

Chapter 314

1969 REPLACEMENT PART

Income Taxation Generally

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GENERAL PROVISIONS

- 314.002** [Repealed by 1953 c.310 §3]
314.004 [Repealed by 1953 c.310 §3]
314.006 [Repealed by 1953 c.310 §3]
314.008 [Repealed by 1953 c.310 §3]
314.010 [Repealed by 1953 c.310 §3]

314.011 Definition. As used in ORS 314.021 to 314.080, 314.280, 314.285, 314.295, 314.355 to 314.385, 314.405 to 314.465, 314.605 to 314.675, 314.805 to 314.855 and 314.991, unless the context requires otherwise, "department" means the Department of Revenue.

[1957 c.632 §40; 1965 c.152 §24]

- 314.012** [Repealed by 1953 c.310 §3]
314.014 [Repealed by 1953 c.310 §3]
314.016 [Repealed by 1953 c.310 §3]
314.018 [Repealed by 1953 c.310 §3]
314.020 [Repealed by 1953 c.310 §3]

314.021 Certain sections of this chapter are applicable to all laws imposing taxes upon or measured by net income. ORS 314.021 to 314.080, 314.277, 314.280, 314.285, 314.295, 314.355 to 314.385, 314.405 to 314.445, subsections (1) and (2) of 314.450, ORS 314.455 to 314.465, 314.605 to 314.675, 314.805 to 314.855 and 314.991 are applicable to all laws of this state imposing taxes upon or measured by net income.

[1957 c.632 §2; 1961 c.176 §3; 1965 c.152 §25]

- 314.022** [Repealed by 1953 c.310 §3]
314.024 [Repealed by 1953 c.310 §3]
314.026 [Repealed by 1953 c.310 §3]
314.028 [Repealed by 1953 c.310 §3]
314.030 [Repealed by 1953 c.310 §3]
314.032 [Repealed by 1953 c.310 §3]
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314.036 [Repealed by 1953 c.310 §3]
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314.042 [Repealed by 1953 c.310 §3]
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314.050 [Repealed by 1953 c.310 §3]
314.052 [Repealed by 1953 c.310 §3]
314.054 [Repealed by 1953 c.310 §3]
314.056 [Repealed by 1953 c.310 §3]

- 314.058** [Repealed by 1953 c.310 §3]
314.060 [Repealed by 1953 c.310 §3]
314.062 [Repealed by 1953 c.310 §3]
314.064 [Repealed by 1953 c.310 §3]
314.066 [Repealed by 1953 c.310 §3]
314.068 [Repealed by 1953 c.310 §3]
314.070 [Repealed by 1953 c.310 §3]
314.072 [Repealed by 1953 c.310 §3]
314.074 [Repealed by 1953 c.310 §3]

314.075 Evading requirements of law prohibited. No person, or officer or employe of a corporation or a member or employe of a partnership, shall, with intent to evade any requirement of any law imposing taxes upon or measured by net income or any lawful requirement of the department thereunder:

(1) Fail to pay any tax or to make, sign or verify any return or to supply any information required;

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

(3) Supply any false or fraudulent information.

[1957 c.632 §3 (ORS 314.075 and 314.080 enacted in lieu of ORS 316.025, 316.030, 317.015 and 317.020)]

314.080 Venue on failure to comply with law. The failure to do any act required by or under any law imposing taxes upon or measured by net income shall be deemed an act committed in part at the office of the department in Oregon.

[1957 c.632 §3 (ORS 314.075 and 314.080 enacted in lieu of ORS 316.025, 316.030, 317.015 and 317.020)]

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

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

(1) The term "determination of tax liability" means an appealable order or ruling of the Department of Revenue upon an appeal to it by a taxpayer protesting the assessment of any income tax or claiming a refund, abatement or credit of any income tax or an agreement executed pursuant to ORS 305.150.

(2) A determination of tax liability shall be deemed final on the date that the order of the department becomes final for want of a perfected appeal to a court of competent jurisdiction or in the event of such an appeal,

on the date the judgment of any court with respect to such determination becomes final for want of a perfected appeal therefrom or from the date an appeal from an order of the department or the judgment of a lower court is dismissed by stipulation of the parties or by the court on its own motion, whichever date occurs earliest, or on the date of an agreement executed pursuant to ORS 305.150.

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

(4) The term "department" means the Department of Revenue.

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

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

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

[1953 c.702 §1; 1957 c.337 §4]

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

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

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

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

(4) Allows or disallows any of the deductions with respect to income distributed or

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

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

and, on the date the determination of tax liability becomes final, correction of the effect of the error is prevented by the operation of any provision of an income tax law of this state other than ORS 314.110 to 314.140 or other than a compromise settlement, then the effect of such error shall be corrected in accordance with ORS 314.130, but only if in the determination of tax liability the commission or the taxpayer, as the case may be, maintains a position inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be. In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency, the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or appeal to any circuit court of the State of Oregon for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

[1953 c.702 §2]

314.130 Manner of correction of errors described in ORS 314.120. (1) The correction of an error under circumstances described in ORS 314.120 shall be made by an adjustment of tax liability with respect to the erroneous return of the taxpayer or of a related taxpayer, as the case may be, in the same

manner as a deficiency in tax would have been assessed or an overpayment of tax would have been refunded or credited or an overstatement of tax would have been abated, as the case may be, as if on the date the determination of tax liability became final there remained one year before the expiration of the period of limitation upon the assessment of the deficiency or the filing of a claim for refund or abatement, as the case may be, with respect to the erroneous return.

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

[1953 c.702 §3]

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

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

(3) An election under subsection (2) shall be in writing, signed by each related taxpayer or his authorized representative, and filed with the department prior to the expiration of the applicable period of limitation with respect to the adjustment of the last open state return of either related taxpayer affected by the federal tax deficiency or refund. Such election shall constitute a

waiver of any statute of limitations to permit the adjustment of all returns of the related taxpayers for the purpose only of effecting a reallocation of income or deductions similar to that made by the federal tax authorities and to adjust the federal income tax deductions resulting therefrom.

[1953 c.702 §4]

RECOGNITION OF GAIN OR LOSS FROM REACQUISITION OF REAL PROPERTY

314.155 Gain from reacquisition of real property. (1) In the case of a reacquisition of real property to which ORS 317.252 and 318.048 apply, gain shall result from such reacquisition to the extent that:

(a) The amount of money and the fair market value of other property (other than obligation of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(b) The amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) The amount of gain determined under subsection (1) of this section resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of:

(a) The amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(b) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this subsection, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) Except as provided in ORS 314.155 to 314.175, 317.252 and 318.048, the gain determined under this section resulting from a reacquisition to which ORS 317.252 and

318.048 apply, shall be recognized notwithstanding any other provisions of law.
[1965 c.178 §8; 1969 c.493 §79]

314.160 Basis of real property upon reacquisition. If ORS 317.252 and 318.048 apply to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of:

(1) The amount of the gain determined under ORS 314.155 resulting from such reacquisition; and

(2) The amount described in paragraph (b) of subsection (2) of ORS 314.155.

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

[1965 c. 178 §9, 1969 c.493 §80]

314.165 Treatment of prior indebtedness upon reacquisition. If, prior to a reacquisition of real property to which ORS 317.252 and 318.048 apply, the seller has treated indebtedness secured by such property as having become worthless or partially worthless:

(1) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) The adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

[1965 c.178 §10; 1969 c.493 §81]

314.170 [1965 c.178 §11; repealed by 1969 c.493 §98]

314.175 Certain financial institutions not subject to ORS 314.155 to 314.175. ORS 314.155 to 314.175, 317.252 and 318.048 shall not apply to a reacquisition of real property by a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank without capital stock organized and operated for mutual purposes and without profit.

[1965 c.178 §12; 1969 c.493 §82]

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

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

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

(2) If the amount of profits so eliminated is applied as an offset against any other amount due the taxpayer, then the profits so eliminated shall be excluded from gross income for the prior taxable year or years if they were included in gross income for such prior taxable year or years under any law of this state imposing a tax on or measured by net income.

[Formerly 317.605]

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

(2) If a taxpayer has paid any tax or interest or penalty because of the provisions of chapter 226, Oregon Laws 1945, then the taxpayer shall, upon the filing of a properly verified claim for refund under regulations

prescribed by the department, be refunded such tax or interest or penalty so paid, without interest. No claim for any tax or interest or penalty under chapter 226, Oregon Laws 1945, shall be made or collected after July 16, 1949.

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

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

(5) If a refund allowed under this section had been allowable under chapter 226, Oregon Laws 1945, and the taxpayer could not have received such refund under chapter 226, Oregon Laws 1945, without the imposition of federal excess profits taxes upon such refund, then the amount of the refund allowed under this section shall be reduced by the amount of excess profits taxes which would have been imposed upon such refund after deducting from such excess profits taxes the amount of federal corporation income taxes which would have been imposed upon such refund if such refund were subject only to such federal corporation income taxes.

[Formerly 317.610]

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

[Formerly 317.615]

POLLUTION CONTROL FACILITIES

314.250 Federal grants or tax credits for pollution control facility to be offset against state income or excise tax credits. If a taxpayer obtains grants or tax credits from the Federal Government, other than investment credits granted under section 46 of the Internal Revenue Code of 1954, in connection with a pollution control facility which has been certified by the Environmental Quality Commission, the income or excise tax credits which such taxpayer would be entitled to after any such grant or credit has been made available to or received by such taxpayer, shall be offset or reduced by such federal grants or tax credits, dollar for dollar. Taxpayers applying for such grants shall notify the Department of Revenue of each such application, and of the receipt of any such grant or tax credits. Notification shall be made in the taxpayer's next Oregon income or excise tax return.

[1967 c.592 §18]

314.255 Collection of taxes due by reason of revocation of certification of pollution control facility. (1) Upon receipt of notice of the revocation of a certification of a pollution control facility pursuant to subsection (1) of ORS 449.645, the Department of Revenue immediately shall collect any taxes due by reason of such revocation, and shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(2) No tax relief shall be allowed under ORS 307.405, 316.092 or 317.072 for any pollution control facility constructed or used by or for the benefit of any governmental or quasi-governmental body or public corporation or form thereof.

[1967 c.592 §§16, 17; 1969 c.493 §83]

METHODS OF ACCOUNTING AND REPORTING INCOME

314.275 Adjustments required by changes in methods of accounting. (1) In computing a taxpayer's taxable income for any tax year (referred to in this section as the "year of the change"), under any law imposing taxes upon or measured by net income and administered by the Department of Revenue, if such computation is under a method of accounting different from the method under which the taxpayer's taxable

income for the preceding tax year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted. The adjustments allowed by this section are to be made regardless of whether a change is requested by the taxpayer or required by the department or required by the enactment of the Personal Income Tax Act of 1969, and, if required, whether it is regarded as a change in the taxpayer's method of keeping books or a change in the method of reporting.

(2) (a) If the method of accounting from which the change is made was used by the taxpayer in computing taxable income for the two tax years preceding the year of the change, and the increase in taxable income for the year of change which results solely by reason of the adjustments required by subsection (1) of this section exceeds \$1,000, then the tax attributable to such increase in taxable income shall not be greater than the aggregate of the taxes which would result if one-third of such increase were included in taxable income for the year of the change and one-third of such increase were included for each of the two preceding tax years.

(b) If the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (1) of this section exceeds \$1,000, and the taxpayer establishes his or its taxable income (under the new method of accounting) for one or more tax years consecutively preceding the tax year of the change for which the taxpayer in computing taxable income used the method of accounting from which the change is made, then the tax attributable to such increase in taxable income shall not be greater than the net increase in taxes which would result if the adjustments required by subsection (1) were allocated to the tax year or years specified in this paragraph to which they are properly allocable under the new method of accounting and the balance of the adjustments required by subsection (1) was allocated to the tax year of the change.

(3) In the case of any change described in subsection (1) of this section, the taxpayer may, in such manner and subject to such conditions as the department may by regulations prescribe, take the adjustments required by subsection (1) into account in computing the tax imposed for the tax year

or years permitted under such regulations.

(4) This section shall not apply to a change to which ORS 317.175 (relating to change to instalment method) applies.

(5) This section shall not apply to a change affecting taxable income under the Personal Income Tax Act of 1969 by reason of a change to the instalment method on the taxpayer's federal personal income tax return.

[1957 c.544 §2; 1969 c.493 §84]

314.277 Computation where annual accounting period varies. (1) A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always upon whatever date such same day of the week last occurs in a calendar month or on whatever date such same day of the week falls which is nearest to the last day of the calendar month, may (in accordance with regulations prescribed by the department) elect to compute his taxable income for purposes of ORS chapters 314, 317 and 318 on the basis of such annual period.

(2) In any case in which the effective date or the applicability of any provision of ORS chapters 314, 317 and 318 is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described in subsection (1) of this section shall be treated as beginning on the first day of the calendar month beginning nearest to the first day of such taxable year, or as ending with the last day of the calendar month ending nearest to the last day of such taxable year, as the case may be.

(3) In the case of a change from or to a taxable year described in subsection (1) of this section, if such change results in a short period of 359 days or more, or of less than seven days, ORS 314.355 shall not apply; and if such change results in a short period of less than seven days, such short period shall be added to and deemed part of the following tax year.

[1961 c.176 §§2, 4; 1969 c.493 §85]

314.280 Allocation of income of financial organization or public utility from business within and without state. (1) If a taxpayer has income from business activity as a financial organization or as a public utility (as defined respectively in subsections (4) and (6) of ORS 314.610) which is tax-

able both within and without this state (as defined in subsection (8) of ORS 314.610 and in ORS 314.615), the determination of net income shall be based upon the business activity within the state, and the commission shall have power to permit or require either the segregated method of reporting or the apportionment method of reporting, under rules and regulations adopted by the department, so as fairly and accurately to reflect the net income of the business done within the state.

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

[1957 c.632 §4 (enacted in lieu of ORS 316.205 and 317.180; 1963 c.319 §1; 1965 c.152 §22)]

314.285 Inventories. Whenever, in the opinion of the department, the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the department may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income.

[1957 c.632 §5 (enacted in lieu of ORS 316.210 and 317.185)]

314.290 Deferral of tax recognition of gain limited to cases where newly acquired property within Oregon's jurisdiction. For tax years beginning on and after January 1, 1957, where laws relating to taxes imposed upon or measured by net income make provision for deferral of tax recognition of gain upon the voluntary or involuntary conversion or exchange of tangible real or personal property, such provisions shall be limited to those conversions or exchanges where the property newly acquired by the taxpayer has a situs within the jurisdiction of the State of Oregon.

[1957 c.102 §2]

314.295 Determination of net income where several taxpayers carry on business under common control. When the department has reason to believe that any tax-

payer so conducts a trade or business as either directly or indirectly to distort its true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, by selling the commodities or services in which it deals at less than the fair price for which they might have been obtained therefor, or buying commodities or services at more than the fair price for which they might have been obtained, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, it may require the facts it considers necessary for the proper computation of the entire net income and the net income properly attributable to the state, and in determining the same the department shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

[1957 c.632 §10 (enacted in lieu of ORS 316.560 and 317.375)]

TAX LIABILITY OF TRANSFEREE

314.310 Liability of transferee of taxpayer for taxes imposed on taxpayer. (1)

When a taxpayer ceases to exist or is no longer subject to the jurisdiction of this state (although subject to the courts of a state having comity or reciprocity with the State of Oregon), being indebted for taxes upon or measured by net income, the transferee of the money or property of the taxpayer shall be liable for any such tax or deficiency in tax, including penalties and interest, imposed by law on the taxpayer and accruing or accrued upon the date of transfer, to the extent of the amount of money or value of the property received by the transferee. Property received by the transferee shall be valued at the fair market value of said property at the time of transfer to the initial transferee by the taxpayer. However, no heir, legatee, devisee or distributee of an estate of a deceased person shall be liable as a transferee of the decedent or of the decedent's estate (a) after the Department of Revenue's certificate of release with respect to such decedent's estate has been filed with the clerk of the probate court pursuant to ORS 316.387, or (b) where no release has been filed but 90 days have elapsed following a request to the department by the decedent's representative for such release, unless within

that time the probate court, upon application by the department, finds reasonable grounds for extending the period and allows the department additional time in which to issue a release.

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

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

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

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

(b) In the case of the liability of a transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the taxpayer;

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

(d) If, before the expiration of the time prescribed in paragraph (a), (b) or (c) of this subsection for the assessment of the liability, both the Department of Revenue and

the transferee have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period of extension agreed upon. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period of extension previously agreed upon.

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

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

[1955 c.367 §2; 1969 c.493 §86]

RETURNS

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

[1957 c.632 §6 (enacted in lieu of ORS 316.520)]

314.360 Information returns. (1) Fiduciaries required to make returns under laws imposing tax upon or measured by net income, proprietorships, partnerships, corporations, joint stock companies or associations or insurance companies, having places of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, purchasers of stumpage and all officers and employes of the state or of any political subdivisions of the state, having the control, custody, disposal or payment of interest (other than interest coupons payable to

bearer), rent, dividends, salaries, fees, wages, the purchase price of stumpage, emoluments or other fixed or determinable annual or periodical gains, profits and income, paid or payable, during any year to any taxpayer, shall make return thereof, under oath, to the department, under such regulations and in such form and manner and to such extent as it may prescribe.

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

[1957 c.632 §7 (enacted in lieu of ORS 316.535); 1959 c.305 §1]

314.365 Mandamus to compel return.

If a taxpayer fails to file a return within 60 days of the time prescribed by any law imposing a tax upon or measured by net income, the judge of the Oregon Tax Court, upon petition of the department, or of any 10 taxable residents of the state, shall issue a writ of mandamus requiring the person to file a return. The order of notice upon the petition shall be returnable not later than 10 days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. An appeal may be taken from the judgment by the taxpayer or the department to the Supreme Court in the manner that appeals are taken in suits in equity, irrespective of the amounts involved. All writs and processes may be issued from the office of the clerk of the tax court, and, except as otherwise provided in this section, shall be returnable as the court shall order.

[1957 c.632 §8 (enacted in lieu of ORS 316.550 and 317.365); 1961 c.533 §51]

314.370 Department requiring return or supplementary return. If the department is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items

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

[1957 c.632 §9 (enacted in lieu of ORS 316.555)]

314.380 Furnishing copy of federal return or report; action required when federal return changed.

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

(2) If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, resulting in recognition of \$250 or more of additional net income which is subject to tax by this state, the taxpayer shall report such change or correction in federal taxable income to the department within 90 days after the final determination of such change or correction. The taxpayer may file a report of a federal change or correction, and the report of the federal change or correction shall be treated by the department as a claim for refund pursuant to ORS 314.415 and, notwithstanding the limitations of ORS 314.415, shall be deemed timely if filed with the department within one year after the federal correction has become final. The preceding sentence shall apply to all tax years for which federal changes or corrections become final after December 31, 1959.

The report shall either concede the accuracy of such determination or state wherein the taxpayer believes it to be erroneous. Any taxpayer filing an amended federal income tax return reporting \$250 or more of additional taxable income which is subject to tax by this state shall also file an amended return with the department within 90 days thereafter.

[1957 c.632 §11 (enacted in lieu of ORS 316.565 and 317.380); 1963 c.509 §1]

314.385 Form of returns; time for filing.

(1) Returns shall be in such form as the department may, from time to time, prescribe and shall be filed with the department on or before the fifteenth day of the fourth month after the expiration of the tax year, except that the final return of a decedent shall be filed at any time following his death, to and including the fifteenth day of the fourth month after expiration of his regular tax year. The department may allow further time for filing returns except that no extension may be granted for more than six months. The 1959 amendment to this subsection applies to tax years beginning after December 31, 1958.

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

(3) The department shall prepare blank forms for the returns and distribute them throughout the state. Such forms shall be furnished the taxpayer upon request, but failure to receive or secure a form shall not relieve the taxpayer from the obligation of making any return required by law.

[1957 c.632 §12 (enacted in lieu of ORS 316.545 and 317.355); 1959 c.156 §1; last sentence of subsection (1) derived from 1959 c.156 §3; 1963 c.281 §1]

314.395 Payment of tax; interest on delinquent return. (1) The tax (or, under ORS 316.570, the first instalment thereof) shall be paid to the department at the time fixed by ORS 314.385 for filing the return.

(2) When the time for filing a return of income is extended at the request of the taxpayer, interest at the rate of two-thirds of one percent of the tax per month or major fraction of a month from the time 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 ORS 316.570.

[1969 c.166 §2]

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

314.405 Assessment of deficiency; penalties and interest. (1) As soon as practicable after the return is filed, the department shall audit it, if the department deems such audit practicable. If the department discovers from the audit of a return or otherwise that a deficiency exists, it shall compute the tax and give notice to the taxpayer of its proposal to assess the deficiency, plus interest and penalty for fraud or negligence, if any attaches. The notice shall state the reason for each proposed adjustment to the return and a reference to the statute, regulation or department ruling upon which the proposed adjustment is based. Each notice of deficiency and proposed assessment shall be certified by the auditor who audited the return that he has audited the return and that the proposed adjustments to the return are made in good faith and not for the purpose of extending the period of assessment.

(2) Within 30 days from the date of mailing of notice of proposed assessment, the taxpayer shall pay the proposed deficiency with interest computed to the date of payment and any penalty proposed, or within that time shall advise the department in writing wherein its determination of deficiency is erroneous. If requested by the taxpayer in his written objection to the proposed deficiency, the taxpayer shall have an opportunity to confer with the department or its delegate as to the proposed assessment at any time prior to the date such assessment is made.

(3) If neither payment nor written objection is received by the department within 30 days after notice of proposed assessment has been mailed, the department shall assess the deficiency, plus interest and fraud or negligence penalty, if any, and shall give notice of the amount so assessed.

(4) Except as provided in ORS 314.395, 314.420 and 316.570, every deficiency shall bear interest at the rate of two-thirds of one percent per month for each month or major fraction of a month computed from the due date of the return to date of payment.

(5) Penalties shall be imposed as follows:

(a) If the deficiency is due to negligence in the preparation or filing of income tax returns, or in payment of the income tax due, five percent of the deficiency.

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

(6) All payments received must be credited first to penalty, then to interest accrued, and then to tax due.

(7) Mailing of notice to the taxpayer at his last-known address shall constitute the giving of notice of proposed assessment as prescribed in subsection (1) of this section or of notice of assessment as prescribed in subsection (3) of this section. The provisions of this chapter with respect to revision and appeal shall apply to the assessed deficiency, penalties and interest.

(8) Additional assessments and deficiency assessments with respect to any tax return shall be made pursuant to this section, and not otherwise, within the time limits prescribed by ORS 314.410, including but not limited to the assertion of additional tax arising from:

(a) The failure to report properly items or amounts of income subject to or which are the measure of the tax;

(b) The deduction of items or amounts not permitted by law;

(c) Mathematical errors in the return or the amount of tax shown due in the records of the department;

(d) Improper credits or offsets against the tax claimed in the return pursuant to the Personal Income Tax Act of 1969 or ORS chapter 317 or 318.

[1957 c.632 §13 (enacted in lieu of ORS 316.605 and 317.405); 1959 c.212 §1; subsection (8) derived from 1959 c.212 §3; 1961 c.504 §1; 1965 c.554 §1; 1969 c.166 §3; 1969 c.493 §87]

314.410 Time limit for assessment of deficiency. (1) At any time within three years after the return was filed, the department may give notice of proposed assessment as prescribed in ORS 314.405.

(2) If the department finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return, notice of proposed assessment may be given at any time within five years after the return was filed.

(3) The limitations to the giving of notice of proposed assessment of a deficiency provided in this section shall not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed. If the Commissioner of Internal Revenue or other authorized officer of the Federal Government makes a correction resulting in additional income tax for state in-

come tax purposes, and a report thereof is filed with the department by the taxpayer in accordance with ORS 314.380, then notice of a proposed assessment of income tax under any law imposing tax upon or measured by income for the corresponding tax year may be mailed within one year after such federal correction becomes final, or within the applicable three-year or five-year period prescribed in subsections (1) and (2) of this section, respectively, whichever period expires the later. The limitations to the giving of notice of proposed assessment of a deficiency shall not apply where a taxpayer has failed to file any report or amended return required of him by ORS 314.380 until three years after the federal correction becomes final.

(4) The tax deficiency must be assessed and notice of tax assessment mailed to the taxpayer within one year from the date of the notice of proposed assessment unless an extension of time is agreed upon as prescribed in subsection (6) of this section.

(5) Notwithstanding other provisions of this section, the period for the assessment of any deficiency attributable to any part of the gain realized upon the sale or exchange of the taxpayer's principal residence, as provided in the federal Internal Revenue Code as applicable to the Personal Income Tax Act of 1969, shall not expire prior to the expiration of three years from the date the department is notified by the taxpayer of:

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

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

(c) A failure to purchase a new residence within the period prescribed in the federal Internal Revenue Code as applicable to the Personal Income Tax Act of 1969.

(6) If, prior to the expiration of any period of time prescribed in this section for giving of notice of proposed assessment or of assessment, the department and the taxpayer consent in writing to the deficiency being proposed or assessed after the expiration of such prescribed period, such deficiency may be proposed or assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.

[1957 c.632 §14 (enacted in lieu of 316.610 and 317.410); 1959 c.212 §2; 1959 c.591 §20; subsection (8) derived from 1959 c.212 §3 and 1959 c.591 §21; 1963 c.509 §2; 1963 c.627 §1 (referred and rejected); 1969 c.405 §1; 1969 c.493 §§88, 88a]

314.415 Refunds. (1) (a) For tax years beginning after December 31, 1968, if the amount of the tax found due as computed is less than the amount theretofore paid, the excess shall be refunded by the department with interest at the rate of two-thirds of one percent for each month or major fraction of a month during a period beginning 120 days after the due date of the return or the date the tax was paid, whichever is the later, to the time the refund is made.

(b) No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance with the manner prescribed by the department.

(c) No interest on a refund to an employee of a tax withheld by an employer shall be paid for any period prior to the time the employee filed his personal income tax return for the tax year involved, nor for any period prior to the day which is four months after the date when the employee's annual return for that year was filed or was due, whichever is the later.

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

(2) Notwithstanding any provision to the contrary in ORS 314.455 or subsection (1) of this section, if, prior to the expiration of the period prescribed in paragraph (b) of subsection (1) of this section, the department and the taxpayer consent in writing to the refund of tax after the expiration of the period prescribed, the refund shall be made at any time prior to the expiration of the period agreed upon and no refund shall be made or allowed after the expiration of the period agreed upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed upon in compliance with the manner prescribed by the department. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously

agreed upon. The department shall have the power to consent to such refund only where the taxpayer has consented to assessment of additional tax, if such be determined upon audit, after the expiration of the applicable three-year or five-year period prescribed in subsections (1) and (2) of ORS 314.410.

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

[1957 c.632 §15 (enacted in lieu of 316.615 and 317.415); 1969 c.166 §4; 1969 c.495 §2]

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

(1) (a) In case of a failure by the taxpayer to file a return on the date prescribed therefor (determined with regard to any extension for filing), the department shall determine the income of the taxpayer according to the best of its information and belief, assess the tax thereon, and notify the taxpayer of the determination and assessment. In addition to the tax the department shall also assess and collect interest on such tax at the rate of two-thirds of one percent per month or major fraction thereof computed from the original due date of the return until paid and, unless it is shown that the failure to file the return within such period is due to reasonable cause and not due to wilful neglect or fraud, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or major fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(b) For the purposes of paragraph (a) of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) A taxpayer shall be deemed to have been notified under this section when the department shall have mailed a written notice to the last-known address of the taxpayer.

[1957 c.632 §16 (enacted in lieu of 316.620, 317.370 and 317.420); 1969 c.166 §5]

314.425 Examining books, records or persons. (1) The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxpayer, may examine or cause to be examined by an agent or representative designated by it for the purpose, any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the taxpayer or officer or agent or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The department shall have authority, by order or subpoena to be served with the same force and effect and in the same manner that a subpoena is served in a civil action in the circuit court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of any law imposing tax on or measured by net income.

(2) If any person fails to comply with any subpoena or order of the department or to produce or permit the examination or inspection of any books, papers or documents pertinent to any investigation or inquiry under this section, or to testify to any matter regarding which he may be lawfully interrogated, the department may apply to the circuit court for the county in which the person resides for an order to the person to attend and testify, or otherwise comply with the demand or request of the department. The application to the court shall be by ex parte motion upon which the court shall make an order requiring the person against whom it is directed to comply with the request on demand of the department within 10 days after service of the order (or such

further time as the court may grant) or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

[1957 c.632 §17 (enacted in lieu of 316.625 and 317.425)]

314.430 Warrant for collection of taxes.

(1) If any tax imposed upon or measured by net income or any portion of such tax is not paid within 30 days after it becomes due (or within five days, in the case of the termination of the tax year by the department under the provisions of ORS 314.440) and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the department, the department shall:

(a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds \$10.

(b) Issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for the payment of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff thereupon shall proceed

upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be added to and collected as a part of the warrant liability.

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

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

[1957 c.632 §18 (enacted in lieu of ORS 316.630 and 317.430); 1959 c.74 §1; 1959 c.234 §1]

314.435 [1957 c.632 §19 (enacted in lieu of ORS 316.635 and 317.435); 1959 c.147 §1; repealed by 1961 c.573 §2 (ORS 305.140 enacted in lieu of ORS 314.435, 315.635 and 321.085)]

314.440 Tax as debt; termination of taxable period and immediate assessment of tax.

(1) Every tax imposed by any law imposing a tax upon or measured by net income, and all increases, interest and penalties thereon shall become, from the time such liability is incurred, a personal debt, due the State of Oregon, from the person or persons liable therefor.

(2) If the department finds that a taxpayer designs quickly to depart from the state or to remove his property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past tax year or the tax year then current unless such proceedings be brought without delay, the department shall declare the current taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer. Simultaneously, the department, on the basis of the best information available to it, shall assess a tax for such terminated period and for the preceding tax year (if no return has been filed therefor, whether or

not the time otherwise allowed by law for filing such return and paying the tax has expired), and shall assess additional tax for any years open to assessment under the provisions of the applicable law. The department shall give notice to the taxpayer of all taxes so assessed. Such taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his last known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the findings of the department, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design and the certificate of the department of the mailing or issuing of the notice and findings specified in this section is presumptive evidence that the notice and findings were mailed or issued.

[1957 c.632 §20 (enacted in lieu of ORS 316.640, 317.440 and 317.445)]

314.445 Waiver, reduction or compromise of penalties and interest. The department may, in its discretion, upon good and sufficient cause, according to and consistent with its rules and regulations, upon making a record of its reason therefor, waive, reduce or compromise any tax balance of \$10 or less or any part or all of the penalties and interest provided for in a law imposing tax upon or measured by net income.

[1957 c.632 §21 (enacted in lieu of ORS 316.650 and 317.455); 1959 c.234 §2]

314.450 Cancellation or reduction of uncollectible taxes. (1) If the director believes upon reasonable and sufficient evidence that any tax or portion thereof, including any penalty or interest, is uncollectible, he may, after collecting the portion of the assessment which he believes is collectible, cancel the remainder of the assessment. Each such cancellation shall be evidenced by a written record in the files of the department which shall be signed by the director and the administrator of the division charged with the collection of the particular tax, both concurring in such cancellation of assessment. Such record shall set forth:

- (a) The name of the taxpayer against whom the liability was assessed;
- (b) The amount of the assessed liability;
- (c) The amount of the liability paid;
- (d) The amount of the liability canceled;
- (e) A sworn statement of the taxpayer

or his personal representative setting forth the complete financial responsibility of the taxpayer or his estate, and containing a full disclosure of all matters bearing upon the ability of the taxpayer or his estate to pay the full amount of the liability assessed; and

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

(2) Notwithstanding the provisions of ORS 314.835, a full and true copy of the record of each canceled assessment under subsection (1) of this section, certified as such by the director, shall be filed with the Governor and thereafter preserved by him as a public record.

(3) If the Administrator of the Income Tax Division of the Department of Revenue determines that:

(a) Taxes imposed upon or measured by net income have been delinquent for seven or more years;

(b) All reasonable efforts have been made to effect collection;

(c) The taxpayer cannot be located, or is dead;

(d) The tax is wholly uncollectible; he may request the director in writing for an order directing that such taxes be canceled on the books and records of the department. The director, when so requested, may in his discretion order the cancellation of such uncollectible taxes, such order being permanently filed in the records of the department and an entry thereof being made in its minutes.

(4) The director shall cancel any tax or portion thereof assessed against a natural person, including any penalty and interest, which has not been collected if:

(a) The liability for the tax accrued prior to the date of the bankruptcy of a natural person who was subsequently granted a discharge from other debts; and

(b) The liability for federal tax purposes is subject to cancellation pursuant to Title 11, United States Code, section 35.

(5) No cancellation shall be allowed under subsection (4) of this section if the liability for the tax or any portion thereof is assessed with penalties for fraud.

(6) The director may cancel any tax or portion thereof assessed against a person, including any penalty and interest, which has not been collected if the director determines that the administration and collection costs

involved would not warrant collection of the amount due.

(7) When taxes are canceled under subsection (4) or (6) of this section, the director shall make an order canceling the tax. The order shall be permanently filed in the records of the department. Upon making the order, the director also shall cause to be canceled or released any lien which the department may have for the tax so canceled.

[Subsections (1) and (2) enacted as 1957 c.632 §22 (enacted in lieu of 316.655 and 317.460); subsection (3) enacted as 1957 c.545 §2; 1959 c.650 §1; 1969 c.520 §40]

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

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

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

(2) The appeal shall be by way of written petition which shall state the grounds upon which the taxpayer contends that the assessment is erroneous. The department shall grant a hearing upon the appeal and shall examine the determination of the amount of tax due, including penalty and interest thereon, and shall redetermine such amount if it is necessary upon the law and the facts to do so. The department shall notify the taxpayer of its determination of the amount of tax due, with penalty and interest, either as originally assessed or as redetermined, and shall refund to the taxpayer the amount, if any, paid in excess of the tax found to be due, with interest thereon as provided in ORS 314.415. Where there has been an overpayment of any tax, the amount of such overpayment and the interest thereon shall be credited against any tax, or penalty or interest then due from the taxpayer, and only the balance shall be refunded. If the taxpayer has failed prior to the time

of the appeal, without good cause, to file any return required by law, within the time prescribed by law, or has filed a fraudulent return, or, having filed an incorrect return, has failed after notice, to file a proper return, the department shall not reduce or refund so much of the amount of the tax involved in the hearing as it may be found that the taxpayer owes for any other year or years.

[1957 c.632 §23 (enacted in lieu of ORS 316.660 and 317.465)]

314.460 Appeal from department. (1) An appeal from the determination of the department upon the application made by the taxpayer for refund or revision of any tax, as provided for in ORS 314.455, may be taken by the taxpayer by filing an original and one certified copy of a complaint with the clerk of the Oregon Tax Court at its principal office at the state capital, Salem, Oregon, within 60 days after notice by the department of its determination has been received by the taxpayer given as provided in ORS 314.455. Such filing in the Oregon Tax Court shall constitute the perfection of the appeal. Service upon the department shall be accomplished by the clerk of the tax court filing the certified copy of the complaint with the secretary of the Department of Revenue. The complaint shall be entitled in the name of the person filing the same as plaintiff and the Department of Revenue as defendant. A copy of the order of the department shall be attached to the original complaint.

(2) If the department fails to notify the taxpayer within 12 months after the claim was filed of its determination of a claim for refund of tax filed by the taxpayer according to the provisions of ORS 314.415, the taxpayer may bring suit for the refund by filing an original and one certified copy of a complaint against the department in the Oregon Tax Court. Such filing in the tax court shall constitute the perfection of the appeal. Service upon the department shall be accomplished in the same manner as provided in subsection (1) of this section.

[1957 c.632 §24 (enacted in lieu of 316.665 and 317.470); 1961 c.533 §52; 1967 c.78 §2]

314.465 When appeal stays collection proceedings. Unless otherwise ordered by the Oregon Tax Court, an appeal to the department under ORS 314.455, or an appeal to the court under ORS 314.460, or an appeal to the small claims division of the Oregon Tax Court from an assessment of taxes or additional taxes, shall not stay proceedings to col-

lect any unpaid tax if the department believes that collection of the tax will be jeopardized by delay.

[1957 c.632 §25 (enacted in lieu of ORS 316.670 and 317.475); 1961 c.533 §53]

314.470 [1957 c.632 §26 (enacted in lieu of ORS 316.675 and 317.480); repealed by 1961 c.20 §1]

DIVISION OF INCOME FOR TAX PURPOSES (General Provisions)

314.605 Short title; construction. (1) ORS 314.605 to 314.670 may be cited as the Uniform Division of Income for Tax Purposes Act.

(2) ORS 314.610 to 314.670 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[1965 c.152 §§20, 21]

314.610 Definitions for ORS 314.605 to 314.675. As used in ORS 314.605 to 314.675, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, the management, use or rental, and the disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

(4) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company.

(5) "Nonbusiness income" means all income other than business income.

(6) "Public utility" means any business entity whose principal business is ownership and operation for public use of any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

(7) "Sales" means all gross receipts of

the taxpayer not allocated under ORS 314.615 to 314.645.

(8) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

[1965 c.152 §2]

314.615 When allocation of income from business activity required. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in ORS 314.605 to 314.675. Taxpayers engaged in activities as a financial organization or public utility shall report their income as provided in ORS 314.280 and 314.675.

[1965 c.152 §3]

314.620 When taxpayer is considered taxable in another state. For purposes of allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

[1965 c.152 §4]

(Allocation of Nonbusiness Income)

314.625 Certain nonbusiness income to be allocated. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in ORS 314.630 to 314.645.

[1965 c.152 §5]

314.630 Allocation to this state of net rents and royalties. (1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocable to this state (a) if and to the extent that the property is utilized in this state, or (b) in their

entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

[1965 c.152 §6]

314.635 Allocation to this state of capital gains and losses. (1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if (a) the property had a situs in this state at the time of the sale, or (b) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

[1965 c.152 §7]

314.640 Allocation to this state of interest and dividends. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

[1965 c.152 §8]

314.645 Allocation to this state of patent and copyright royalties. (1) Patent and copyright royalties are allocable to this state (a) if and to the extent that the patent or copyright is utilized by the payer in this state, or (b) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing

in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

[1965 c.152 §9]

(Apportionment of Business Income)

314.650 Formula for apportionment to this State of business income. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

[1965 c.152 §10]

314.655 Determination of "property factor." (1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(2) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

[1965 c.152 §§11, 12, 13]

314.660 Determination of "payroll factor." (1) The payroll factor is a fraction, the numerator of which is the total amount

paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(2) Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state; or

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

[1965 c.152 §§14, 15]

314.665 Determination of "sales factor."

(1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(2) Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (A) the purchaser is the United States Government or (B) the taxpayer is not taxable in the state of the purchaser.

(3) Sales, other than sales of tangible personal property, are in this state if (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

[1965 c.152 §§16, 17, 18]

(Procedure Where Ordinary Determination Not Satisfactory)

314.670 Additional methods to determine extent of business activity in this state. If the allocation and apportionment provisions of ORS 314.610 to 314.665 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for and the department may permit, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) Separate accounting;
 - (2) The exclusion of any one or more of the factors;
 - (3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
 - (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- [1965 c.152 §19]

(Apportionment of Net Loss)

314.675 Apportionment of net loss; net loss deduction; limitations. For tax years ending after December 31, 1962, if the operations of a taxpayer subject to ORS 314.280 or 314.615 result in a net loss, that net loss shall be apportioned in the same manner as the net income so as fairly and accurately to reflect the net loss of the business done within this state. The net loss applicable to Oregon income pursuant to this section shall then become the net loss deduction for subsequent years which may be deducted from apportioned net income in the same manner as set forth in the Personal Income Tax Act of 1969, and in ORS 317.297 and 318.046. The limitations as to the amount deductible and the time limitations in those statutes shall apply to the apportioned net loss deduction computed pursuant to this section.

[1965 c.152 §23; 1969 c.493 §89]

(Application)

314.695 Application of ORS 314.280 and 314.605 to 314.675. The provisions of ORS 314.280 and 314.605 to 314.675 apply to the allocation and apportionment of the income of corporations and nonresident individuals, and do not apply to the income of resident individuals, resident estates, and resident trusts taxable as provided in the Personal Income Tax Act of 1969.

[1967 c.60 §2; 1969 c.493 §90]

EFFECT OF MULTISTATE TAX COMPACT

314.705 Computation of tax when income reported as percentage of sales volume. Any taxpayer electing in any year to report and pay an income tax on the basis of a percentage of sales volume, pursuant to Article III, section 2 of the Multistate Tax Compact, shall pay a tax computed at one-fourth of one percent of the dollar volume of gross sales in Oregon, except that if the taxpayer's return on sales for its business is less than five percent, it shall pay a tax computed on the basis of one-eighth of one percent of such volume.

[1967 c.242 §2]

314.710 Application to allocation and apportionment of income. The provisions of Articles III and IV of the Multistate Tax Compact apply to the allocation and apportionment of the income of corporations and nonresident individuals and do not apply to income of resident individuals, resident estates and resident trusts, taxable as provided in the Personal Income Tax Act of 1969.

[1967 c.242 §7; 1969 c.493 §91]

ADMINISTRATIVE PROVISIONS

314.805 Department to administer and enforce laws; enforcement districts; branch offices. The department shall administer and enforce the tax imposed by any law imposing tax upon or measured by net income. For this purpose the department may divide the state into districts. In each district a branch office may be established. The department may, from time to time, change the limits of such districts.

[1957 c.632 §27 (enacted in lieu of ORS 316.705 and 317.505)]

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

[1957 c.632 §29 (enacted in lieu of ORS 316.715)]

314.815 Rules and regulations. The department may, from time to time, make such rules and regulations, not inconsistent

with legislative enactments, that it considers necessary to enforce income tax laws.

[1957 c.632 §30 (enacted in lieu of ORS 316.720 and 317.505)]

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

[1957 c.632 §31 (enacted in lieu of ORS 316.725 and 317.520); 1969 c.97 §2]

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

[1957 c.632 §32 (enacted in lieu of ORS 316.730 and 317.525)]

314.830 [1957 c.632 §33 (enacted in lieu of 316.735 and 317.530); repealed by 1965 c.44 §1]

314.835 Divulging particulars of returns and reports prohibited. Except as otherwise specifically provided by law, it shall be unlawful for the department, any deputy, agent, auditor or other officer or employe, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under a law imposing a tax upon or measured by net income. No subpoena or judicial order shall be issued compelling the department or its agents to divulge or make known the amount of income or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representative of the state of the

report or return of any taxpayer who brings action to set aside or review the tax based thereon, or against whom any action or proceeding has been instituted to recover any tax or any penalty under a law imposing a tax upon or measured by net income.

[1957 c.632 §34 (enacted in lieu of ORS 316.740 and 317.535)]

314.840 Officials to whom information may be furnished. Notwithstanding ORS 314.835, the department may permit the Commissioner of Internal Revenue of the United States, the Governor or the administrative head of the Inheritance Tax Department of the State of Oregon, or the proper officer of any state or the District of Columbia imposing taxes upon or measured by gross or net income, or the authorized representative of any such officer, to inspect the income tax returns of any taxpayer, or may furnish to such officer or his authorized representatives an abstract or copy of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted, or such information furnished, to such officer or his representative only if the statutes, regulation or practice of the United States or of such other state or the District of Columbia, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of income taxes.

[1957 c.632 §35 (enacted in lieu of ORS 316.745 and 317.540); 1959 c.114 §1]

314.845 Certificate of department as evidence. The certificate of the department to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied, as required by or under any law imposing a tax upon or measured by net income, shall be prima facie evidence that the tax has not been paid, that the return has not been filed or that the information has not been supplied.

[1957 c.632 §36 (enacted in lieu of ORS 316.750 and 317.545)]

314.850 Statistics. The department shall prepare and publish annually statistics, reasonably available, with respect to the operation of income tax laws, including amounts collected, classification of taxpayers and

other facts considered pertinent and valuable.

[1957 c.632 §37 (enacted in lieu of ORS 316.755)]

314.855 Rewards for information. The department may pay rewards to persons, other than officers or employes of the department, furnishing information that leads to the recovery of tax from other persons guilty of violating the provisions of income tax laws. Such rewards shall not exceed 10 percent of the net amount of tax, penalty and interest recovered by suit or otherwise and shall be paid only in cases where such evasions of tax would not be disclosed by the audit of returns or from other information available to the department.

[1957 c.632 §38 (enacted in lieu of ORS 316.760 and 317.550)]

PENALTIES

314.990 [Repealed by 1953 c.310 §3]

314.991 Penalties. (1) A person or an officer or employe of a corporation or a

member or employe of a partnership who violates ORS 314.075 is liable to a penalty of not more than \$1,000, to be recovered by the Attorney General, in the name of the state, by action in any court of competent jurisdiction, and is also guilty of a misdemeanor and shall, upon conviction, be fined not to exceed \$1,000 or be imprisoned not to exceed one year, or both. The penalties provided in this subsection shall be additional to all other penalties in this chapter.

(2) Violation of ORS 314.825 or 314.835 is punishable, upon conviction, by a fine not exceeding \$1,000, or by imprisonment in the county jail for not more than one year, or by both. If the offender is an officer or employe of the state he shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter.

[1957 c.632 §39 (enacted in lieu of ORS 316.990 and 317.990)]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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 December 1, 1969.

Robert W. Lundy
Legislative Counsel

