance for the exhaustion, wear and tear and obsolescence of property used in the business. The basis for the depreciation allowance shall be taken proportionately over the useful life of the property; but in no case shall the total amount recoverable through depreciation allowance over the life of the property be in excess of the basis of the property as computed under subsection (2) of this section.

(2) The basis recoverable through depreciation allowance in respect of any property shall be:

(a) In the case of property acquired before January 1, 1929, the cost of the property (or, in the case of property acquired other than by purchase, the fair market value of the property at the date of acquisition) less depreciation properly chargeable against the property prior to January 1, 1929.

(b) In the case of property acquired after December 31, 1928, the same basis as for gain or loss upon the disposition of such property as provided in ORS 317.210 to 317.220.

**317.290 Depletion.** (1) In computing net income there shall be allowed as a deduction, in the case of mines, oil and gas wells, and other natural deposits, except in the case of metal mines as provided in subsection (3) of this section, a reasonable allowance for depletion according to the peculiar conditions in each case. Such reasonable allowance in

all cases shall be computed on the cost of the property, and in the case of property acquired prior to January 1, 1929, the basis shall be the cost less depletion properly chargeable against the property to January 1, 1929.

(2) In the case of timber, a reasonable allowance shall be allowed for depletion according to the peculiar conditions in each case. In the case of timber acquired prior to January 1, 1929, the basis for depletion shall be the fair market value on that date; in the case of timber acquired after December 31, 1928, the allowance for depletion shall be computed on the cost of the property.

(3) In the case of metal mines, a taxpayer may deduct an amount equal to 15 percent of the gross income from the property during the taxable year, but such deduction shall not in any case exceed 50 percent of the net income of such taxpayer (computed without allowance for depletion) from the property. In its first return made under this chapter (for a taxable year beginning after December 31, 1938), 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 it elects to have depletion allowance for each such property for the taxable year computed with or without reference to percentage depletion. An election once exercised under this section cannot thereafter be changed by the taxpayer, and the depletion allowance in respect to each such property will for all succeeding taxable years be computed in accordance with the election so made.

**317.295 Contributions and gifts.** (1) In computing net income there shall be allowed as deductions, to an amount not in excess of five percent of the taxpayer's net income as computed without the benefit of this section, contributions or gifts made within the tax year by the taxpayer:

(a) After December 31, 1946, 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) After December 31, 1946, and before January 1, 1955, to corporations or associations operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of

which inures to the benefit of any private stockholder or individual.

(c) After December 31, 1954, 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.

(d) After December 31, 1952, 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.

(e) After December 31, 1952, 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) Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the commission. [Amended by 1953 c.385 §9; 1955 c.722 §1]

**317.300 Items not deductible.** In computing net income no deduction shall be allowed for:

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

(2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

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

(4) 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. This subsection is applicable to tax years beginning after December 31, 1952, but the determination as to whether or not a taxpayer has properly charged to capital account any tax

or carrying charge incurred prior to December 31, 1952, shall be made as if this subsection had not been enacted and without inferences drawn from the fact that this subsection was not expressly made applicable to tax years beginning before January 1, 1953. [Amended by 1953 c.385 §9]

**317.305 to 317.350** [Reserved for expansion]

### RETURNS AND PAYMENT OF TAX

**317.355 Returns.** Every taxpayer shall, on or before the fifteenth day of the fourth month after the expiration of the taxable year, transmit to the tax commission a return in form prescribed by the commission, specifying for the taxable year immediately preceding, all such facts as are reasonably required by the commission in order to carry out the provisions of this chapter. Under regulation by the tax commission the taxpayer may, in its return, quote from its income tax return, as made to the Federal Government, such information as truly reflects its gross and net income for the taxable year. To the end that the return may be simplified, the commission shall prescribe a form of return which shall condense the same to the fullest extent practicable to obtain the information required, the returns to be modified or supplemented by the commission to such extent as may be necessary to enable it to enforce the provisions of this chapter. Every such return shall be verified by oath of an officer of the national banking association or corporation.

**317.360 Consolidated return of affiliated corporations.** (1) Where a corporation required to make a return under this chapter is affiliated with another or other corporations (whether or not such other corporation or corporations are doing business in Oregon) and the income of the corporation required to make the return is affected or regulated by agreement or arrangement with such affiliated corporation or corporations, the commission may permit or require a consolidated return and apply the tax upon that part of the income shown on the consolidated return which is properly attributable to this state under the rules and regulations of the commission relating to allocation of income. The corporations which are joined in a consolidated return shall be treated as one taxpayer.

(2) For the purposes of this section two

or more corporations are affiliated if:

(a) One corporation owns at least 95 percent of the voting stock of the other or others, or

(b) At least 95 percent of the voting stock of two or more corporations is owned by the same interests.

(3) If any corporation or corporations which are required to file a consolidated return fail to file such a return, the commission may estimate, according to its information and belief, the amount of income which would be shown in a consolidated return and determine the tax due from such estimate.

**317.365 Mandamus to compel return.** If any 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 such taxpayer 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 317.470 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.

**317.370 Estimated return by commission.** If any return required by this chapter is not made, the commission may make an estimate of the net income and the amount of the tax due under this chapter from any information in its possession, and may order and state an amount according to such estimate for the taxes and penalties due to the state.

**317.375 Determining net income where tax evasion arrangements exist.** When any taxpayer conducts its business in such a manner as either directly or indirectly to benefit its members or stockholders or any person or corporation interested in such business or to reduce the income attributable to this state by selling the commodities or services in which it deals at less than the fair price for which they might have been

obtained therefor, or buying commodities or services at more than the fair price for which they might have been obtained, or by any other arrangement, whether by agreement or otherwise, the commission may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for such arrangement, having regard to the fair profits which, but for any agreement, arrangement, or understanding, might have been or could have been obtained from such business.

**317.380 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 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 audit or adjustment of the taxpayer's federal income tax return.

**317.385** [Reserved for expansion]

**317.390 Payment of tax.** (1) The tax may be paid in equal quarterly instalments. The first instalment shall be paid to the commission at the time fixed by ORS 317.355 for filing the return, the second instalment on or before three months, the third instalment on or before six months and the fourth instalment on or before nine months after the time fixed by ORS 317.355 for filing the return.

(2) If any of the instalments are not so paid the commission may, at its option, declare the entire unpaid balance of the tax immediately due and take the action necessary to enforce collection thereof.

(3) If the time for filing the return is extended, interest at the rate of six percent a year from the time the return was originally required to be filed to the time of payment shall be added and paid; except that no extension for filing excise tax returns may be granted for more than six months.

(4) 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.

**317.395 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.

**317.400** [Reserved for expansion]

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

**317.405 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 the 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. [Amended by 1955 c.587 §1]

**317.410 Additional assessment.** (1) If the commission discovers from the audit of the return or otherwise that any portion of the income of any taxpayer has not been assessed, it may, at any time within three years after the return has been filed, compute the tax and give notice to the taxpayer of the amount due, including penalty and interest thereon. However, if the commission finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return for any tax year, 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 makes 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 becomes final, or with-

in the applicable three- or five-year period prescribed in this subsection, whichever period expires the later; provided, however, that the statute of limitations shall not be reopened or extended with respect to any tax return or additional assessment which is otherwise barred on the effective date of this amendment.

(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 the prescribed period, the tax may be assessed or any tax overpaid for such year shall be refunded at any time prior to the expiration of the period agreed upon.

(3) Mailing of the notice of proposed assessment to the taxpayer at its 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) The 1953 amendments to this section are applicable to any tax year the return for which is open to adjustment on July 21, 1953. [Amended by 1953 c.385 §9; 1955 c.581 §2]

**317.415 Refunds.** (1) If the amount of 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. 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 was 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) If the claim for credit or refund relates to an overpayment on account of the deductibility by the taxpayer under ORS 317.270 or 317.280, 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.

(3) Notwithstanding any provision to the contrary in ORS 317.465 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 three-year period prescribed in subsection (1) of ORS 317.410.

(4) The 1953 amendments to this section are applicable to any tax year the return for which is open to adjustment on July 21, 1953. The 1955 amendments to this section are applicable to any tax year the return for which is open to adjustment on August 3, 1955. [Amended by 1953 c.385 §9; 1955 c.581 §1]

**317.420 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 by 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. [Amended by 1955 c.356 §1]

**317.425 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 any officer or agent of the taxpayer or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oath to such person or 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 such person resides for an order to such 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.

#### **317.430 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 taxable year by the commission under the provisions of ORS 317.445), the commission shall issue a warrant, under its 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 owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the tax commission and to pay to it the money collected by virtue thereof, within 60 days after receipt of such warrant.

(2) The sheriff shall, within five days

after the receipt of the warrant, file with the clerk of his county a copy thereof. 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 such warrant so docketed shall become a lien upon the title to and interest in real or personal property of the taxpayer against which 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 judgments 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 tax commission, a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect this tax, and, in the execution thereof, the agent shall have 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 tax commission shall have the same remedies to enforce the claim for taxes against the taxpayer as if the state had a recorded judgment against the taxpayer for the amount of the tax.

**317.435 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 317.430 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 subsection within 60 days from

the date of the 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 to 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 317.430 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.

**317.440 Tax as debt.** 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 corporation or corporations liable therefor.

**317.445 Termination of taxable period by commission.** If the commission finds that a taxpayer designs quickly to depart from the state or to remove its property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for

any past taxable year or the taxable year then current unless such proceedings are brought without delay, the commission shall declare the current taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer. Simultaneously, the commission, on the basis of the best information available to it, shall assess a tax for such terminated period and for the preceding taxable year (if no return has been filed therefor, whether or not the time otherwise allowed by law for filing such return and paying the tax has expired), and shall assess additional tax for any year 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 its 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.

**317.450 Penalty and interest on delinquencies.** If any 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 such tax or instalment becomes due but thereafter voluntarily pays such tax or instalment, there shall be imposed a penalty in an amount equal to five percent of such 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.

**317.455 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.

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

**317.465 Appeal to commission.** (1) A taxpayer may appeal to the commission for the refund or revision of any tax within the following times:

(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 subsection (1) of ORS 317.415. 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, penalty or interest then due from the tax-

payer, 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.

**317.470 Appeal from commission.** (1) An appeal from the determination of the commission upon application made by a taxpayer for refund or revision of any tax, under ORS 317.465, may be taken by the taxpayer by filing a complaint against the commission in the circuit court of the county in which the taxpayer has its principal place of business, or in which there is located an agent of the corporation authorized to accept service in this state, and by serving a true copy thereof upon the commission by registered mail within 60 days after notice by the commission of its determination, given as provided in ORS 317.465, has been received by the taxpayer. Thereupon appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be found entitled may be granted and any such taxes, interest or penalties paid, found by the court to be in excess of those legally assessed, shall be ordered refunded to the taxpayer, with interest from time of payment 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 317.415, 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 tax-

payer resides or has its 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. [Amended by 1953 c.385 §9; 1955 c.585 §1]

**317.475 When appeal stays collection proceedings.** Unless otherwise ordered by a court of competent jurisdiction, an appeal to the commission under ORS 317.465, or an appeal to a court under ORS 317.470, shall not stay proceedings to collect any unpaid tax if the commission believes that collection of the tax will be jeopardized by delay.

**317.480 Action to recover tax.** Action may be brought at any time 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.

**317.485 to 317.500** [Reserved for expansion]

### ADMINISTRATIVE PROVISIONS

**317.505 Commission to administer and enforce law; rules and regulations.** The commission shall administer and enforce all the provisions of this chapter. The commission may adopt, prescribe, and, from time to time, alter and amend and enforce reasonable rules, orders and regulations for the purposes of carrying out the provisions of this chapter.

**317.510 Requiring additional reports and information.** The commission may order additional reports or such other information it deems necessary in addition to the regular reports provided in this chapter. All reports and returns, as provided in this chap-

ter, shall be upon standard forms, adopted by the commission, with no more detailed information relating to the taxpayer's business than is necessary to enable the commission to administer fully the provisions of this chapter.

**317.515 Paying collections to State Treasurer.** All collections by the commission shall be paid over by it at least weekly to the State Treasurer.

**317.520 Recognizing representative of taxpayer.** No attorney, accountant or agent shall be recognized as representing any corporation in regard to any claim, appeal or other matter relating to the tax liability of such corporation 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. However, where an authorization has not been filed, the representative may be recognized pending the filing of the authorization if 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 corporation.

**317.525 Representation by former officer or employee of commission.** No former officer, clerk or employee 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.

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

**317.535 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 re-

turns 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.

**317.540 Officials to whom information may be furnished.** Notwithstanding ORS 317.535, 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 return of any taxpayer, or may furnish to such officer or his authorized representative 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. Such permission shall be granted, or such information furnished, to such officer or his representative only if the statutes, regulations 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.

**317.545 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 such tax has not been paid, that such return has not been filed or that such information has not been supplied.

**317.550 Rewards for information.** The commission is authorized to pay rewards to such persons, other than officers or employes of the commission, furnishing information that will lead to the recovery of tax from corporations 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 rewards shall be paid out of the revenue arising under the operation of this chapter.

**317.555 to 317.585** [Reserved for expansion]

**317.590 Disposition of revenue.** (1) 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 from the tax, after deduction of such administrative costs, 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 \$500,000.

(2) The amendment of this section by the Forty-seventh Legislative Assembly shall first apply to the state levy of taxes for the fiscal year 1953-54. [Amended by 1953 c.309 §2; 1955 c.35 §1]

**317.595 and 317.600** [Reserved for expansion]

**317.605** [Amended by 1953 c.331 §2; renumbered 314.210]

**317.610** [Renumbered 314.220]

**317.615** [Renumbered 314.230]

**317.620 to 317.985** [Reserved for expansion]

## PENALTIES

**317.990 Penalties.** (1) A person or an officer or employe of a corporation who violates ORS 317.015 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 also is guilty of a misdemeanor and shall, upon conviction, be fined not to exceed \$1,000 or imprisoned not to exceed one year, or both. The penalties provided by this subsection shall be additional to all other penalties in this chapter.

(2) Violation of ORS 317.525 or 317.535 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 from office and shall be incapable of holding  
by both. If the offender is an officer or any public office in this state for a period  
employee of the state he shall be dismissed of five years thereafter.

**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