

Chapter 316

1959 REPLACEMENT PART

Personal Income Tax Act of 1953

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GENERAL PROVISIONS

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

316.010 General definitions. As used in this chapter, unless the context requires otherwise:

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

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

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

(4) "Distribution in complete liquidation" means a single and final distribution or any one of a series of distributions made by a corporation in complete cancelation or redemption of all of its stock in accordance with a bona fide plan of liquidation and dissolution.

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

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

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(8) "Fiscal year" means an accounting

period of 12 months, ending on the last day of any month other than December.

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

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

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

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

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

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

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

(16) "Stockholder" means any owner or holder of any certificate, unit or share rep-

representing or evidencing an interest in any corporation.

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

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

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

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

(1) The deductions allowed by ORS 316.305 to 316.360 which:

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

(b) Consist of expenses of travel, meals and lodging, paid or incurred by the taxpayer in connection with the performance by him of services as an employe, while away from home for a minimum period which lasts substantially longer than an ordinary day's work and during which his duties require him to obtain necessary rest away from such home.

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

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

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

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

(2) The deductions allowed by ORS 316.275 to 316.295 as losses from the sale or exchange of property.

(3) The expenses deductible under ORS 316.122. [1953 c.304 §3; 1953 c.552 §2; 1959 c.211 §3]

316.020 Excluding period of military service outside United States in determining amount of tax liability or time within which an act must be done. The period of time (if

such period is longer than 90 days) during which an individual is continuously outside the continental United States as a member of the Armed Forces of the United States, and the next 90 days thereafter, shall be disregarded in determining, with respect to any personal income tax liability or credit or refund:

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

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

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

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

316.025 [1953 c.304 §5; repealed by 1957 c.632 §1 (ORS 314.075 and 314.080 enacted in lieu of ORS 316.025, 316.030, 317.015 and 317.020)]

316.030 [1953 c.304 §6; repealed by 1957 c.632 §1 (ORS 314.075 and 314.080 enacted in lieu of ORS 316.025, 316.030, 317.015 and 317.020)]

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

316.040 Effect of subsequent repeal of chapter. In the event of repeal of this chapter, unless otherwise specifically provided in the repeal, this chapter shall remain in full force for the assessment, imposition and collection of the tax and all interest, penalty or forfeitures which have accrued or may

accrue in relation to any such tax for the calendar year in which the tax is repealed. [1953 c.304 §7]

316.045 and 316.050 [Reserved for expansion]

IMPOSITION OF TAX; TAX RATES

316.055 Imposition of tax. (1) A tax hereby is imposed upon every resident of the state upon and with respect to his entire net income, as defined in ORS 316.125, including his entire net income from sources both within and without the state.

(2) A like tax hereby is imposed upon every individual not a resident of this state upon and with respect to his entire net income, as defined in ORS 316.125, from all property located in the state, including interest, or any amount in lieu thereof, upon the deferred payments of the selling price received in connection with the sale of such property, and from every business, trade, profession or occupation carried on in the state, including income from money or credits and other intangible personal property used by such nonresident individual in the conduct of his business, trade, profession or occupation within the state.

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

(4) The amendments to this section made by section 1, chapter 15, Oregon Laws 1957 (special session), shall apply to all tax years ending after August 3, 1957, and for prior tax years the law applicable to such tax years shall continue to apply. [1953 c.304 §8; 1953 c.552 §3; 1957 (s.s.) c.15 §1]

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

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

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

(c) On the third \$500 of taxable income, or any part thereof, five percent.

(d) On the fourth \$500 of taxable income, or any part thereof, six percent.

(e) On all taxable income in excess of \$2,000, and not in excess of \$4,000, seven percent.

(f) On all taxable income in excess of

\$4,000, and not in excess of \$8,000, nine percent.

(g) On all taxable income in excess of \$8,000, 9.5 percent.

(2) On or before August 15, 1958, the commission shall certify to the Secretary of State the amount of net revenue received by the commission pursuant to this chapter during the preceding fiscal year. If the amount certified is more than \$87,500,000, the tax determined by application of subsection (1) of this section shall be decreased one percent for each one million dollars more than \$87,500,000. The percentage decrease thus ascertained shall be applicable to the tax determined by application of subsection (1) of this section in the taxpayer's next tax year ending after August 15, 1958. Notwithstanding the provisions of subsection (1) of ORS 316.075 or any other provisions of this chapter, the commission may provide in its forms, tables and instructions the method of applying to taxable income the decrease provided by this subsection.

(3) For tax years ending after August 3, 1957, there shall be no surtax. The amendments of tax rates made by chapter 15, Oregon Laws 1957 (special session), shall apply to all full tax years ending after August 3, 1957, and for prior tax years the law applicable to such tax years shall continue to apply. Returns for partial tax years ending prior to August 4, 1957, shall be taxed at the rates in effect on the last day of the period for which the return is made. Returns for partial tax years ending after August 3, 1957, and before February 14, 1958, shall be taxed at the rates prescribed by ORS 316.060 as amended by section 1, chapter 586, Oregon Laws 1957. [1953 c.304 §9; 1955 c.596 §1; part derived from 1955 c.596 §4; 1957 c.586 §1; 1957 (s.s.) c.15 §2]

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

316.070 Amount of tax on compensation for services rendered for a period of 36 months or more and back pay. (1) If at least 80 percent of the total compensation for personal services covering a period of 36 calendar months or more (from the beginning to the completion of such services) is received

or accrued in one tax year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

(2) For the purposes of this subsection, the term "artistic work or invention," in the case of an individual, means a literary, musical or artistic composition of such individual or a patent or copyright covering an invention of or a literary, musical or artistic composition of such individual, the work on which by such individual covered a period of 36 calendar months or more from the beginning to the completion of such composition or invention. If, in the tax year, the gross income of any individual from a particular artistic work or invention by him is not less than 80 percent of the gross income in respect of such artistic work or invention in the tax year plus the gross income therefrom in previous tax years and the 12 months immediately succeeding the close of the tax year, the tax attributable to the part of such gross income of the tax year shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over that part of the period preceding the close of the tax year but not more than 36 calendar months.

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

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

(a) Remuneration, including wages, salaries, retirement pay, and other similar compensation, which is received or accrued during the tax year by an employe for services

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

(b) Wages or salaries which are received or accrued during the tax year by an employe for services performed prior to the tax year for his employer and which constitute retroactive wage or salary increases ordered, recommended, or approved by any federal or state agency, and made retroactive to any period prior to the tax year; and

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

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

316.075 Election to pay tax in accordance with table. (1) In lieu of the tax imposed by ORS 316.055, and subject to the conditions of ORS 316.365, an individual or husband and wife filing a joint return whose adjusted gross income for the tax year is not more than \$8,000 may elect for that tax year to pay a tax in accordance with a tax table, preparation of which by the commission hereby is authorized. The taxes in such table shall be computed by adjusted gross income brackets, which shall be graduated by not less than each \$25 nor by more than each \$100 of adjusted gross income; and the taxes in such table shall be computed to the nearest dollar at the applicable rates set out in ORS 316.060 and 316.065 upon the taxable balance of net income after deducting from the median adjusted gross income of each such bracket the standard deduction provided by ORS 316.365 based upon such median gross income, and the applicable exemption and dependency credit provided

by ORS 316.455. Such exemption shall not, however, be prorated in case the taxpayer's status changes during his tax year, but the taxpayer's exemption status shall be determined as of the last day of his tax year, unless the taxpayer's spouse dies during such tax year, in which case the determination shall be made as of the date of such death. In the case of husband and wife making separate returns, the married exemption shall be divided equally between them.

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

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

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

316.080 [1953 c.304 §12; renumbered 316.475]

316.085 to 316.100 [Reserved for expansion]

GROSS INCOME; NET INCOME

316.105 **Gross income.** "Gross income" includes:

(1) Gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; and from royalties paid by licensees of copyrights, patents and other similar property or privileges created by law, and by licensees, or by lessees of real property or interest therein, for the privilege of severing or re-

moving minerals, oil or other natural deposits; and from interest, rent, dividends, including stock dividends, or any other income from money or credits, or from securities; also from the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever, including income derived through resident and nonresident estates or trusts by the beneficiaries thereof. "Gross income" also includes salaries and compensation of all employes of this state or any political subdivision, district or municipality thereof; and of all officials and judges, notwithstanding that such officials or judges hold constitutional offices and their compensation or salaries are not subject to being diminished during their terms of office.

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

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

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

(2) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such

amounts and other than amounts received as annuities) under a life insurance or endowment contract whether in a single sum or otherwise, but if such amounts (when added to amounts received before the tax year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the tax year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity contract shall be included in gross income; except that there shall be excluded from gross income the amount received in the tax year until the aggregate of the amounts excluded from gross income under this chapter and under the Property Tax Relief Act of 1929, as amended, on any such contract equals the aggregate premiums or consideration paid for such annuity. If the annuity contract was purchased by the employer of the taxpayer, there shall be excluded from gross income under this subsection only the amount which equals the taxpayer's contribution from his own funds toward the purchase of the annuity, plus the contributions of the employer, made either directly or through a trust or other employe's annuity plan, which were taxable to the employe under this chapter or under the Property Tax Relief Act of 1929, as amended, for the year in which such contributions of the employer were made, or, in the event that the employe was then a non-resident of this state, which would have been so taxable had he been a resident. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under this subsection.

(3) Contributions to a trust created by an employer as part of a stock bonus, pension or profit-sharing plan which is exempt from tax under the provisions of ORS 316.840 and any amounts paid by an employer on behalf of an employe or any of his dependents under a plan or system established by an employer, whether or not at the instance of a recognized bargaining agent, which makes provision for his employes generally (or for his employes generally and their dependents) or for a class or classes of his employes (or for a class or classes of his employes and their dependents), on account of:

(a) Retirement pay or pensions, or

(b) Sickness or accident disability, or

(c) Medical or hospitalization expenses in connection with sickness or accident disability, or

(d) Death.

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

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

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

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

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

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

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

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

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

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

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

(12) Except in the case of amounts attributable to and not in excess of deductions allowed under ORS 316.345, amounts received through accident or health insurance or under workmen's compensation Acts as compensation for personal injuries or sickness, plus the amount of damages received, whether by suit or agreement, on account of such injuries or sickness; and any amounts received by way of unemployment compensation, old age benefits or similar payments in pursuance of state or federal law.

(13) Income received in the tax year from pensions and annuities under a public retirement system, but only to the extent that such income does not represent compensation for personal services rendered during the tax year. As used in this subsection, "public retirement system" means a pension, annuity, retirement or similar fund or system established by the United States or this state or any municipal corporation or political subdivision of this state; except:

(a) That "public retirement system" does not include the Public Employes' Retirement System established by ORS chapter 237 or a fund or system established by the United States for members of the Armed Forces of the United States.

(b) That in the case of a public retirement system established by the United States the maximum amount excludable from gross income from such pensions or annuities shall be in the amount of \$2,400.

Nothing in this subsection is intended to affect or limit the provisions of ORS 237.201. This subsection is applicable to tax years beginning after December 31, 1956. [1953 c.304 §15; 1953 c.552 §6; 1957 c.582 §1]

316.112 "Away from home" expenses.

(1) For tax years beginning after December 31, 1958, under rules and regulations compiled by the commission, a deduction shall be allowed from gross income for sums paid by the taxpayer for expenses incurred for travel, food and lodging if the taxpayer meets both of the following conditions:

(a) The taxpayer maintains throughout the tax year a regular place of abode in which he houses one or more persons as to whom he is entitled to an exemption (other than the exemption allowed for the taxpayer himself) or credit pursuant to ORS 316.455.

(b) The taxpayer is engaged as an employe in an occupation as to which there is no permanent job situs but which requires him to travel to jobs beyond practicable commuting distances from his regular place of abode.

(2) The allowance for travel under subsection (1) of this section is limited to one round trip between his regular place of abode and the job situs for each uninterrupted period of employment at each job situs for each year. Expenses of travel between a temporary abode and the job situs shall not be allowed as a deduction. [1959 c.211 §2]

316.115 Alimony or separate maintenance payments. (1) Alimony or separate maintenance payments shall be includable in the gross income of a wife:

(a) If a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, and the wife's gross income includes periodic payments (whether or not made at regular intervals) received subsequent to such decree in discharge of, or such payments are received from income of property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation (including a subsequent modification or amendment of such decree or instrument).

(b) If a wife is separated from her husband, there is a written separation agreement and the wife's gross income includes

periodic payments (whether or not made at regular intervals) received after such agreement is executed which are made under such agreement and because of the marital or family relationship (or which are attributable to property transferred in trust or otherwise, under such agreement and because of such relationship).

(c) If a wife is separated from her husband and the wife's gross income includes periodic payments (whether or not made at regular intervals) received by her from her husband under a decree requiring the husband to make the payments for her support or maintenance. This paragraph (c) shall not apply if the husband and wife make a single return jointly.

(2) Subsection (1) of this section shall not apply to that part of any such periodic payments which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of such husband. In case any such periodic payment is less than the amount specified in the decree or written instrument, for the purpose of applying the preceding sentence, such payment, to the extent of such sum payable for such support, shall be considered a payment for such support. Instalment payments discharging a part of an obligation, the principal sum of which is, in terms of money or property, specified in the decree or instrument, shall not be considered periodic payments for the purposes of this subsection; except that an instalment payment shall be considered a periodic payment for the purposes of this subsection if such principal sum, by the terms of the decree or instrument, may be or is to be paid within a period ending more than 10 years from the date of such decree or instrument, but only to the extent that such instalment payment for the tax year of the wife (or if more than one such instalment payment for such tax year is received during such tax year, the aggregate of such instalment payments) does not exceed 10 percent of the principal sum.

(3) Whenever appropriate to the meaning of this section, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in the section are made by or on behalf of the wife or former wife to the husband or former husband, the term "husband" shall be read "wife" and the

term "wife" shall be read "husband."

(4) Subsections (1) to (3) of this section are applicable to tax returns subject to audit under ORS 314.405 on August 5, 1959. [1953 c.304 §16; 1959 c.555 §1; subsection (4) derived from 1959 c.555 §2]

316.120 [Reserved for expansion]

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

316.130 to 316.155 [Reserved for expansion]

METHODS OF ACCOUNTING AND REPORTING INCOME

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

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

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

(a) There shall first be computed the tax that would have been due had the Property Tax Relief Act of 1929, as amended,

remained in force to the close of the fiscal year and such tax shall be multiplied by the percentage that the number of months in the period preceding the operative date of this chapter is of 12;

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

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

316.165 Amendment of return to change basis of reporting. Whether the taxpayer has filed on a cash or accrual basis, he may not amend his return for the purpose of changing his basis of filing unless in the opinion of the commission it is necessary to make the amended return on the different basis to correct errors in the original return or more clearly to reflect net income. [1953 c.304 §19]

316.170 Period for reporting income.

(1) The amount of all items of gross income shall be reported in the return for the tax year in which received by the taxpayer, unless, under a method of accounting properly employed by the taxpayer, such amounts are to be properly accounted for as of a different period.

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

316.175 Death of taxpayer; effect on reporting income. In the case of the death of a taxpayer, gains, profits and income are to be returned for the tax year in which they are received by the taxpayer, unless they are to be reported as of a different period in accordance with the approved method of accounting followed by him. If a taxpayer has died, there shall also be included in computing his net income for the taxable period in which he died amounts accrued (whether prior or subsequent to the operative date of

this chapter) up to the date of his death if not otherwise properly includable in respect of such period or a prior period, regardless of the fact that the decedent may have kept his books and made his returns on the basis of cash receipts and disbursements. (The foregoing sentence shall not apply with respect to crops not harvested within said taxable period, or livestock.) The decedent's executor or other legal representative may, at his option, exclude such accruable amounts in computing net income for the taxable period in which falls the date of the decedent's death, upon the condition that:

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

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

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

(4) Such amounts are considered in such returns to have the character which they would have had in the hands of the decedent and to be includable in computing net income to the same extent as if the decedent had lived and received such amounts; and

(5) There is filed with the commission, prior to the close of administration of the decedent's estate and the discharge of the executor or representative, a bond in the amount and with the sureties the commission deems necessary, conditioned upon the return as income by the executor, representative or other taxpayer of such amounts or the value of such rights not theretofore reported, in the same manner as such amounts would be returnable as income by the decedent if he had lived and received such amounts. [1953 c.304 §21]

316.180 Death of taxpayer; effect on deductions allowed. In the case of the death of a taxpayer there shall be allowed as deductions for the taxable period in which he died, regardless of the fact that the decedent may have kept his books and made his returns on the basis of cash receipts and disbursements, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period under this chapter or the Property Tax Relief Act of 1929, as amended. However, any deductions properly chargeable against income excluded from the decedent's final return by virtue of the exercise of the option provided in ORS 316.175 or the corresponding section [ORS 315.175] in the Property Tax Relief Act of 1929, as amended, shall be allowed to, and may be claimed only by the person or taxable entity reporting such income. [1953 c.304 §22]

316.185 Dealers in personal property on an instalment basis. (1) Under regulations prescribed by the commission, a person who regularly sells or otherwise disposes of personal property on the instalment plan may return as income therefrom in any tax year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed bears to the total contract price.

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

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

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

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

(a) The portion of the tax for such prior tax year which is attributable to the gross

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

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

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

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

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

316.190 Sales of realty and casual sales of personal property on instalment basis.

(1) In the case of:

(a) A casual sale or other casual disposition of personal property (other than property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the tax year), for a price exceeding \$1,000, or

(b) A sale or other disposition of real property, if in either case the initial payments do not exceed 30 percent of the selling price, the income may, under regulations prescribed by the commission, be returned on the basis and in the manner prescribed in ORS 316.185. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the tax year in which the first payment on account of the sale or other disposition is received.

(2) If the transaction is reported by the taxpayer as resulting in a gain, an election

to report a casual sale or other casual disposition of real or personal property on the instalment basis must be clearly manifested in the first return of the taxpayer made for the tax year in which the sale or other disposition was made or, if no payments are received in that year, in the first year in which payments are received. If such manifestation is not so made, or if the sale or disposition is omitted from the return, or if the transaction is erroneously and in bad faith reported as resulting in a loss, the entire gain, as determined by ORS 316.260, shall be included in income for the tax year in which the sale or disposition was made; however, if no initial payment is received in the year of sale or other disposition, the entire gain shall be included in the taxable year in which the initial payment is made.

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

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

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

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

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

(3) This section shall not apply to the transmission at death of instalment obligations if there is filed with the commission, at the time the return of the decedent is due (or such further time as the commission may grant), a bond in the amount and with the sureties the commission deems necessary, conditioned upon the return as income, by

the person receiving any payment on such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment. [1953 c.304 §25]

316.200 Income from partnerships. An individual carrying on business in partnership shall be liable for income tax only in his individual capacity. There shall be included in the return of each partner his distributive share, whether distributed or not, of the net income of the partnership for the tax year of the partnership ending with or within the tax year for which the partner's return is made. If the partnership keeps its books of account on a fiscal year basis, the distributive share of each partner of the net income of the partnership for the entire 12-month period preceding the close of its fiscal year ending within the first calendar year following the operative date of this chapter, shall be taxed under the provisions of this chapter and no part thereof shall be taxed under the provisions of the Property Tax Relief Act of 1929, as amended. The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual. [1953 c.304 §26]

316.205 [1953 c.304 §27; repealed by 1957 c.632 §1 (ORS 314.280 enacted in lieu of ORS 316.205 and 317.180)]

316.210 [1953 c.304 §28; repealed by 1957 c.632 §1 (ORS 314.285 enacted in lieu of ORS 316.210 and 317.185)]

316.215 to 316.250 [Reserved for expansion]

DETERMINATION AND RECOGNITION OF GAIN AND LOSS

316.255 [1953 c.304 §29; repealed by 1959 c.581 §1 (ORS 316.256 enacted in lieu of ORS 316.255)]

316.256 Definitions. (1) (a) "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 stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition); or

(C) The acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded; or

(D) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under subsection (3) or subsection (5) of either ORS 316.281 or 316.286; or

(E) A recapitalization; or

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

(b) (A) If a transaction is described in both subparagraphs (C) and (D) of paragraph (a) of this subsection, then, such transaction shall be treated as described only in subparagraph (D).

(B) If one corporation acquires substantially all of the properties of another corporation, the acquisition would qualify under subparagraph (C) of paragraph (a) of this subsection but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and the acquiring corporation acquires, solely for voting stock described in subparagraph (C) of paragraph (a) of this subsection, property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation, then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under subparagraph (C) of paragraph (a) of this subsection. Solely for the purpose of determining whether as required by the preceding sentence 80 percent of the fair market value of the property was acquired for voting stock of the acquiring corporation, the amount of any liability assumed by the ac-

quiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(C) A transaction otherwise qualifying under subparagraph (A) or (C) of paragraph (a) of this subsection shall not be disqualified by reason of the fact that part or all of the assets which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets.

(2) "A party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subparagraph (C) of paragraph (a) of subsection (1) of this section, if the stock exchanged for the properties is stock of a corporation which is in control of the acquiring corporation, "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under subparagraph (A) or (C) of paragraph (a) of subsection (1) of this section by reason of subparagraph (C) of paragraph (b) of subsection (1) of this section, "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets are transferred.

(3) "Control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(4) This section is effective with respect to transactions occurring on or after August 5, 1959. [1959 c.581 §2 (enacted in lieu of ORS 316.255); subsection (4) derived from 1959 c.581 §11]

316.260 Computation of gain or loss.

(1) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in ORS 316.270, and the loss shall be the excess of the adjusted basis provided in ORS 316.270 over the amount realized.

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

(3) Nothing in ORS 316.260 to 316.270 shall be construed to prevent (in the case of property sold under contract providing for payment in instalments) the taxation of that portion of any instalment payment representing gain or profit in the year in which such payment is received. [1953 c.304 §30]

316.265 [1953 c.304 §31; 1953 c.552 §7; repealed by 1959 c.581 §3 (ORS 316.266 enacted in lieu of ORS 316.265)]

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

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

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

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

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

(5) If the property was acquired by gift or transfer in trust after December 31, 1929,

(other than a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift, whichever is lower. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the commission shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the commission finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the commission as of the date or approximate date at which, according to the best information that the commission is able to obtain, such property was acquired by such donor or last preceding owner.

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

(7) If the property was acquired before January 1, 1930, upon an exchange (whether or not an exchange as to which no gain or loss would be recognized under ORS 316.275, 316.281, 316.286, 316.291 and 316.295), the basis shall be the same as if the property had been purchased on the date of such exchange for its fair market value on that date.

(8) (a) If the property was acquired after December 31, 1929, upon an exchange

to which ORS 316.281 applies the basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged decreased by the fair market value of any other property (except money) received by the taxpayer, and the amount of any money received by the taxpayer and increased by the amount which was treated as a dividend, and the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend). The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) Under regulations prescribed by the commission, the basis determined under paragraph (a) shall be allocated among the properties permitted to be received without the recognition of gain or loss. In the case of an exchange to which subsection (5) of ORS 316.281 (or so much of ORS 316.286 as relates to such subsection (5)) applies, then in making such allocation there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) For purposes of this subsection, a distribution to which subsection (5) of ORS 316.281 (or so much of ORS 316.286 as relates to such subsection) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) 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 purposes of this subsection, be treated as money received by the taxpayer on the exchange.

(9) (a) If the property was acquired after December 31, 1929, as the result of compulsory or involuntary conversion described in ORS 315.295 and the destruction, theft, seizure, requisition or condemnation of the converted property, or the sale or exchange of such property under threat or im-

minence of requisition or condemnation occurred prior to the operative date of this chapter, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended upon such conversion, and increased in the amount of gain to the taxpayer recognized upon such conversion under the Property Tax Relief Act of 1929, as amended.

(b) If the property was acquired as a result of a compulsory or involuntary conversion described in subsection (1) of ORS 316.295 the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended upon such conversion and increased in the amount of gain to the taxpayer recognized upon such conversion.

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

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

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

(11) If a taxpayer's personal residence was acquired upon a sale of his prior residence as described in subsection (6) of ORS 316.281, or the corresponding section of the

Property Tax Relief Act of 1929, as amended, the basis of the acquired residence shall be the cost thereof reduced by the amount of the gain which was not recognized upon the sale of such other residence, and increased by the amount of the loss incurred on the sale of such other residence notwithstanding such loss was not otherwise recognized or allowed as a deduction.

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

(13) If the property consists of stock (called "old stock") in respect of which the shareholder has received a distribution of stock or rights to acquire stock in the distributing corporation (called "new stock") and if the distribution did not constitute receipt of a dividend taxable under the provisions of this chapter, or under the Property Tax Relief Act of 1929, as amended, the basis of the old and new stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations prescribed by the commission.

This section is effective with respect to transactions occurring on or after August 5, 1959. [1959 c.581 §4 (enacted in lieu of ORS 316.265); last sentence derived from 1959 c.581 §11]

316.270 Adjusted basis; substituted basis. (1) The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under ORS 316.266, adjusted as provided in this section.

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

(a) For expenditures, receipts, losses or other items, properly chargeable to capital account, but no such adjustment shall be

made in respect to items for which deductions have been taken by the taxpayer on his tax returns for prior years made under this chapter or under the Property Tax Relief Act of 1929, as amended, if the adjustment of such return is barred.

(b) In respect to any period (whether before or after January 1, 1930) for exhaustion, wear and tear, obsolescence, amortization and depletion, to the extent actually sustained (except in the case of property to the extent used by the taxpayer as his personal residence), but in any event not less than the total amount actually allowed upon returns to the State of Oregon during the period after December 31, 1929, made under this chapter or under the Property Tax Relief Act of 1929, as amended.

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

(3) The term "substituted basis" as used in this section means a basis determined under any provision of ORS 316.266 providing that the basis shall be determined:

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

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

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

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

316.275 Recognition of gain or loss.

(1) Upon the sale or exchange of property the entire amount of the gain or loss, as determined under ORS 316.260 to 316.270 shall

be recognized, except as provided in this chapter.

(2) The 1959 amendments to this section apply to tax years beginning after December 31, 1959. [1953 c.304 §33; 1959 c.591 §19; subsection (2) derived from 1959 c.591 §21]

316.280 [1953 c.304 §34; 1953 c.552 §8; 1955 c.256 §1; paragraph (d) of subsection (6) of 1957 Replacement Part derived from 1955 c.256 §2; repealed by 1959 c.581 §5 (ORS 316.281 enacted in lieu of ORS 316.280)]

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

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

(3) No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. The preceding sentence shall not apply if the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or any such securities are received and no such securities are surrendered; nor shall such sentence apply to an exchange in pursuance of a plan of reorganization if the reorganization is one described in subparagraph (D) of paragraph (a) of subsection (1) of ORS 316.256 unless the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets and the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization. Notwithstanding any other provision of this chapter, the

rule of this subsection (and so much of ORS 316.286 as relates to this subsection) shall apply with respect to any plan of reorganization for a railroad approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act or under section 20 b of the Interstate Commerce Act, as being in the public interest.

(4) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation. For purposes of this subsection, stock or securities issued for services shall not be considered as issued in return for property. In determining control for purposes of this subsection, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.

(5) (a) If a corporation (referred to in this section as the "distributing corporation") distributes to a shareholder, with respect to its stock, or distributes to a security holder, in exchange for its securities, solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution (stock which was acquired by the distributing corporation by reason of any transaction occurring within five years of the distribution in which gain or loss was recognized in whole or in part to be considered other property and not stock for such purposes); the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device); the requirements of paragraph (b) (relating to active businesses) are satisfied; and as part of the distribution, the distributing corporation distributes all of the stock and securities in the controlled corporation held by it immediately before the distribution, or an amount

of stock in the controlled corporation constituting control, and it is established to the satisfaction of the commission that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Oregon income or excise taxes then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities. This subsection shall apply whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation, whether or not the shareholder surrenders stock in the distributing corporation, and whether or not the distribution is in pursuance of a plan of reorganization. This subsection shall not apply if the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

(b) Paragraph (a) of this subsection shall apply only if either the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business. For such purposes a corporation shall be treated as engaged in the active conduct of a trade or business if and only if it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged, such trade or business has been actively conducted throughout the five-year period ending on the date of the distribution, such trade or business was not acquired within such five-year period in a transaction in which gain or loss was recognized in whole or in part, and control of a

corporation which (at the time of acquisition of control) was conducting such trade or business, was not acquired directly (or through one or more corporations by another corporation within such five-year period) or was so acquired by another corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

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

(b) For the purposes of this subsection:

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

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

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

(D) A residence any part of which was constructed or reconstructed by the taxpayer shall be considered as purchased by the taxpayer. In determining the taxpayer's

cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction and improvements made which are properly chargeable to capital account, during the period specified in this subsection.

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

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

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

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

(I) The term "adjusted sales price" means the amount realized, reduced by the aggregate of the expenses for work performed on the old residence in order to assist in its sale. This reduction applies only to the following expenses: (i) For work performed during the 90-day period ending on the day on which the contract to sell the old residence is entered into; (ii) which are paid on or before the thirtieth day after the date of the sale of the old residence; (iii) which are not allowable as deductions in computing taxable income and which are not taken

into account in computing the amount realized from the sale of the old residence. The reduction provided for work performed on the old residence applies to expenses for work performed in any taxable year (whether beginning before, on or after January 1, 1954), but only in the case of a sale or exchange of an old residence which occurs after December 31, 1953.

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

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

(7) No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in subsection (7) of ORS 317.231 in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate the plan of reorganization provided for in such subsection.

(8) This section is effective with respect to transactions occurring on or after August 5, 1959. [1959 c.581 §6 (enacted in lieu of ORS 316.280); subsection (8) derived from 1959 c.581 §11]

316.285 [1953 c.304 §35; repealed by 1959 c.581 §7 (ORS 316.286 enacted in lieu of ORS 316.285)]

316.286 Exchanges not solely in kind.

(1) If an exchange would be within the provisions of subsection (1), (2), (3), (4), (5) or (7) of ORS 316.281, 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 an exchange is described in subsection (3) or (5) of ORS 316.281 but has the effect of the distribution of a dividend, then there shall be treated as a dividend to each distributee such an amount of the gain recognized under subsection (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation. The remainder, if any, of the gain recognized under subsection (1) of this section shall be treated as gain from the exchange of property.

(3) If subsection (5) of ORS 316.281 would apply to a distribution but for the fact that the property received in the distribution 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 an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of a dividend to the extent that such amount is not in excess of the distributee's ratable share of the undistributed earnings and profits of the corporation.

(4) If subsection (1), (2), (3), (4) or (7) of ORS 316.281 would apply to an exchange or subsection (5) thereof would apply to an exchange or distribution, but for the fact that the property received in the exchange or distribution 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 or distribution shall be recognized.

(5) The term "other property" as used in this section includes securities except as hereinafter provided:

(a) The term "other property" does not include securities to the extent that, under subsection (3) or (5) of ORS 316.281, such securities would be permitted to be received without the recognition of gain.

(b) If in an exchange described in subsection (3) of ORS 316.281 (other than a reorganization described in the last sentence thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and the principal amount of such securities received exceeds the principal amount of such securities

surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this paragraph and paragraph (c) of this subsection, if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(c) If in an exchange or distribution described in subsection (5) of ORS 316.281 the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess.

(d) The term "other property" does not include securities received in an exchange under subsection (4) of ORS 316.281.

(6) This section is effective with respect to transactions occurring on or after August 5, 1959. [1959 c.581 §8 (enacted in lieu of ORS 316.285); subsection (6) derived from 1959 c.581 §11]

316.290 [1953 c.304 §36; repealed by 1959 c.581 §9 (ORS 316.291 enacted in lieu of ORS 316.290)]

316.291 Assumption of liability. (1) Except as provided in subsections (2) and (3) of this section, if the taxpayer receives property which would be permitted to be received under subsection (4) of ORS 316.281 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, then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of such subsection.

(2) If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition described in subsection (1) of this section was a purpose to avoid Oregon income or excise taxes on the exchange, or, if not such purpose, was not a bona fide business purpose, then such assumption or

acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall be considered as money received by the taxpayer on the exchange. In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(3) In the case of an exchange to which subsection (1) of this section applies, if the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of property. This subsection shall not apply to any exchange to which subsection (2) of this section applies.

(4) This section is effective with respect to transactions occurring on or after August 5, 1959. [1959 c.581 §10 (enacted in lieu of ORS 316.290); subsection (4) derived from 1959 c.581 §11]

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

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

(b) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in subsection (2) of this section occurred on or after the operative date of this chapter) the gain, if any, shall be recognized except to the extent hereinafter provided in subparagraphs (A) and (B):

(A) If the taxpayer during the period specified in subparagraph (B) following, for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such

amount is received in one or more tax years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the commission may by regulation prescribe. For the purposes of this paragraph, (i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition, and (ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (9) of ORS 316.266, the unadjusted basis of such property or stock would be its cost within the meaning of ORS 316.266.

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

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

(3) This section shall not apply in the case of property used by the taxpayer as his principal residence, if the disposition of such converted property occurred on or after the operative date of this chapter. [1953 c.304 §37]

316.300 [Reserved for expansion]

DEDUCTIONS ALLOWED IN COMPUTING NET INCOME

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

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

(a) A reasonable allowance for salaries

or other compensation for personal services actually rendered;

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

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

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

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

(b) In the form of contributions to a trust exempt from tax under the provisions of ORS 316.840, such amounts shall be deductible in the year paid to the fund or trust. In all other cases of deferred payment of compensation, the employer may deduct only such amounts as are actually paid to his employees and only in the year such amounts are paid directly to them.

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

316.306 Amounts paid to employees' plan or trust in excess of current contribution. For taxable years beginning on and after January 1, 1955, there shall be allowed, in addition to the current contributions accruing during the year to a plan or an exempt employees' trust, which are allowed as a deduction under subsection (2) of ORS 316.305, a deduction for a reasonable amount transferred to or paid to the plan or exempt employees' trust in excess of such current

contributions when such amount (1) has not theretofore been allowable as a deduction, (2) is paid in recognition of past service and (3) is apportioned over a period of 10 consecutive years beginning with the year in which the transfer or payment is made. [1955 c.608 §2]

316.310 Interest; instalment purchases where interest charge not separately stated.

(1) In computing net income there shall be allowed as a deduction all interest paid during the tax year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities, the interest on which is exempt from taxation under this chapter.

(2) If personal property is purchased under a contract (a) which provides that payment of part or all of the purchase price is to be made in instalments and (b) in which carrying charges are separately stated but the interest charge cannot be ascertained, then the payments made during the tax year under the contract shall be treated for purposes of this section as if they included interest equal to six percent of the average unpaid balance under the contract during the tax year. For purposes of this subsection, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the tax year, divided by 12. In the case of any contract to which this subsection applies, the amount treated as interest for any tax year shall not exceed the aggregate carrying charges which are properly attributable to such tax year. This subsection first applies to tax years beginning on or after January 1, 1957. [1953 c.304 §39; 1957 c.18 §1]

316.315 Taxes. (1) In computing net income there shall be allowed as deductions taxes paid during the tax year by the taxpayer, imposed by the State of Oregon or any of its political subdivisions or by the authority of the United States, including federal income taxes paid by the taxpayer upon income taxed to a fiduciary or other legal entity for Oregon income tax purposes and allocable to the State of Oregon, except:

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

(b) Gasoline taxes when not a business expense.

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

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

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

(f) Federal income taxes on income not taxed under this chapter or under the Property Tax Relief Act of 1929, as amended. For tax years the returns for which are subject to audit by the commission on August 20, 1957, and thereafter, when it is necessary to compute the federal income tax deduction by allocation, because the items or amounts of gross income taxed by Oregon law do not equal or exceed the items or amounts of gross income taxed by federal law, the federal tax deduction shall be the product calculated by multiplying the federal income tax paid during the year by the following fraction:

(A) The numerator shall equal the federal adjusted gross income for the tax year decreased by items or amounts not taxed by the Oregon law.

(B) The denominator shall equal the federal adjusted gross income for the same tax year.

The fraction described above shall be computed and applied separately to federal tax paid for each tax year to which payment is applicable. For the purposes of this paragraph, "taxed" shall mean actually taxed as distinguished from subject to tax.

(g) Except as provided in subsection (3) of this section, taxes which became a lien upon property at a date prior to the acquisition of such property by the taxpayer.

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

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

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

(2) (a) If the net income of the taxpayer is computed under an accrual method of accounting, then, at the election of the tax-

payer, any real property tax which is related to a definite period of time shall be accrued ratably over that period.

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

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

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

(b) In the case of any sale of real property, if a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid, and the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year, then for purposes of subsection (1) of this section the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (a) of this subsection, is treated as imposed on the taxpayer. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property

shall be considered liable for the real property tax for the real property tax year.

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

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

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

(4) The 1955 amendments to this section shall be applicable to tax years ending after December 31, 1953. [1953 c.304 §10; 1955 c.285 §1; subsection (4) derived from 1955 c.285 §2; 1957 c.540 §1]

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

(a) If incurred in trade or business.

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

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

(2) The basis for determining the amount of deduction for losses sustained under paragraphs (a), (b) and (c) of subsection (1) of this section shall be computed according to the method prescribed for arriving at the adjusted basis in ORS 316.260 to 316.270.

(3) Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(4) For purposes of subsection (1) of this section, any loss arising from theft or embezzlement shall be treated as sustained during the tax year in which the taxpayer discovers such loss. This subsection shall first apply to tax years beginning on or after

January 1, 1957. [1953 c.304 §41; 1957 c.73 §1]

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

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

(3) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under rules and regulations prescribed by the commission. [1953 c.304 §42]

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

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

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

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

316.335 Depreciation; depletion. (1) In computing net income there shall be allowed as a deduction a reasonable allowance for the depreciation, exhaustion, wear and tear and obsolescence of property used in the trade or business, or property held for the production of income subject to taxation under this chapter, and in the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion. Except in the case of metal mines in respect of which percentage depletion is claimed as provided in subsection (4) of this section, and in the case of property acquired before January 1, 1930, the basis upon which the deductions specified in this subsection are to be allowed in respect of any property shall be the adjusted basis provided in ORS 316.260 to 316.270 for the purpose of determining the gain upon the sale or other disposition of such property. In the case of property acquired before January 1, 1930, the basis upon which the deductions specified in this subsection are to be allowed shall be the cost of such property (or, in the case of property acquired other than by purchase, the fair market value at the date of acquisition) less depreciation properly chargeable against such property prior to January 1, 1930, and as adjusted in accordance with ORS 316.270. The reasonable allowance under this subsection includes an allowance computed in accordance with regulations prescribed by the commission under any of the following methods:

(a) The straight-line method;

(b) The declining balance method, using a rate not exceeding twice the rate which would have applied had the annual allowance been computed under paragraph (a) of this subsection;

(c) The sum-of-the-years digits method; and

(d) Any other consistent method approved by the commission.

(2) The regulations prescribed by the

commission pursuant to this section shall be designed to permit the adoption and use by the taxpayer of a uniform method of computing his allowance for depreciation for the purposes of this chapter and for federal income tax purposes.

(3) Paragraphs (b), (c) and (d) of subsection (1) of this section shall apply only in the case of property (other than intangible property) described in subsection (1) of this section with a useful life of three years or more:

(a) The construction, reconstruction or erection of which is completed after December 31, 1956, and then only to that portion of the basis which is properly attributable to such construction, reconstruction or erection after December 31, 1956; or

(b) Acquired after December 31, 1956, if the original use of such property commences with the taxpayer and commences after such date.

(4) In the case of metal mines, a taxpayer may deduct an amount equal to 15 percent of the gross income from the property during the tax year, but such deduction shall not in any case exceed 50 percent of the net income of such taxpayer (computed without allowance for depletion) from the property. In his first return made under this chapter, the taxpayer must state as to each property with respect to which the taxpayer has any item of income or deduction (in case of metal mines), whether he elects to have depletion allowance for each such property for the tax year computed with or without reference to percentage depletion. An election once exercised cannot thereafter be changed by the taxpayer, and the depletion allowance in respect to each such property will for all succeeding tax years be computed in accordance with the election so made.

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

allowable deduction specified in this section may be equitably apportioned between the lessor and lessee. [1953 c.304 §44; 1957 (s.s.) c.15 §3]

316.337 Soil and water conservation expenses. (1) A taxpayer engaged in the business of farming may treat expenditures which are paid or incurred by him during the tax year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) The amount deductible under subsection (1) of this section for any tax year shall not exceed 25 percent of the gross income derived from farming during the tax year. If for any tax year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the tax year, such excess shall be deductible for succeeding tax years in order of time; but the amount deductible under this section for any one such succeeding tax year (including the expenditures actually paid or incurred during the tax year) shall not exceed 25 percent of the gross income derived from farming during the tax year.

(3) For purposes of subsection (1) of this section:

(a) The term "expenditures which are paid or incurred by him during the tax year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of the erosion of land used in farming" means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control and protection of diversion channels, drainage ditches, earthen dams, water courses, outlets and ponds, the eradication of brush and the planting of windbreaks. Such term does not include the purchase, the construction, installation or improvement of structures, appliances or facilities which are of a character which is subject to the allowance for depreciation provided in ORS 316.335, or any amount paid or incurred which is allowable as a deduction without regard to this section. Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to

satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section.

(b) The term "land used in farming" means land used (before or simultaneously with the expenditures described in paragraph (a) of this subsection) by the taxpayer or his tenant for the production of crops, fruits or other agricultural products or for the sustenance of livestock.

(4) The taxpayer may, without the consent of the commission, adopt the method provided in this section for any tax year beginning on or after January 1, 1957, and for which expenditures described in subsection (1) of this section are paid or incurred, but once adopted, the method provided in this section shall apply to all expenditures described in subsection (1) of this section, and shall be adhered to in computing taxable income for all subsequent tax years unless, with the approval of the commission and in conformity with its regulations, a change to a different method is authorized with respect to a part or all of such expenditures. [1957 c.16 §2]

316.340 Contributions and gifts. (1) In computing net income there shall be allowed as deductions, to an amount not in excess of 20 percent of the taxpayer's adjusted gross income, contributions or gifts within the tax year:

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

(b) To a corporation, trust, community chest, fund or foundation operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;

(c) To posts or organizations of war veterans (including their auxiliary units and societies) located in the State of Oregon, no part of the net earnings of which inures to the benefit of any private stockholder or individual; and

(d) To a domestic fraternal society, order or association, operating under the

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

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

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

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

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

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

(3) The term "medical care", as used in subsection (1) of this section, includes amount paid for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body, amounts paid for accident or health insurance, and amounts paid for Christian Science treatment and nursing care.

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

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

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

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

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

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

316.353 Net losses of prior years. (1) In computing net income there shall be allowed as a deduction an amount equal to the aggregate of the net losses of prior years to the extent provided in this section.

(2) As used in this section, "net loss" means the total of the deductions allowed by this chapter in arriving at adjusted gross income, reduced by the gross income, if any, with a limitation provided in subsection (3) of this section.

(3) In computing the net loss for any tax year the net loss for a prior year shall not be allowed as a deduction.

(4) (a) The net loss in any tax year shall be allowed as a deduction in any of the five succeeding tax years.

(b) The amount of the net loss deductible in any tax year shall be the net loss of a prior year reduced by the net income (computed without the net loss deduction) of any intervening tax year or years between the year of loss and the succeeding tax year in which the net loss deduction is claimed.

(c) The net loss of the earliest tax year shall be exhausted before a net loss from a later year may be deducted.

(5) For the purpose of establishing a net loss under this section, an original or amended return for any tax year may be filed, at the option of the taxpayer, with the commission within the same period, but not thereafter, during which a claim for refund might be filed for the same tax year under ORS 314.415. The filing of any such original or amended return shall not operate to extend the period during which the commission might otherwise assess any tax for such tax year or during which the taxpayer

might otherwise file a claim for refund of taxes paid with respect to such year.

(6) This section, including the 1959 amendments, applies only to net losses occurring after December 31, 1956. [1957 (s.s.) c.15 §6; subsection (6) derived from 1957(s.s.) c.15 §8; 1959 c.92 §1]

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

316.360 Deductions allowed nonresident taxpayers. (1) Subject to subsection (2) of this section, in the case of a nonresident taxpayer the deductions allowed by ORS 316.305 to 316.350 shall be allowed only if and to the extent that they are connected with:

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

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

(2) The deduction prescribed in ORS 316.340, and as therein limited, shall be allowed to a nonresident taxpayer but only with respect to contributions or gifts within the tax year to the United States, the State of Oregon or any political subdivision thereof for use exclusively for public purposes within the State of Oregon, or to a corporation or association described in ORS 316.340, or a chapter or branch thereof, located within the State of Oregon. [1953 c.304 §49]

316.365 Optional standard deduction. (1) At the taxpayer's election a standard deduction may be claimed as follows:

(a) The optional standard deduction shall be the amount of \$250, or five percent of adjusted gross income, whichever is the

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

(b) The optional standard deduction shall be in lieu of all other deductions otherwise allowable under this chapter except those which under ORS 316.015 are to be subtracted from gross income in computing adjusted gross income.

(c) The optional standard deduction shall not be allowed to estates, trust, individuals who are not residents of this state for the full 12 months of the tax year, individuals filing returns for a period of less than 12 months in order to effect a change in the accounting period, or a husband or wife if the net income of one of the spouses is determined without regard to the standard deduction. For the purposes of this paragraph the determination of whether an individual is married shall be made as of the last day of the tax year, except that if one of the spouses dies during the tax year such determination shall be made as of the date of such spouse's death.

(d) If the adjusted gross income shown on the return is more than \$8,000, the optional standard deduction shall be allowed only if an election to claim such deduction is evidenced in the return. If the adjusted gross income shown on the return is \$8,000 or less, the optional standard deduction shall be allowed only if an election to claim such deduction is evidenced by the computation in the return of the tax in accordance with ORS 316.075.

(2) Under regulations prescribed by the commission, a change of election to take, or not to take, the standard deduction provided in this section for any tax year may be made after the filing of the return for such year and within the period specified in ORS 314.415 for the filing of a timely claim for refund with respect to such return. If the spouse of the taxpayer filed a separate return for any tax year corresponding to the tax year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations:

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

(b) The taxpayer and his spouse consent

in writing to the assessment, within such period as may be agreed upon with the commission, of any deficiency, to the extent attributable to the change of election, even though at the time of filing of such consent the assessment of the deficiency would otherwise be prevented. [1953 c.304 §50; 1953 c.552 §11; 1957 c.586 §15]

316.370 Alimony or separate maintenance payments. (1) In computing net income there shall be allowed as deductions, in the case of a husband described in ORS 316.115 amounts described therein as includable in the gross income of his wife, (or in the case the wife is not a resident of Oregon, such amounts which would be includable in her gross income under this chapter if she were a resident of Oregon), payment of which is made within the husband's tax year. If the amount of any such payment is not includable in such husband's gross income, no deduction shall be allowed under this section with respect to such payment.

(2) Subsection (3) of ORS 316.115 applies to this section. [1953 c.304 §51]

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

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

(2) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate (except for soil and water conservation expenditures specifically allowable as deductions by this chapter).

(3) Any amount expended in restoring property for which an allowance is or has been made under this chapter or under the Property Tax Relief Act of 1929, as amended.

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

(5) Amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the commission, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such

taxes or charges as so chargeable. [1953 c.304 §52; 1957 c.16 §3]

316.380 Certain losses not deductible.

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

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

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

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

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

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

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

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

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

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

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

(e) Stock constructively owned by a person by reason of the application of paragraph (a) of this subsection shall, for the purpose of applying paragraph (a), (b) or (c) of this subsection, be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (b) or (c) of this subsection shall not be treated as owned by him for the purpose of again applying

either of such paragraphs in order to make another the constructive owner of such stock. [1953 c.304 §53]

316.385 to 316.405 [Reserved for expansion]

SPECIAL TREATMENT FOR CAPITAL GAINS

316.406 Application of ORS 316.408 to 316.450. ORS 316.408 to 316.450 apply to tax years beginning after December 31, 1959. [1959 c.591 §21]

316.408 "Capital asset" defined. For the purpose of ORS 316.408 to 316.450, "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include:

(1) Stock in trade of the taxpayer or other property 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 property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(2) Property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in ORS 316.335, or real property used in his trade or business.

(3) A copyright, a literary, musical or artistic composition, or similar property, held by:

(a) A taxpayer whose personal efforts created such property; or

(b) A taxpayer in whose hands the basis of such property is determined, for the purpose of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of the person whose personal efforts created such property.

(4) Accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in subsection (1) of this section. [1959 c.591 §2]

316.410 "Capital gain" and "taxpayer" defined. As used in ORS 316.408 to 316.450:

(1) "Capital gain" means the gain from the sale or exchange of a capital asset if and to the extent that such gain is taken into account in computing gross income.

(2) "Taxpayer" means an individual, an estate or trust (other than share trusts

which are taxed as corporations under ORS chapter 317) or a common trust fund. [1959 c.591 §3]

316.412 Taxpayer may elect to have special treatment of his capital gains. Any taxpayer may elect to have special treatment of all or part of his capital gains for any tax year as provided in ORS 316.434 to 316.450 if he qualifies under ORS 316.414 to 316.432. [1959 c.591 §4]

316.414 Investment of gain in qualifying investment necessary to qualify for special treatment. (1) Capital gains for any tax year qualify for special treatment under ORS 316.434 to 316.450 to the extent that the taxpayer makes a good faith investment as provided in ORS 316.414 to 316.432 of such capital gains in qualifying investments listed in ORS 316.420.

(2) For the purposes of this section, if the taxpayer within a period of three years from the date the capital gains are invested in compliance with ORS 316.408 to 316.432 sells or otherwise disposes of the investment, such sale or other disposition shall, unless the taxpayer establishes to the contrary, be deemed to have been made in bad faith, but no such investment which is sold or otherwise disposed of after the expiration of such three-year period shall be treated as having been made in bad faith. [1959 c.591 §5]

316.416 to 316.418 [Reserved for expansion]

316.420 Qualifying investments. (1) A qualifying investment under ORS 316.414 is:

- (a) Real property in Oregon.
- (b) Investment in a corporation determined to be a qualifying corporation under ORS 316.426 on the date the investment is made.
- (c) Investment in a partnership qualifying under subsection (2) of this section.
- (d) Investment as a sole proprietor in a business qualifying under subsection (3) of this section.
- (e) Mortgages on real property located in Oregon if the mortgage is for a period of three years or more.
- (f) Payments made by the taxpayer on a loan made to the taxpayer if the proceeds of the loan are invested in an investment that qualifies under paragraphs (a) to (e) of this subsection.

(2) In order to qualify under paragraph (c) of subsection (1) of this section, the average of the "property factor" and the "salary and wage factor" for the partnership must be 50 percent or more. The "property factor" for the partnership is the percent that (a) the average value during the tax year of the real and tangible personal property used in the business within this state is of (b) the average value during the tax year of the real and tangible personal property used in the business both within and without this state, using the tax year of the latest return filed by the partnership under ORS 316.540. The "salary and wage factor" for the partnership is the percent that (a) the total of the wages, salaries and other compensation for personal services paid during the tax year to employees within this state is of (b) the total of such payments during the tax year to employees both within and without this state, using the tax year of the latest return filed by the partnership under ORS 316.540.

(3) In order to qualify under paragraph (d) of subsection (1) of this section, the average of the "property factor" and the "salary and wage factor" for the sole proprietor must be 50 percent or more. The "property factor" for the sole proprietor is the percent that (a) the average value during the tax year of the real and tangible personal property used in business within this state is of (b) the average value during the tax year of the real and tangible personal property used in the business both within and without this state, using the tax year of the latest return filed by the individual under ORS 316.505. The "salary and wage factor" for the sole proprietor is the percent that (a) the total of the wages, salaries and other compensation paid during the tax year to employees within this state is of (b) the total of such payments during the tax year to employees both within and without this state, using the tax year of the latest return filed by the individual under ORS 316.505.

(4) The burden of establishing that an investment qualifies under this section is on the taxpayer. [1959 c.591 §6]

316.422 to 316.424 [Reserved for expansion]

316.426 Determination of corporations in which qualifying investment may be made.

(1) Notwithstanding ORS 314.835:

(a) Upon request of a taxpayer proposing to invest his funds in a specific corporation pursuant to ORS 316.420, the commission shall notify the taxpayer whether the corporation qualifies under subsection (2) of this section.

(b) Upon request of a corporation, the commission shall determine whether the corporation qualifies under subsection (2) of this section.

(2) In order to qualify under subsection (1) of this section, the average of the "property factor" and the "salary and wage factor" for the corporation must be 50 percent or more. The "property factor" for the corporation is the percent that (a) the average value during the taxable year of the real and tangible personal property used in the business within this state is of (b) the average value during such taxable year of the real and tangible personal property used in the business both within and without this state, using the latest taxable year for which the corporation has filed a return under Oregon tax laws. The "salary and wage factor" for the corporation is the percent that (a) the total of the wages, salaries and other compensation for personal services paid during the taxable year to employes in this state is of (b) the total of such payments paid during such taxable year to employes within and without this state, using the latest taxable year for which the corporation has filed a return under Oregon tax laws.

(3) Notwithstanding ORS 314.835, the commission may make public the names of the corporations determined under subsection (1) of this section to be corporations qualifying under subsection (2) of this section. [1959 c.591 §7]

316.428 [Reserved for expansion]

316.430 Time allowed for investment.

(1) The taxpayer has only the period specified in subsection (2) of this section within which to make the investment as required by ORS 316.414 in order to qualify for special treatment of the capital gains so invested.

(2) The period referred to in subsection (1) of this section shall be the period beginning with the date of the sale or exchange of the capital asset, and ending:

(a) One year after the close of the tax year in which any part of the capital gain 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 by the taxpayer made at such time and in such manner as the commission may by regulation prescribe. [1959 c.591 §8]

316.432 Making election for special treatment; time allowed for making election.

(1) The taxpayer in order to qualify for special treatment of his capital gains shall make an election to do so by making a statement in substantially the following form on his tax return:

"I elect to report the following described capital gains for special treatment pursuant to ORS 316.405 to 316.450 (listing the capital gain)."

(2) The election shall be made within one year after the close of the tax year in which any part of the capital gain is realized. If the taxpayer elects to have special treatment of his capital gains for a tax year, the provisions of ORS 316.436 to 316.450 shall apply to that tax year. [1959 c.591 §9]

316.434 Supplying information to commission. If the taxpayer elects to have special treatment of capital gains under ORS 316.408 to 316.450, he shall report to the commission for the tax year for which such election is made and for subsequent tax years such information as the commission requires. [1959 c.591 §10]

316.436 Percentages of capital gains to be taken into account. After deducting losses as required by ORS 316.438, to the extent that the taxpayer qualifies for special treatment of capital gains under this chapter, only the following percentages of the gain recognized upon the sale or exchange of a capital asset shall be taken into account:

(1) One hundred percent if the capital asset has been held for not more than one year.

(2) Eighty percent if the capital asset has been held for more than one year but not for more than two years.

(3) Sixty percent if the capital asset has been held for more than two years but not for more than five years.

(4) Fifty percent if the capital asset has been held for more than five years. [1959 c.591 §11]

316.438 Offsetting losses against capital gains. Where the taxpayer elects to have special treatment of his capital gains for a tax year the entire capital gains shall be included in the gross income of the taxpayer for such tax year and the taxpayer shall offset all his losses recognized under this chapter, whether capital losses or not, for such tax year, including any loss carryover from previous years, against his capital gains for the tax year. The taxpayer shall determine the order in which he wishes to offset the losses against his capital gains. [1959 c.591 §12]

316.440 Application of ORS 316.442 to 316.448. ORS 316.442 to 316.448 apply only to the computation of capital gains. [1959 c.591 §13]

316.442 Determination of holding period. (1) In determining the period for which the taxpayer has held property received in an exchange, there shall be included the period during which he held the property exchanged if the property has, for the purposes of determining gain from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges after December 31, 1958, the property exchanged at the time of such exchange was a capital asset as defined in ORS 316.408. For the purposes of this subsection:

(a) An involuntary conversion described in ORS 316.295 shall be considered an exchange of property converted for the property acquired.

(b) A distribution to which subsection (13) of ORS 316.266 or to which ORS 316.281 applies shall be treated as an exchange.

(2) In determining the period for which the taxpayer has held property, however acquired, there shall be included the period during which such property was held by any other person, if such property has, for the purpose of determining gain from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or rights to acquire stock received on a distribution, if the method for determining the basis of such stock or rights is specified in this chapter, there shall (under regulations prescribed by the commission) be included the period for

which he held the stock in the distributing corporation before the receipt of such stock or rights upon such distribution.

(4) In determining the period for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire such stock or securities, there shall be included only the period beginning with the date on which the right to acquire was exercised.

(5) In determining the period for which the taxpayer has held a residence, the acquisition of which resulted under ORS 316.281 in the nonrecognition of any part of the gain realized on the sale or exchange in another residence, there shall be included the period for which such other residence had been held as of the date of such sale or exchange.

(6) In determining the period for which the taxpayer has held a commodity acquired in satisfaction of a commodity futures contract, there shall be included the period for which he held the commodity futures contract if such commodity futures contract was a capital asset in his hands. [1959 c.591 §14]

316.444 Options to buy or sell. Gain attributable to the sale or exchange of a privilege or option to buy or sell property which in the hands of the taxpayer constitutes (or if acquired would constitute) a capital asset shall be considered gain from the sale or exchange of a capital asset held for one year or less. [1959 c.591 §15]

316.446 Dealers in securities. (1) Gain by a dealer in securities from the sale or exchange of any security shall not be considered as gain from the sale or exchange of a capital asset unless:

(a) The security was, before the expiration of the thirtieth day after the date of its acquisition, clearly identified in the dealer's records as a security held for investment or if acquired before July 1, 1958, was so identified before August 1, 1958; and

(b) The security was not, at any time after the expiration of such thirtieth day, held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(2) For purposes of this section, "security" means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of

an interest in or right to subscribe to or purchase any of the foregoing. [1959 c.591 §16]

316.448 Cancellation of lease or distributor's agreement. Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement. [1959 c.591 §17]

316.450 Gain from sale of property between spouses or between an individual and a controlled corporation. In the case of a sale or exchange, directly or indirectly, of any property:

(1) Between a husband and wife; or

(2) Between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse and his minor children and minor grandchildren; any gain recognized to the transferor from the sale or exchange of such property shall be considered as a gain from the sale or exchange of property which is not a capital asset. [1959 c.591 §18]

EXEMPTIONS AND DEPENDENCY CREDITS; CREDITS AGAINST TAX

316.455 Exemptions and dependency credits; credits against tax. (1) There shall be deducted from the net income of individuals the following personal exemptions and credits:

(a) In the case of a single individual, \$600.

(b) In the case of married individuals, \$1,200. A husband and wife shall be allowed but one such exemption, and if they make separate returns it may be divided between them or taken by either. For the purposes of this paragraph, the determination of whether an individual is a married individual shall be made as of the last day of the tax year of the taxpayer, unless one of the spouses dies during the tax year of the taxpayer, in which case the determination shall be made as of the date of such death.

(c) A credit of \$600 for each dependent individual. Dependency credits shall be allowed in the full amount, without proration, in the case of a taxpayer furnishing chief

support to a dependent individual who was or becomes a dependent individual during the tax year even though the status of dependent individual does not exist as of the close of the tax year. However, the credit for a dependent individual shall not be allowed to any taxpayer for any dependent individual for whom a personal exemption has been allowed, for the tax year beginning in the calendar year in which the taxpayer's tax year begins, under paragraph (b) of this subsection as a husband and wife, whether a joint return or separate returns are made by such dependent individual and his spouse.

(2) A "dependent individual" means a person other than a husband or wife:

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

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

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

(d) Whose gross income for the calendar year in which the tax year of the taxpayer begins is less than \$600.

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

(a) The death of the taxpayer.

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

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

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

(e) The taxpayer ceasing to be subject to the personal income taxation laws of this state.

For the purpose of such apportionment, a fractional part of a month shall be disregarded unless it amounts to more than one-half a month in which case it shall be considered as a month. A husband and wife may file either a joint return or separate returns; but if their marital status is changed during the year and a joint return is filed, the total exemptions and credits allowed in the joint return shall not exceed the sum of the exemptions and credits which would have been allowed in reduction of taxable net income had separate returns been filed.

(4) An additional exemption of \$600 and a credit against his tax of \$18 is allowed the taxpayer if he is blind at the close of his taxable year or period. If a husband and wife make a joint return, an exemption of \$600 and a credit of \$18 is allowed for each spouse who is blind at the close of the taxable year or period for which the joint return is made. For the purposes of this paragraph, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) If the taxpayer has attained the age of 65 years before the close of his tax year or period, a credit of \$12 is allowed against his tax. If a husband and wife make a joint return and each has attained the age of 65 years before the close of the tax year or period for which the return is made, a credit of \$24 is allowed against their joint tax.

(6) If the taxpayer contributes to the support of a person whom he could claim as a dependent individual except for the requirement of chief support set out in paragraph (b) of subsection (2) of this section, a credit of \$1 is allowed against his tax for each \$100 (disregarding fractions less than \$100) actually contributed by him, but the credit shall not exceed \$6. However, the credit for a dependent individual shall not be allowed under this subsection to any taxpayer for whom a personal exemption has been allowed, for the tax year beginning in the calendar year in which the taxpayer's tax year begins, under paragraph (b) of subsection (1) of this section as a husband or wife, whether a joint return or separate return is made by such dependent individual and his spouse.

(7) The amendments to this section made by section 2, chapter 586, Oregon Laws 1957, and by section 4, chapter 15, Oregon Laws 1957 (special session), shall apply to all tax years ending after August 3, 1957, and for prior tax years the law applicable to such tax years shall continue to apply. [1953 c.304 §54; 1953 c.552 §12; 1955 c.596 §2; 1957 c.586 §2; 1957(s.s.) c.15 §4]

316.460 to 316.470 [Reserved for expansion]

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

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

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

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

(d) Receipts showing the payment of income taxes to another state or country and a certified copy of a return or returns upon the basis of which such taxes are assessed must be filed with the commission at, or prior to, the time credit is claimed. If credit is claimed on account of a deficiency assessment, a certified copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, must be filed.

(2) If an estate or trust is a resident of this state within the definition in ORS 316.810 and also a resident of another state or country, it shall, notwithstanding the limitations contained in subsection (1) of this section, be allowed a credit against the taxes imposed by this chapter for income taxes imposed by and paid to such other state or country in accordance with the formula contained in paragraph (c) of subsection (1) of this section and the requirements of paragraph (d) of subsection (1) of this section.

(3) A resident beneficiary of an estate or trust who is taxed under this chapter on the income of the estate or trust received by the beneficiary shall be allowed a credit against the taxes imposed by this chapter on such income for income taxes paid by the estate or trust to another state or country

on such income in accordance with the formula contained in paragraph (c) of subsection (1) of this section and the requirements of paragraph (d) of subsection (1) of this section.

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

(5) Nothing contained in this section shall be construed to permit a credit against the taxes paid under this chapter for federal income taxes. [Formerly 316.080]

316.480 to 316.500 [Reserved for expansion]

RETURNS AND PAYMENT OF TAX

316.505 Persons required to make returns. (1) Every single individual, or married individual filing a separate return, having during the tax year a net income of \$600 or over; married individuals filing a joint return, having during the tax year a net income of \$1,200 or over jointly; every individual having during the tax year gross income in excess of \$4,000; and every fiduciary and partnership shall make a return under such rules and regulations as the commission may prescribe. However, nothing contained in this section shall preclude the commission from requiring any person to file a return when in its judgment a return should be filed.

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

(3) The 1957 amendments to this section shall apply to all tax years ending after

August 3, 1957, and for prior tax years the law applicable to such tax years shall continue to apply. [1953 c.304 §55; 1953 c.552 §13; 1955 c.596 §3; subsection (3) derived from 1955 c.596 §4; 1957 c.586 §3]

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

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

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

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

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

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

(4) If an executor or administrator of the decedent is appointed after the making of a joint return by the surviving spouse, the executor or administrator may disaffirm the joint return by making, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the tax year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(5) If an individual has filed a separate return for a tax year for which a joint return could have been made by him and his spouse under this section, and the time prescribed in this chapter for filing the return for such tax year has expired, such

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

(a) If the tax determined to be due on the joint return filed in accordance with this subsection exceeds the aggregate of the amounts of tax theretofore assessed upon the separate returns of the spouses for the same tax year, the excess shall be treated as a deficiency in respect of which there shall be assessed the appropriate interest charges and penalties as specified in ORS 314.405.

(b) If the tax determined to be due upon the joint return filed in accordance with this subsection is less than the aggregate of the amounts of tax theretofore paid with respect to the separate returns of the spouses for the same tax year, the difference shall be refunded with interest, subject to the provisions of ORS 314.415.

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

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

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

If one spouse first becomes subject to the state's jurisdiction to tax under this chapter during the course of the other spouse's tax year, the husband and wife will be considered as "having tax years beginning on the same date" during that year.

(7) For the purposes of this section an individual who is legally separated from his

spouse under a decree of divorce or of separate maintenance shall not be considered as married. [1953 c.304 §56; 1957 c.586 §4]

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

316.520 [1953 c.304 §58; repealed by 1957 c.632 §1 (ORS 314.355 enacted in lieu of ORS 316.520)]

316.525 Return for decedent; collecting tax from estate. The return of an individual who, while living, was subject to the tax imposed by this chapter, and who has died without making the return, shall be made in his name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from his estate. [1953 c.304 §59]

316.530 Allowance of final account of fiduciary and order closing estate prohibited unless taxes settled. (1) No final account of a fiduciary shall be allowed by any court unless the account shows, and the judge of the court finds, that all taxes imposed by this chapter upon the fiduciary, which have been payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. No order closing an estate shall be entered unless the fiduciary files with the clerk of the court the commission's certificate of release, or shows that 30 days have elapsed since the mailing to the commission of a request for such release and that the commission has not filed any objection to the final account.

(2) For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the commission may, on behalf of the state, agree upon the amount of

taxes at any time due or to become due from such fiduciaries under the provisions of this chapter with respect to a tax return or returns of or for a decedent individual or an estate or trust, and payment in accordance with such agreement shall be in full satisfaction of the taxes to which the agreement relates. [1953 c.304 §60]

316.535 [1953 c.304 §61; repealed by 1957 c.632 §1 (ORS 314.360 enacted in lieu of ORS 316.535)]

316.540 Return of partnership. Every partnership shall make a return for each tax year, stating specifically the items of its gross income and the deductions allowed, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return may be sworn to by any one of the partners. [1953 c.304 §62]

316.545 [1953 c.304 §63; repealed by 1957 c.632 §1 (ORS 314.385 enacted in lieu of ORS 316.545 and 317.355)]

316.550 [1953 c.304 §64; repealed by 1957 c.632 §1 (ORS 314.365 enacted in lieu of ORS 316.550 and 317.365)]

316.555 [1953 c.304 §65; repealed by 1957 c.632 §1 (ORS 314.370 enacted in lieu of ORS 316.555)]

316.560 [1953 c.304 §66; repealed by 1957 c.632 §1 (ORS 314.295 enacted in lieu of ORS 316.560 and 317.375)]

316.565 [1953 c.304 §67; repealed by 1957 c.632 §1 (ORS 314.380 enacted in lieu of ORS 316.565 and 317.380)]

316.570 Payment of tax. (1) The tax may be paid in four instalments, each consisting of one-fourth of the total amount of the tax. The first instalment shall be paid to the commission at the time fixed by law for filing the return. The second instalment shall be paid on or before three months thereafter. The third instalment shall be paid on or before six months thereafter. The fourth instalment shall be paid on or before nine months thereafter; except that where the income consists wholly or in part of wages, salaries, bonus or other emoluments for services as an employe, the tax shall be paid in instalments of not less than one-quarter of the amount of the tax remaining

after crediting the total amount deducted from such wages, salary, bonus or other emoluments, pursuant to ORS 316.711. For tax years beginning on and after January 1, 1959, taxes paid in instalments shall bear interest at the rate of one percent per month computed from the due date of the return to date of payment.

(2) If any instalment is not paid by the due date thereof, the commission may, at its option, declare the entire unpaid balance of the tax immediately due and take such action as may be necessary to enforce collection thereof. When, at the request of the taxpayer the time for filing the return is extended, interest at the rate of one-half of one percent per month, from the time when the return was originally required to be filed to the time of payment, shall be added and paid, except that the interest rate shall be one percent per month where payment is made by instalments under subsection (1) of this section.

(3) If the total amount of the tax is \$25 or less, the whole amount of the tax shall be paid at the time of filing the return.

(4) The tax may be paid with uncertified check during such time and under such regulations as the commission shall prescribe, but if a check so received is not paid by the bank on which it is drawn the taxpayer by whom such check is tendered remains liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered. [1953 c.304 §68; 1957 c.586 §16; 1959 c.632 §1]

316.575 [1953 c.304 §69; 1955 c.595 §1; repealed by 1957 c.586 §19]

316.580 [1953 c.304 §70; 1955 c.595 §2; 1957 c.586 §17; renumbered 316.751]

316.585 [1953 c.304 §71; 1955 c.595 §3; 1957 c.586 §18; renumbered 316.770]

316.590 Date return considered filed or advance payment considered made. A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed shall be considered as made on the last day prescribed by law for the payment of the tax or, if the taxpayer elected to pay the tax in instalments, on the last day prescribed for the payment of the first instalment. The last day prescribed by law for filing the return or paying the tax

shall be determined without regard to any extension of time granted the taxpayer by the commission. [1953 c.304 §72]

316.595 and 316.600 [Reserved for expansion]

316.605 [1953 c.304 §73; 1955 c.590 §1; repealed by 1957 c.632 §1 (ORS 314.405 enacted in lieu of ORS 316.605 and 317.405)]

316.610 [1953 c.304 §74; 1953 c.552 §14; 1957 c.17 §1; repealed by 1957 c.632 §1 (ORS 314.410 enacted in lieu of ORS 316.610 and 317.410)]

316.615 [1953 c.304 §75; 1953 c.552 §15; 1955 c.583 §1; 1957 c.23 §1; repealed by 1957 c.632 §1 (ORS 314.415 enacted in lieu of ORS 316.615 and 317.415)]

316.620 [1953 c.304 §76; 1955 c.355 §1; repealed by 1957 c.632 §1 (ORS 314.420 enacted in lieu of ORS 316.620, 317.370 and 317.420)]

316.625 [1953 c.304 §77; repealed by 1957 c.632 §1 (ORS 314.425 enacted in lieu of 316.625 and 317.425)]

316.630 [1953 c.304 §78; repealed by 1957 c.632 §1 (ORS 314.430 enacted in lieu of ORS 316.630 and 317.430)]

316.635 [1953 c.304 §79; repealed by 1957 c.632 §1 (ORS 314.435 enacted in lieu of ORS 316.635 and 317.435)]

316.640 [1953 c.304 §80; repealed by 1957 c.632 §1 (ORS 314.440 enacted in lieu of ORS 316.640, 317.440 and 317.445)]

316.645 Penalty and interest on delinquencies. If a taxpayer fails to file a return of income at the time required by or under this chapter, but thereafter voluntarily files a return of income, or fails to pay a tax or an instalment thereof at the time the tax or instalment becomes due, but thereafter voluntarily pays the tax or instalment, there shall be imposed a penalty in an amount equal to five percent of the tax or instalment, plus \$1, in addition to interest on the unpaid tax or instalment at the rate of one-half of one percent per month for each month or fraction of a month, computed from the time the tax or instalment became due, during which the tax or instalment remains unpaid. [1953 c.304 §81]

316.650 [1953 c.304 §82; 1953 c.552 §16; repealed by 1957 c.632 §1 (ORS 314.445 enacted in lieu of ORS 316.650 and 317.455)]

316.655 [1953 c.304 §83; 1953 c.552 §17; repealed by 1957 c.632 §1 (subsections (1) and (2) of ORS 314.450 enacted in lieu of ORS 316.655 and 317.460)]

316.660 [1953 c.304 §84; repealed by 1957 c.632 §1 (ORS 314.455 enacted in lieu of ORS 316.660 and 317.465)]

316.665 [1953 c.304 §85; 1953 c.552 §18; 1955 c.588 §1; repealed by 1957 c.632 §1 (ORS 314.460 enacted in lieu of ORS 316.665 and 317.470)]

316.670 [1953 c.304 §86; repealed by 1957 c.632 §1 (ORS 314.465 enacted in lieu of ORS 316.670 and 317.475)]

316.675 [1953 c.304 §87; 1953 c.552 §19; repealed by 1957 c.632 §1 (ORS 314.470 enacted in lieu of ORS 316.675 and 317.480)]

316.680 to 316.700 [Reserved for expansion]

316.705 [1953 c.304 §88; repealed by 1957 c.632 §1 (ORS 314.805 enacted in lieu of ORS 316.705 and 317.505)]

COLLECTION OF TAX AT SOURCE ON WAGES

316.706 Definitions. As used in ORS 316.706 to 316.761, 316.775 and 316.780:

(1) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under ORS 316.731, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

(2) "Wages" means remuneration for services performed by an employe for his employer, including the cash value of all remuneration paid in any medium other than cash, except that "wages" does not include remuneration paid:

(a) For active service in the Armed Forces of the United States.

(b) To an employe of a common carrier when such employe is not a resident of Oregon as defined in ORS 316.010 and regularly performs services both within and without the State of Oregon.

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

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

(e) To an employe whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops if the total amount paid to such employe is less than \$150 annually.

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

(g) To persons temporarily employed as emergency forest fire fighters. [1957 c.586 §6; 1959 c.76 §1]

316.710 [1953 c.304 §89; repealed by 1957 c.632 §1 (subsections (2), (3) and (4) of ORS 306.040 enacted in lieu of ORS 316.710)]

316.711 Requirement of withholding. Every employer at the time of the payment of wages to any employe shall deduct and retain from such wages an amount determined, at the employer's election, either (a) by a "percentage method" withholding table or (b) by "wage bracket" withholding tables, prepared and furnished under the rules and regulations of the commission; except that in the case of wages paid to an employe whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops, the amount withheld shall be 2.25 percent of the total wages paid without regard to any withholding exemptions. Except in the case of an agricultural employe, the amount withheld shall be computed on the basis of the total amount of the wages and the number of withholding exemptions claimed by the employe, without deduction for any amount withheld. [1957 c.586 §7]

316.714 Tax withholding tables. (1) The commission shall prepare a table for use with the percentage method which will provide for the deduction and withholding of a tax equal to a specific percent (to be determined by the commission) of the amount by which the wages for a given payroll period (daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannually or annually, as the case may be) exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption for each payroll period (such amount being determined by the commission for each such

period). The determinations of the commission shall result, so far as is practicable, in withholding from the employe a sum substantially equivalent to the amount of the tax that the employe will be required to pay under this chapter upon such wages.

(2) The commission shall prepare tables for use in computing withholding of tax by wage brackets. The wage brackets shall be graduated so that the amount withheld is, as far as practicable, substantially equivalent to the amount of the tax that the employe will be required to pay under this chapter upon such wages. The amounts in the withholding tables shall be computed to the nearest tenth of a dollar upon the basis of the median wage of each wage bracket.

(3) The withholding tables shall make allowance for:

(a) The applicable exemptions and dependency credits provided by ORS 316.455.

(b) Estimated federal income taxes as computed by the commission.

(c) The standard deduction provided by ORS 316.365. [1957 c.586 §7]

316.715 [1953 c.304 §90; repealed by 1957 c.632 §1 (ORS 314.810 enacted in lieu of ORS 316.715)]

316.720 [1953 c.304 §91; repealed by 1957 c.632 §1 (ORS 314.815 enacted in lieu of ORS 316.720 and 317.505)]

316.721 Withholding exemptions. An employe receiving wages shall on any day be entitled to the following withholding exemptions:

(1) An exemption for himself;

(2) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under subsection (4) of ORS 316.455 (relating to the blind) for the tax year in respect of which amounts deducted and withheld under ORS 316.706 to 316.780 in the calendar year in which such day falls are allowed as a credit;

(3) If the employe is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employe receiving wages, under subsection (1) or (2) of this section, but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption; and

(4) An exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there

may reasonably be expected to be allowable a credit under paragraph (c) of subsection (1) of ORS 316.455 for the tax year in respect of which amounts deducted and withheld under ORS 316.706 to 316.780 in the calendar year in which such day falls are allowed as a credit. [1957 c.586 §12]

316.725 [1953 c.304 §92; repealed by 1957 c.632 §1 (ORS 314.820 enacted in lieu of ORS 316.725 and 317.520)]

316.730 [1953 c.304 §93; repealed by 1957 c.632 §1 (ORS 314.825 enacted in lieu of ORS 316.730 and 317.525)]

316.731 Exemption certificate. An employer shall use the exemption certificate filed by the employe with the employer under the income tax withholding provisions of the United States Internal Revenue Code, for determining the number of withholding exemptions to be used in computing the tax to be withheld under the provisions of ORS 316.711 and 316.714; however, the commission may require such exemption certificate to be filed on a form prescribed by the commission in any circumstance where the commission finds that the exemption certificate filed under the Internal Revenue Code does not properly reflect the number of withholding exemptions allowable under this chapter, except no exemption certificate need be procured from an employe whose wages consist of wages as defined in paragraph (e) of subparagraph (2) of ORS 316.706. [1957 c.586 §13]

316.735 [1953 c.304 §94; repealed by 1957 c.632 §1 (ORS 314.830 enacted in lieu of ORS 316.735 and 317.530)]

316.740 [1953 c.304 §95; 1957 c.75 §1; repealed by 1957 c.632 §1 (ORS 314.835 enacted in lieu of ORS 316.740 and 317.535)]

316.741 Amount withheld is in payment of employe's tax. The amounts deducted from the wages of an employe during any calendar year in accordance with ORS 316.711 and 316.714 shall be considered to be in part payment of the tax on such employe's income for his tax year which begins within such calendar year, and the return made by the employer pursuant to ORS 316.770 shall be accepted by the commission as evidence in favor of the employe of the amounts so deducted from his wages. [1957 c.586 §8]

316.745 [1953 c.304 §96; repealed by 1957 c.632 §1 (ORS 314.840 enacted in lieu of ORS 316.745 and 317.540)]

316.750 [1953 c.304 §97; repealed by 1957 c.632 §1 (ORS 314.845 enacted in lieu of ORS 316.750 and 317.545)]

316.751 Refunds to employes. (1) When the total amount deducted under ORS 316.711 and 316.714 exceeds the amount of the tax on the employe's entire income as computed under this chapter, or when his income is not taxable under this chapter, the commission shall, after auditing the annual return filed by the employe in accordance with ORS 314.385, refund the amount of the excess deducted, with interest thereon as provided by law. No refund shall be made to an employe who fails to file such return within two years from the due date of the return in respect of which the tax withheld might have been credited. If the excess tax deducted is less than \$1, no refund shall be made unless specifically requested by the taxpayer at the time such return is filed and in no event shall the excess be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which such excess was withheld.

(2) The commission may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the commission. If a taxpayer entitled to a refund under this section dies, the commission may issue a draft for payment of such refund under the terms and conditions set out in ORS 291.526 to 291.530, exercising the same powers and subject to the same restrictions pursuant to which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes. [Formerly 316.580]

316.755 [1953 c.304 §98; repealed by 1957 c.632 §1 (ORS 314.850 enacted in lieu of ORS 316.755)]

316.760 [1953 c.304 §99; repealed by 1957 c.632 §1 (ORS 314.855 enacted in lieu of ORS 316.760 and 317.550)]

316.761 Payment to commission by employer. Each employer shall, quarterly, on or before the last day of April, July, October and January pay over to the commission the

amount required by ORS 316.711 and 316.714 to be deducted and retained from the wages paid to any employe during the preceding three months. Every amount so paid over shall be accounted for as part of the collections under this chapter. No employe shall have any right of action against his employer in respect of any moneys deducted from his wages and paid over in compliance or intended compliance with this section. [1957 c.586 §9]

316.770 Reports by employer. (1) Every employer shall, with each payment made by him to the commission, deliver to the commission on a return in the form prescribed by the commission, showing the total amount of wages, salaries, bonuses or other emoluments paid to his employes, the amount deducted therefrom in accordance with ORS 316.711 and 316.714, and such other information as the commission may require. The employer is charged with the duty of advising the employe of the amount of moneys withheld, in accordance with such regulations as the commission may prescribe, using printed forms furnished or approved by the commission for such purpose.

(2) The employer shall make an annual return to the commission on forms provided or approved by it, summarizing the total compensation paid and the tax withheld for each employe during the calendar year and shall file the same with the commission before February 16 of the year following that for which report is made. Failure to file the annual report without reasonable excuse on or before 30 days after notice has been given to the employer of his failure shall subject the employer to a penalty of \$5 for each month of delinquency not to exceed a total penalty of \$100. [Formerly 316.585]

316.775 Liability for tax; warrant for collection of tax. (1) Every employer who deducts and retains any amount under ORS 316.711 and 316.714 shall hold the same in trust for the State of Oregon and for the payment thereof to the commission in the manner and at the time provided in ORS 316.711 and 316.714.

(2) The commission may at any time the employer fails to remit any amount withheld enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued, docketed and proceeded

upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes. [1957 c.586 §10; 1959 c.234 §3]

316.780 Penalties; interest; arbitrary assessments. In so far as they are not inconsistent with the provisions of ORS 316.060, 316.455, 316.505, 316.510, 316.706 to 316.741, 316.761, 316.775 and 316.780, the provisions of the income tax laws relating to penalties, interest, misdemeanors and arbitrary assessments shall apply to employers subject to the provisions of ORS 316.706 to 316.780, and for these purposes any amount deducted or required to be deducted and remitted to the commission under ORS 316.706 to 316.780 shall be considered the tax of the employer and with respect to such amounts he shall be considered as a taxpayer. [1957 c.586 §11]

316.785 [Reserved for expansion]

DISTRIBUTION OF REVENUE

316.790 Distribution of revenue. The net revenue from the tax imposed by this chapter, after deducting refunds, shall be paid over to the State Treasurer and held by him in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred. A working balance of unrecepted revenue from the tax imposed by this chapter may be retained for the payment of refunds but such working balance shall not at the close of any fiscal year exceed the sum of \$1,000,000. [1953 c.304 §116; 1957 c.528 §3]

316.795 and 316.800 [Reserved for expansion]

ESTATES, TRUSTS AND BENEFICIARIES

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

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

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

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

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed, as the court may direct.

(5) Income of an estate during the period of administration or settlement permitted by ORS 316.815 to be deducted from the net income upon which the tax is to be paid by the fiduciary. [1953 c.304 §100]

316.810 Return, computation and payment. (1) The fiduciary shall be responsible for making the return of income from the estate or trust for which he acts, whether such income shall be taxable to the estate or trust or to the beneficiaries thereof. The taxes shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in ORS 316.830 and 316.835.

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

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

(4) For the purposes of this section:

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

(b) "Resident estate" means an estate of which the fiduciary was appointed by an

Oregon court or the administration of which is carried on in Oregon. [1953 c.304 §101]

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

(2) There shall be allowed as a deduction any part of the gross income, without limitation, which, pursuant to the terms of the will or other instrument creating the trust, is, during the tax year, paid to or permanently set aside for the United States, any state, territory or any political subdivision thereof, or the District of Columbia, or any corporation, trust, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or which, pursuant to the terms of the will or other instrument creating the trust, is to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children, or cruelty to animals, or for purposes of educational loans or grants, not to particular individuals, but generally, upon the basis of need or merit.

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

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

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

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

(4) Any amount allowed as a deduction to the estate or trust by subsection (3) of

this section shall be included in computing the net income of the beneficiary receiving the same, or to whom it is properly credited, to the extent taxable by this state to such beneficiary.

(5) Gains from the sale or exchange of property constituting a part of the corpus or principal of the estate or trust are taxable to the estate or trust even though distributed during the tax year, unless the will or trust instrument expressly provides for current distribution of such corpus gains. Distribution of corpus gains or of current income during the tax year, where such distribution is occasioned by a closing of the estate or termination of the trust and not by a provision of the will or trust instrument, shall not be deemed a current distribution of income within the meaning of subsections (2) to (4) of this section, and such gains or income shall be taxed to the estate or trust.

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

316.820 Exemptions. For the purpose of the taxes imposed by this chapter, the estate or trust shall be allowed the same personal exemptions as are allowed to a single person, and the exemptions shall be subject to proration as in the case of a single person. [1953 c.304 §103]

316.825 Tax year. If the tax year of a beneficiary is different from that of the estate or trust, the amount which he is required, under subsections (3) and (4) of ORS 316.815 to include in computing his net income, shall be based upon the income of the estate or trust for any tax year of the estate or trust ending within his tax year. [1953 c.304 §104]

316.827 Unused net loss deduction on termination available to beneficiaries. If on the termination of an estate or trust the estate or trust has (a) a net loss and (b) an unused net loss deduction determined under ORS 316.353, or either, then such net loss and unused net loss deduction, or either, shall be allowed as a deduction, in accordance with regulations prescribed by the commission, to the beneficiaries succeeding to the properties of the estate or trust. This section applies only to net losses occurring after December 31, 1956. [1957(s.s.) c.15 §7; last sentence derived from 1957(s.s.) c.15 §8]

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

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

(2) In any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; then the income of such part of the trust shall be included in computing the net income of the grantor. [1953 c.304 §105]

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

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

(b) May, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor.

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

(2) As used in this section the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question." [1953 c.304 §106]

316.840 Employee's trust. A trust forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of some of his employees or their

beneficiaries, to which contributions are made by such employer, employe, or both, for the purpose of distributing to such employes or their beneficiaries the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this chapter. [1953 c.304 §107]

316.845 and 316.850 [Reserved for expansion]

COMMON TRUST FUNDS

316.855 Definitions. As used in this chapter:

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

(2) "Participant" means any trust, guardianship or estate whose moneys have been invested in a common trust fund. [1953 c.304 §108]

316.860 Common trust fund not subject to income or excise tax. A common trust fund is not subject to taxation upon its income under either ORS chapter 317 or under this chapter, but the participants in common trust funds shall be subject to taxation as provided in ORS 316.855 to 316.885. [1953 c.304 §109]

316.865 Income and losses of common trust fund included in income tax return of participant. Each participant in a common trust fund shall include in its return of income taxable by this state its proportionate share of the net income or net loss of the common trust fund whether or not the income of the common trust fund is distributed and whether or not such income is distributable. There shall be excluded from the in-

come of each participant in a common trust fund its proportionate share of any income which would not be taxable under this chapter if received directly by the participant. [1953 c.304 §110]

316.870 Computing net income of common trust fund. The net income of a common trust fund shall be computed in the same manner and on the same basis as the net income of an individual under this chapter. [1953 c.304 §111]

316.875 Admission and withdrawal of participant. No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant. [1953 c.304 §112]

316.880 Tax year. If the tax year of the common trust fund is different from that of a participant, the inclusions with respect to the net income of the common trust fund, in computing the net income of the participant for its tax year, shall be based upon the net income of the common trust fund for any tax year of the common trust fund ending within or with the tax year of the participant. [1953 c.304 §113]

316.885 Return by bank or trust company maintaining common trust fund. Every bank or trust company maintaining a common trust fund shall make a return for each tax year, stating specifically, with respect to such fund, the items of gross income and deductions, and shall include in the return information sufficient to identify the trusts and estates entitled to share in the net income of the common trust fund and the amount of the proportionate share of each such participant. The return shall be made to the commission at such time as is designated by the commission. [1953 c.304 §114]

316.890 to 316.985 [Reserved for expansion]

316.990 [1953 c.304 §115; repealed by 1957 c.632 §1 (ORS 314.991 enacted in lieu of ORS 316.990 and 317.990)]

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 November 1, 1959.

Sam R. Haley
Legislative Counsel