Chapter 317

1969 REPLACEMENT PART

Corporation Excise Tax

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GENERAL PROVISIONS

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

317.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Centrally assessed corporation" means every corporation the property of which is assessed by the Department of Revenue under ORS 308.505 to 308.730.

(2) "Department" means the Department of Revenue.

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

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

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

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

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

(8) "Doing business" means any transaction or transactions in the course of its activities conducted within the state by a national banking association, or any other corporation; provided, however, that a foreign corporation whose activities in this state are confined to purchases of personal property, and the storage thereof incident to shipment outside the state, shall not be deemed to be doing business unless such foreign corporation is an affiliate of another foreign or domestic corporation which is doing business in Oregon. Whether or not corporations are affiliated shall be determined as provided in ORS 317.360.

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

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

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

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

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

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

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

(16) "Taxpayer" includes every national banking association, bank, building and loan association, savings and loan association,

mutual savings bank, and financial, centrally assessed, manufacturing, mercantile or business corporation subject to the tax imposed by this chapter.

(17) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this chapter. "Taxable year" includes, in the case of a return made for a fractional part of a year, the period for which such return is made. The first taxable year, to be called the taxable year 1929, shall be the calendar year 1929.

(18) As used in 317.076, 317.078, 317.197, 317.199 and 317.299, "domestic insurer" has the meaning defined by subsection (1) of ORS 731.082 and subsections (1) and (2) of ORS 731.142 but does not include title insurers or health care service contractors operating pursuant to ORS chapter 750.

[Amended by 1953 c.385 §9; 1959 c.631 §1; 1963 c.571 §1; subsection (18) enacted as 1969 c.600 §2]

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

317.016 "Regulated investment company" defined; subject to provisions of federal law. (1) As used in this chapter, "regulated investment company" means a corporation which is recognized by the federal Internal Revenue Service as a regulated investment company within the provisions of the Internal Revenue Code (1954), section 851.

(2) For the purposes of this chapter, a regulated investment company in Oregon is subject to the definitions, limitations, requirements and rules found in the federal Internal Revenue Code (1954), sections 851 to 855, and federal regulations promulgated in connection therewith.

(3) Any reference in ORS 317.016 and 317.156 to the Internal Revenue Code of the United States and to regulations promulgated thereunder means the federal Internal Revenue Code of 1954 and amendments thereto and pertinent regulations thereunder in effect on December 31, 1966.

[1967 c.274 §§2, 3, 5]

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

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

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

317.035 Effect of subsequent repeal of chapter. In the event of repeal of this chapter, unless otherwise specifically provided in the repeal, this chapter shall remain in full force for the assessment, imposition and collection of the tax and all interest, penalty or forfeitures which have accrued or may accrue in relation to any such tax for the calendar year in which the tax is repealed.

IMPOSITION OF TAX; OFFSET AGAINST TAX

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

[Amended by 1957 c.607 §1; subsection (2) of 1961 Replacement Part derived from 1957 c.607 §11 and 1957(s.s.) c.5 §1; 1963 c.571 §2]

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

[Amended by 1957 c.607 §2; subsection (2) of 1961 Replacement Part derived from 1957 c.607 §11 and 1957(s.s.) c.5 §1; 1963 c.571 §3]

317.065 Taxes referred to in ORS 317.055 and 317.060 in lieu of all taxes except taxes on real property. The tax referred to in ORS 317.055 and 317.060 is in lieu of all other state, county and municipal

taxes, upon the corporations and associations therein mentioned except taxes upon their real property.

317.070 Tax on centrally assessed, mercantile, manufacturing and business corporations; offset against tax. (1) Every centrally assessed corporation, the property of which is assessed by the Department of Revenue under ORS 308.505 to 308.730, and every mercantile, manufacturing and business corporation doing or authorized to do business within this state, except as provided in ORS 317.080 to 317.090, shall annually pay to this state, for the privilege of carrying on or doing business by it within this state, an excise tax according to or measured by its net income, to be computed in the manner provided by this chapter, at the rate of six percent.

(2) (a) Each corporation subject to subsection (1) of this section which is engaged in this state or elsewhere in manufacturing, processing or assembling materials into finished products for purposes of sale is entitled to an offset of certain personal property taxes against the tax imposed by subsection (1) of this section.

(b) The offset shall be either (A) the amount of taxes assessed to it pursuant to ORS chapter 308 and actually paid by it upon its properly classified tangible personal property and allocable to its raw materials and other materials which become a part of the finished product, goods in process and finished goods produced by it and held for sale as described in the preceding paragraph or (B) such taxes in an amount equal to one-third of its excise tax payable under this chapter, whichever is the lesser. The amount of the offset shall be diminished by any discount allowed and shall not be increased by any interest charged under ORS 311.505 or 311.515.

(3) Except as hereinafter provided in this section, each corporation subject to subsection (1) of this section is entitled also to an offset against the tax imposed by subsection (1) equal to the amount of personal property taxes assessed to and paid by it on any of the following property:

(a) Ores, metals or metal sources shipped from outside Oregon to the corporation's plant within Oregon for reduction or refinement by electrolytic process, which are in storage awaiting such reduction or refinement or which are in the process of electrolytic reduction or refinement.

(b) Metals in molded or bar form after reduction or refinement into such form by electrolytic process.

Taxes used as an offset under subsection (2) of this section shall not be allowed as an offset under this subsection.

(4) If a corporation uses any of the offset provisions of this section, no personal property taxes of the kind described in this section shall be allowed as a deduction under ORS 317.265.

[Amended by 1957 c.607 §3; 1957 c.709 §1; subsection (3) of 1963 Replacement Part derived from 1957 c.607 §11; 1957 c.709 §2 and 1957 (s.s.) c.5 §1; 1959 c.631 §2; 1963 c.627 §22 (referred and rejected); 1965 c.322 §1; 1965 c.544 §1]

317.072 Credit for pollution control facility; limitations; in lieu of other deductions; unused credit, taxpayer's basis. (1) A credit against taxes imposed by this chapter for taxpayers owning a pollution control facility or facilities certified under ORS 449.635 shall be allowed if the taxpayer has not claimed an exemption therefor under ORS 307.405. The maximum credit allowed in any one taxable year shall be the lesser of the tax liability of the taxpayer or the following portion of the cost of the facility:

(a) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 80 per cent or more, five percent of the cost of the facility.

(b) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 60 percent or more and less than 80 percent, four percent of the cost of the facility.

(c) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 40 percent or more and less than 60 percent, three percent of the cost of the facility.

(d) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 20 percent or more and less than 40 percent, two percent of the cost of the facility.

(e) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is less than 20 percent, one percent of the cost of the facility.

(2) To qualify for the credit the pollution control facility must be erected, constructed or installed on or after January 1, 1967, and on or before December 31, 1978.

(3) (a) The taxpayer who is allowed the

credit must be the owner of the trade or business that utilizes Oregon property requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property. As used in this paragraph, "owner" includes a contract purchaser; and

(b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit and must have been in use and operation during said tax year.

(4) A credit under this section may be claimed by a taxpayer only in those tax years which begin on or after January 1, 1967, and on or before December 31, 1978, regardless of when the facility or facilities are erected, constructed or installed in the period specified in subsection (2) of this section. The maximum total credit allowable shall not exceed:

(a) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 80 percent or more, 50 percent of the cost of such facility or facilities.

(b) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 60 percent or more and less than 80 percent, 40 percent of the cost of such facility or facilities.

(c) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 40 percent or more and less than 60 percent, 30 percent of the cost of such facility or facilities.

(d) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is 20 percent or more and less than 40 percent, 20 percent of the cost of such facility or facilities.

(e) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution is less than 20 percent, 10 percent of the cost of such facility or facilities.

(5) The credit provided by this section is in lieu of any depreciation or amortization deduction for the facility to which the taxpayer otherwise may be entitled under this chapter for such year to the extent of the highest percentage figure certified by the Environmental Quality Commission as the portion of the actual cost properly allocable to the prevention, control or reduction of air or water pollution.

(6) Upon any sale, exchange, or other disposition of facility, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering such facility as of the date of such disposition. The transferee may apply for a new certificate under ORS 449.635, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor.

(7) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (4) of this section.

(8) Notwithstanding any other provisions of this chapter, the taxpayer's adjusted basis for determining gain or loss shall be further decreased by any tax credits allowed under this section.

[1967 c.592 §9, 1969 c.340 §3]

317.073 [1959 c.631 §6; repealed by 1969 c.520 §49]

317.074 [1955 c.592 §2; 1957 c.607 §4; subsection (5) derived from 1957 c.607 §11 and 1957 (s.s.) c.5 §1; repealed by 1969 c.520 §49]

317.075 [Repealed by 1955 c.592 §4]

317.076 Tax credit for domestic insurers. A credit against taxes imposed by this chapter shall be allowed domestic insurers for the gross premium tax paid on fire insurance premiums in accordance with ORS 731.820.

[1969 c.600 §9]

317.078 Application of certain provisions of this chapter to domestic insurers. (1) The provisions of ORS 317.216, relating to basis of property, and the provisions of ORS 317.285, relating to depreciation, shall be applicable to every domestic insurer, except that for domestic mutual insurers and for other domestic insurers writing casualty, marine and transportation or property insurance, as those terms are defined in the Insurance Code, wherever the date "December 31, 1928" appears therein, there shall be substituted "December 31, 1969", and wherever the date

"January 1, 1929" appears therein, there shall be substituted "January 1, 1970".

(2) The provisions of ORS 317.220, relating to adjusted and substituted basis, shall be applicable to every domestic insurer, except that for domestic mutual insurers and for other domestic insurers writing casualty, marine and transportation or property insurance, as those terms are defined in the Insurance Code, in paragraph (b) of subsection (2) of ORS 317.220 the date "January 1, 1970" shall be substituted for "January 1, 1929", and the date "December 31, 1969" shall be substituted for "December 31, 1928".
[1969 c.600 §5]

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

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

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

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

(4) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

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

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

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

(8) Farmers' or other mutual ditch or irrrigation companies, mutual or cooperative telephone or mutual or cooperative electric companies or like organizations, but only if 85 percent or more of the income of which companies consists of assessments, dues and fees collected from the members for the sole purpose of meeting expenses.

(9) Farmers' and fruit growers' associations, organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent per year, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association. Exemption shall not be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products

marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchase made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

(10) Corporations organized by an association exempt under subsection (9) of this section, or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent per year, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof. Exemption shall not be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.

(11) Foreign or alien insurance companies and foreign or alien interinsurance and reciprocal exchanges, upon which a tax on premiums is levied; and with respect to its income as a corporate attorney in fact for a reciprocal or interinsurance exchange, corporations acting as attorneys in compliance with ORS 731.462, 731.466, 731.458 and 731.470.

(12) State and federal credit unions so long as the interest or dividends paid on shares do not exceed eight percent per year.

(13) Corporations organized and operated primarily for the purpose of holding title to property and furnishing living quarters to a college fraternity, sorority, student housing cooperative or student living organization, for the benefit of students attending institutions of higher education, no part of the net earnings of which corporations inures to the benefit of any private shareholder or individual.

(14) Corporations engaged in no business or rental activities whatsoever, being organized for the exclusive purpose of holding title to property used by a corporation which itself is exempt under this section.

(15) Corporations, organized and operated primarily for the purpose of furnishing permanent residential, recreational and social facilities primarily for elderly persons, which:

(a) Are corporations not for profit, organized pursuant to ORS chapter 61 or any statute repealed by chapter 580, Oregon Laws 1959;

(b) Receive not less than 95 percent of their operating gross income (excluding any investment income) solely from payments for living, medical, recreational, and social services and facilities, paid by or on behalf of the elderly persons using the facilities of such corporation;

(c) Permit no part of their net earnings to inure to the benefit of any private stockholder or individual;

(d) Provide in their articles or other governing instrument that, upon dissolution, the assets remaining after satisfying all lawful debts and liabilities shall be distributed to one or more corporations exempt from taxation under this chapter as corporations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.

(16) People's utility districts established under ORS chapter 261.

[Amended by 1953 c.207 §1; 1953 c.653 §3; 1955 c.592 §5; last sentence of 1959 Replacement Part derived from 1955 c.592 §6; 1957 c.553 §1; 1959 c.215 §1; 1961 c.473 §1; subsection (17) enacted as 1961 c.473 §2; 1963 c.286 §1, 1967 c.359 §689; 1969 c.600 §11]

317.085 [Repealed by 1957 c.607 §10]

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

317.095 [1955 c.592 §§3, 6; repealed by 1965 c.479 §1 (317.096 enacted in lieu of 317.095)]

317.096 Determination of tax upon change of tax rate or taxable status; exceptions. (1) The determination of tax provided for in subsection (2) of this section shall be made in the following situations:

(a) If any rate of tax imposed by this chapter or ORS chapter 318 changes, and if the taxable year of the corporation includes the effective date of the change (unless that date is the first date of the taxable year).

(b) If the status of a corporation changes from being exempt from taxation under this chapter and ORS chapter 318 to being taxable under either chapter, or changes from being taxable under this chapter or ORS chapter 318 to being exempt from taxation under both chapters, and in either situation the corporation has been carrying on its activities or has been doing business in Oregon during the entire taxable year.

(2) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change (unless that date is the first day of the taxable year), and the rate for the period on and after such date, to the taxable income for the entire taxable year, and the tax for such taxable year shall be the sum of that proportion of each such tentative tax which the number of days in each such period bears to the number of days in the entire taxable year. The rate for the period of exemption shall be considered as zero.

(3) This section shall not apply in the case of a corporation which begins or ceases to carry on business or business activities in Oregon during the taxable year.

(4) For the purposes of this section:

(a) "Taxable income" means the income from the business done or activities carried on within the state during the taxable year.

(b) "Taxable year" means a 12-month fiscal or calendar year.

[1965 c.479 §2 (enacted in lieu of 317.095)]

GROSS INCOME; EXCLUSIONS FROM GROSS INCOME

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

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

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

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

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

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

(1) The proceeds of life insurance policies paid upon the death of the insured, nor the amount received by the insured as a return of premiums paid by the insured under life or fire insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

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

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

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

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

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

the recovery of a part of the particular prior deduction. This subsection shall not apply to deductions allowed or allowable with respect to depreciation, depletion or amortization. This subsection is applicable to tax years beginning after December 31, 1952.

(7) Income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee. This subsection is applicable to any tax year the return for which is open to adjustment on July 21, 1953.
[Amended by 1953 c.385 §9]

317.120 Amounts arising from discharge of debt excluded from gross income. "Gross income" does not include the following items which are exempt from taxation under this chapter:

(1) Any amount arising by reason of the discharge in whole or in part within the taxable year of any indebtedness for which the taxpayer is liable, or subject to which the taxpayer holds property, if the indebtedness was incurred or assumed by the taxpayer in connection with property used in his trade or business, and if such taxpayer makes and files a consent to the regulations prescribed under ORS 317.228 (relating to adjustment of basis) then in effect at such time and in such manner as the department by regulation prescribes. In such case, the amount of any income of such taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income, and the amount of the deduction attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction.

(2) Any amount arising by reason of the discharge, cancellation, or modification, in whole or in part, within the taxable year of any indebtedness of a railroad corporation as defined in section 77(m) of the Bankruptcy Act of the United States (11 U.S.C. 205(n)), if such discharge, cancellation, or modification is effected pursuant to an order of a court in a receivership proceeding, or in a proceeding under section 77 of the Bankruptcy Act, commenced before January 1, 1960. In such cases, the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount (computed as of the last day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. Subsection (1) of this section shall not apply with respect to any discharge of an indebtedness to which this subsection applies.
[1969 c.681 §5]

NET INCOME; METHODS OF ACCOUNTING AND REPORTING

317.155 Net income. "Net income" as used in this chapter means the gross income less the deductions allowed, except as provided in subsection (18) of ORS 317.010, 317.078, 317.197, 317.199 and 317.299 with respect to domestic insurers as defined and limited in subsection (18) of ORS 317.010.
[Amended by 1969 c.600 §10]

317.156 Net income of regulated investment company; imposition of tax. Notwithstanding other provisions of this chapter, "net income" of a regulated investment company is its taxable income as determined for federal internal revenue purposes pursuant to the federal Internal Revenue Code (1954), section 852, and pertinent federal regulations, and the company shall be taxed pursuant to ORS 317.070.
[1967 c.274 §4]

317.160 Accounting periods and methods. The net income shall be computed upon the basis of the taxpayer's annual accounting period, fiscal year or calendar year, as the case may be, in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if such method employed does not clearly reflect the net income the computation shall be made in accordance with such method as the department may prescribe to reflect the net income. If the taxpayer's annual accounting period is other than a fiscal year, or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

317.165 Dealers in personal property on an instalment basis. Under regulations prescribed by the department, a taxpayer who

regularly sells or otherwise disposes of personal property on the instalment plan may return as income therefrom in any taxable year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

317.170 Sales of realty and casual sales of personalty on instalment basis. (1) In the case of (a) a casual sale or other casual disposition of personal property (other than property of a kind which would be properly included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding $1,000, or (b) a sale or other disposition of real property, if in either case the initial payments do not exceed 30 percent of the selling price, the income may, under regulations prescribed by the department, be returned on the basis and in the manner prescribed in ORS 317.165 and 317.175. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable year in which the first payment on account of the sale or other disposition is received.

(2) If the transaction is reported by the taxpayer as resulting in a gain, an election to report a casual sale or other casual disposition of real or personal property on the instalment basis must be clearly manifested in the first return of the taxpayer made for the taxable year in which the sale or other disposition was made or, if no payments are received in that year, in the first year in which payments are received. If such manifestation is not so made, or if the sale or disposition is omitted from the return or if the transaction is erroneously and in bad faith reported as resulting in a loss, the entire gain, as determined in subsection (1) of ORS 317.210, shall be included in income for the taxable year in which the sale or disposition was made; however, if no initial payment is received in the year of sale or other disposition, the gain shall be included in the taxable year in which the initial payment is made.

(3) The 1955 amendments to this section shall be applicable to any taxable year, the return for which is open to adjustment on August 3, 1955.

[Amended by 1955 c.99 §1; subsection (3) derived from 1955 c.99 §2]

317.175 Change to instalment basis. (1) If a taxpayer entitled to the benefits of ORS 317.165 elects for any taxable year to report its net income on the instalment basis, then in computing its taxable income for such year (referred to in this section as "year of change") or for any subsequent year:

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

(b) The tax imposed by this chapter for any taxable year (referred to in this section as "adjustment year") shall be reduced by the adjustment computed under subsection (2) of this section.

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

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

(b) The portion of the tax for the adjustment year which is attributable to the gross profit described in paragraph (a) of subsection (2) of this section.

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

(3) For purposes of subsection (2) of this section, the portion of the tax for a prior taxable year, or for the adjustment year, which is attributable to the gross profit described in such subsection is that amount which bears the same ratio to the tax imposed by this chapter for such taxable year (computed without regard to subsection (2) of this section) as the gross profit described in subsection (2) of this section bears to the gross income for such taxable year.

(4) The 1955 amendments to this section shall apply to tax years beginning on and after December 31, 1953.

[Amended by 1955 c.128 §1; subsection (4) derived from 1955 c.128 §2]

317.180 [Repealed by 1957 c.632 §1 (ORS 314.280 enacted in lieu of ORS 316.205 and 317.180)]

317.185 [Repealed by 1957 c.632 §1 (ORS 314.285 enacted in lieu of ORS 316.210 and 317.185)]

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

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

317.197 Net income of domestic insurer; items excluded from taxable income. (1) For purposes of the tax imposed under ORS 317.070, the net income of a domestic insurer shall be the insurer's "net gain from operations" determined in the manner prescribed by the Insurance Division of the Department of Commerce on its Annual Statement Form for the year 1968, as adjusted pursuant to subsection (18) of ORS 317.010, 317.076, 317.078, 317.199, 317.299 and this section.

(2) The net income of a domestic insurer shall be computed by adding or subtracting, to the insurer's net gain from operations as determined under subsection (1) of this section, such of the following items as apply to the insurer:

(a) Add the amount of federal and state income taxes deducted by the insurer in computing its net gain from operations.

(b) Add penalty interest received by the insurer arising out of prepayment of loans made by the insurer.

(c) Add realized gains and losses on sales or exchanges by the insurer of property.

(d) Subtract, if the insurer so elects, additional or accelerated depreciation on real and personal property as allowed by ORS 317.285 that is in excess of the depreciation deducted by the method used in computing the insurer's net gain from operations.

(e) Subtract that amortized portion of the contribution for past service credits made to qualified plans and exempt trusts for employes allowed as a deduction by ORS 317.256.

(f) Add or subtract, as appropriate, increases or decreases in mandatory reserves that the insurer is required to maintain by law or by rules or directives of the Insurance Commissioner, other than increases or decreases that (A) are deducted in arriving at the insurer's net gain from operations, or (B) result from net gains or losses, realized or unrealized, in the value of the insurer's property and investments.

(g) Add or subtract, as appropriate, increases or decreases in reserves for policies and obligations outstanding before the beginning of the taxable year resulting from changes in the bases and methods of computing such reserves that are justified by accounting and actuarial practices applicable to or accepted by the insurance industry, commonly known as "reserve strengthening" or "reserve weakening."

(3) Income, expenses, gains, losses, exclusions, deductions, assets, reserves, liabilities and other items properly attributable to one or more separate accounts authorized under ORS 733.180 shall not be taken into account in determining taxable income of a domestic insurer under subsection (18) of ORS 317.010, 317.076, 317.078, 317.199, 317.299 and this section until such amounts or items are returned to and reflected on the general accounts of such insurer so as to be available generally to or for the benefit of contract and policyholders of the insurer.
[1969 c.600 §§3, 4, 6]

317.199 Allocation of net income where domestic insurer does business in other states. In lieu of the provisions of ORS 314.280, if the income of a domestic insurer is derived from business done both within and without this state, the determination of net income attributable to this state and to be allocated to this state shall be arrived at by apportion-

ment based upon an averaging of the following three factors:

(1) Insurance sales factor: The percentage obtained by dividing (a) the direct premiums (excluding reinsurance accepted and without deduction of reinsurance ceded) received by the insurer during the taxable year on policies and contracts which are allocated to this state and to other jurisdictions in which the insurer is not authorized to do business by (b) the total of such premiums received by the insurer during the taxable year on policies and contracts that had been sold within and without this state. For purposes of this subsection, "premiums" means sums properly included in appropriate schedules of the annual statement filed by the insurer with the Insurance Commissioner, which allocate premiums by jurisdiction.

(2) Wage and commission factor: The percentage obtained by dividing (a) the total of wages, salaries, commissions and other compensation for personal services paid in this state during the tax period to employes and insurance salesmen in connection with the business of the insurer, by (b) the total wages, salaries, commissions and other compensation for personal services paid everywhere during the tax period to employes and insurance salesmen in connection with the business of the insurer. For determining the place of payment, the procedure set forth in subsection (2) of ORS 314.660 shall apply.

(3) Real estate income and interest factor: The percentage obtained by dividing (a) the total net income (after deducting from gross rental income real estate expenses, property taxes and depreciation attributable thereto, which are included in appropriate schedules of the annual statement filed by the insurer with the Insurance Division) received from real property within this state plus gross interest received on loans secured by real property within this state during the taxable year, by (b) the total net income received from real property within and without this state plus gross interest received on loans secured by real property within and without this state during the taxable year.
[1969 c.600 §7]

DETERMINATION AND RECOGNITION OF GAIN AND LOSS

317.205 [Repealed by 1959 c.389 §1 (ORS 317.206 enacted in lieu of ORS 317.205)]

317.206 Definitions. (1) (a) "Reorganization" means:

(A) A statutory merger or consolidation; or

(B) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition); or

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

(D) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualified under subsection (2) or subsection (6) of ORS 317.231 or 317.236; or

(E) A recapitalization; or

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

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

(B) If one corporation acquires substantially all of the properties of another corporation, the acquisition would qualify under subparagraph (C) of paragraph (a) of this subsection but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and the acquiring corporation acquires, solely for voting stock described in subparagraph (C) of paragraph (a) of this subsection, property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property

of the other corporation, then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under subparagraph (C) of paragraph (a) of this subsection. Solely for the purpose of determining whether as required by the preceding sentence 80 percent of the fair market value of the property was acquired for voting stock of the acquiring corporation, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

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

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

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

(4) This section is effective with respect to transactions occurring on or after August 5, 1959.

[1959 c.389 §2 (enacted in lieu of ORS 317.205); subsection (4) derived from 1959 c.389 §11]

317.210 Computation of gain or loss. (1) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in ORS 317.220, and the loss shall be the excess of the adjusted basis provided in ORS 317.220 over the amount realized.

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

(3) Nothing in ORS 317.210 to 317.220 shall be construed to prevent (in the case of property sold under contract providing for payment in instalments) the taxation of that portion of any instalment payment representing gain or profit in the year in which such payment is received.

317.215 [Amended by 1953 c.385 §9; 1957 c.338 §1; part of subsections (10) and (11) of 1957 Replacement Part derived from 1957 c.338 §3; repealed by 1959 c.389 §3 (ORS 317.216 enacted in lieu of ORS 317.215)]

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

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

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

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

(4) If the property was acquired by gift or transfer in trust (other than a transfer in trust by a bequest or devise) before January 1, 1929, the basis for computing profit shall be the fair market value of the property at the date of transfer or the fair market value thereof on January 1, 1929, whichever is higher, and the basis for computing loss shall be the fair market value of the property at the date of transfer or the fair market value on January 1, 1929, whichever is lower. However, no profit shall be deemed

to have been derived if either the fair market value at the date of transfer or the fair market value on January 1, 1929, exceeds the amount realized and no loss shall be deemed to have been sustained if either the fair market value at the date of transfer or the fair market value on January 1, 1929, is less than the amount realized.

(5) If the property was acquired by gift or transfer in trust after December 31, 1928 (other than a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift, whichever is lower. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the department shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the department finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the department as of the date or approximate date at which, according to the best information the department is able to obtain, such property was acquired by such donor or last preceding owner.

(6) If the property was acquired before January 1, 1929, upon an exchange (whether or not an exchange as to which no gain or loss would be recognized under ORS 317.225, 317.231 or 317.236, 317.240, 317.241 and 317.245 to 317.250), the basis shall be the same as if the property had been purchased on the date of such exchange for its fair market value on that date.

(7) (a) If the property was acquired after December 31, 1928, upon an exchange to which ORS 317.231 applies the basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged decreased by the fair market value of any other property (except money) received by the taxpayer, and the amount of any money received by the taxpayer, and increased by the amount which was treated as a dividend, and the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend). The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) Under regulations prescribed by the department, the basis determined under paragraph (a) of this subsection shall be allocated among the properties permitted to be received without the recognition of gain or loss. In the case of an exchange to which subsection (6) of ORS 317.231 (or so much of ORS 317.236 as relates to such subsection (6)) applies, then in making such allocation there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) For purposes of this subsection, a distribution to which subsection (6) of ORS 317.231 (or so much of ORS 317.236 as relates to such subsection) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this subsection, be treated as money received by the taxpayer on the exchange.

(8) (a) If property was acquired by a corporation in connection with a transaction to which subsection (5) of ORS 317.231 (relating to transfer of property to corporation controlled by transferor) or the equivalent language of the federal Internal Revenue Code applicable to the Personal Income Tax Act of 1969 applies, or as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) If property was acquired by a corporation in connection with a reorganization to which subsection (2) or (3) of ORS 317.231 or the equivalent language of the federal Internal Revenue Code applicable to the Personal Income Tax Act of 1969 applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the

amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(c) If property was acquired by a corporation in a transfer to which subsection (7) of ORS 317.231 applies, then notwithstanding the provisions of section 270 of the Bankruptcy Act (54 Stat. 709; 11 U.S.C. 670), the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred.

(d) Notwithstanding paragraph (a) of this subsection, if property other than money is acquired by a corporation as a contribution to capital, and is not contributed by a shareholder as such, then the basis of such property shall be zero. Notwithstanding paragraph (a) of this subsection, if money is received by a corporation as a contribution to capital, and is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the department.

(9) If the property was acquired after December 31, 1928, as the result of a compulsory or involuntary conversion described in ORS 317.250 or paragraph (a) of subsection (1) of ORS 317.249, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended upon such conversion, and increased in the amount of gain to the taxpayer recognized upon such conversion. If the property was purchased by the taxpayer and such purchase resulted, under the provisions of paragraph (b) of subsection (1) of ORS 317.249, in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(10) If the property was acquired by a corporation upon a distribution in complete liquidation of another corporation within the meaning of ORS 317.245, then, except as provided in subsection (11) of this section, the basis shall be the same as it would be in the hands of the transferor. However, if such acquisition occurred prior to August 2, 1951, the basis shall be as determined by the law in effect on the date of such acquisition.

(11) If the property was acquired by a corporation upon a distribution in complete liquidation of another corporation (within the meaning of ORS 317.245), the basis of the property in the hands of the distributee shall be the adjusted basis of the stock with respect to which the distribution was made, if:

(a) The distribution is pursuant to a plan of liquidation adopted on or after June 22, 1954, and not more than two years after the date of the transaction described in paragraph (b) of this subsection (or, in the case of a series of transactions, the date of the last such transaction); and

(b) Stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase during a period of not more than 12 months. A "purchase" for purposes of this paragraph means any acquisition of stock, but only if the basis of the stock in the hands of the distributee is not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, the stock is not acquired in an exchange to which subsection (5) of ORS 317.231 or the equivalent language of

the federal Internal Revenue Code as applicable to the Personal Income Tax Act of 1969 applies, the stock is not acquired from an affiliated corporation as such term is defined in ORS 317.360, or the stock is not acquired from a decedent by bequest or inheritance.

(12) For purposes of subsection (11) of this section, under regulations prescribed by the department, proper adjustment in the adjusted basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed, or subject to which the property was received, and for other items. For purposes of this subsection and of subsection (11) of this section, the term "distributee" means only the corporation which meets the 80 percent stock ownership requirements specified in ORS 317.245.

(13) If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility under ORS 317.270 of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

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

[1959 c.389 §4 (enacted in lieu of ORS 317.215); last sentence derived from 1959 c.389 §11; 1969 c.103 §2; 1969 c.493 §92]

317.220 Adjusted basis; substituted basis. (1) The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under ORS 317.216, adjusted as provided in this section.

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

(a) For expenditures, receipts, losses or other items, properly chargeable to capital account, but no such adjustment shall be made in respect to items for which deductions have been taken by the taxpayer on its tax returns for the prior years, if the adjustment of such returns is barred.

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

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

(3) The term "substituted basis" as used in this section means a basis determined under any provision of ORS 317.216, providing that the basis shall be determined:

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

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

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

(5) Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under subsection (7) of ORS 317.110.

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

[Amended by 1953 c.385 §9]

317.225 Recognition of gain or loss. Upon the sale or exchange of property the entire amount of the gain or loss, as determined under ORS 317.210, shall be recognized, except as provided in ORS 317.231, 317.236 and 317.241 to 317.250.

317.228 Application of amount excluded under ORS 317.120 to basis of property held by taxpayer. Where any amount is excluded from gross income under ORS 317.078 (relating to income from discharge of indebtedness) on account of the discharge of indebtedness the whole or a part of the amount so excluded from gross income shall be applied in reduction to the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under ORS 317.078) and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the department) in effect at the time of the filing of the consent by the taxpayer referred to in ORS 317.078. The reduction shall be made as of the first day of the taxable year in which the discharge occurred, except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began. [1969 c.681 §6]

317.230 [Amended by 1953 c.385 §9; repealed by 1959 c.389 §5 (ORS 317.231 enacted in lieu of ORS 317.230)]

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

(2) No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. The preceding sentence shall not apply if the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or any such securities are received and no such securities are surrendered; nor shall such sentence apply to an exchange in pursuance of a plan of reorganization if the reorganization is one described in subparagraph (D) of paragraph (a) of subsection (1) of ORS 317.206 unless the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets and the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization. Notwithstanding any other provision of this chapter, the rule of this subsection (and so much of ORS 317.236 as relates to this subsection) shall apply with respect to any plan of reorganization for a railroad approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act under section 20 b of the Interstate Commerce Act, as being in the public interest.

(3) No gain or loss shall be recognized if a corporation, a party to a reorganization, exchanges property in pursuance of the plan of reorganization solely for stock or securities in another corporation, a party to the reorganization.

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

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

(6) (a) If a corporation (referred to in this section as the "distributing corporation") distributes to a shareholder, with respect to its stock, or distributes to a security holder, in exchange for its securities, solely stock or securities of a corporation (referred to in this section as "controlled corporation")

which it controls immediately before the distribution (stock which was acquired by the distributing corporation by reason of any transaction occurring within five years of the distribution in which gain or loss was recognized in whole or in part to be considered other property and not stock for such purposes); the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device); the requirements of paragraph (b) of this subsection (relating to active businesses) are satisfied; and as part of the distribution, the distributing corporation distributes all of the stock and securities in the controlled corporation held by it immediately before the distribution, or an amount of stock in the controlled corporation constituting control, and it is established to the satisfaction of the department that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Oregon income or excise taxes then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities. This subsection shall apply whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation, whether or not the shareholder surrenders stock in the distributing corporation, and whether or not the distribution is in pursuance of a plan of reorganization. This subsection shall not apply if the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

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

(7) No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77(m) of the Bankruptcy Act (49 Stat. 922; 11 U.S.C. 205)) is transferred in pursuance of an order of the court having jurisdiction of such corporation in a receivership, foreclosure, or similar proceeding, or in a proceeding under chapter X of the Bankruptcy Act (52 Stat. 883-905; 11 U.S.C., chapter 10) or the corresponding provisions of prior law, to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(8) No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in subsection (7) of

this section, in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(9) This section is effective with respect to transactions occurring on or after August 5, 1959.

[1959 c.389 §6 (enacted in lieu of ORS 317.230); subsection (9) derived from 1959 c.389 §11]

317.235 [Repealed by 1959 c.389 §7 (ORS 317.236 enacted in lieu of ORS 317.235 and 317.240)]

317.236 Exchanges not solely in kind. (1) If an exchange would be within the provisions of subsection (1), (2), (4), (5), (6) or (8) of ORS 317.231, if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient, shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If an exchange is described in subsection (2) or (6) of ORS 317.231 but has the effect of the distribution of a dividend, then there shall be treated as a dividend to each distributee such an amount of the gain recognized under subsection (1) of this section as is not in excess of his ratable share of the undistributed earnings and profits of the corporation. The remainder, if any, of the gain recognized under subsection (1) of this section shall be treated as gain from the exchange of property.

(3) If subsection (6) of ORS 317.231 would apply to a distribution but for the fact that the property received in the distribution consists not only of property permitted by such subsection to be received without the recognition of gain, but also of other property or money, then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of a dividend to the extent that such amount is not in excess of the distributee's ratable share of the undistributed earnings and profits of the corporation.

(4) If an exchange would be within the provisions of subsection (3) or (7) of ORS 317.231 if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such subsection to be received without the recognition of gain, but also of other property or money, then:

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

(b) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(5) If subsection (1), (2), (3), (4), (5), (7) or (8) of ORS 317.231 would apply to an exchange or subsection (6) thereof would apply to an exchange or distribution, but for the fact that the property received in the exchange or distribution consists not only of property permitted by such subsection to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange or distribution shall be recognized.

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

(a) The term "other property" does not include securities to the extent that, under subsection (2) or (6) of ORS 317.231, such securities would be permitted to be received without the recognition of gain.

(b) If in an exchange described in subsection (2) of ORS 317.231, (other than a reorganization described in the last sentence thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and the principal amount of such securities received exceeds the principal amount of such securities surrendered, then with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this paragraph and paragraph (c) of this subsection, if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(c) If in an exchange or distribution described in subsection (6) of ORS 317.231 the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such

securities received, the term "other property" means only the fair market value of such excess.

(d) The term "other property" does not include securities received in an exchange under subsection (5) of ORS 317.231.

(7) This section is effective with respect to transactions occurring on or after August 5, 1959.

[1959 c.389 §8 (enacted in lieu of ORS 317.235 and 317.240); subsection (7) derived from 1959 c.389 §11]

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

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

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

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

[1965 c.460 §2]

317.239 ORS 317.238 inapplicable in certain cases. (1) ORS 317.238 shall not apply and no gain or loss shall be recognized to a distributing corporation if such distribution is in the course of a liquidation under ORS 317.245, and no gain or loss would be recognized to the recipient corporation upon the receipt of such obligation.

(2) ORS 317.238 shall not apply if (a) an instalment obligation is distributed by a corporation in the course of liquidation under ORS 317.247 and (b) no gain or loss would have been recognized to the corporation if the corporation had sold or exchanged such instalment obligation on the day of such distribution.

[1965 c.460 §§3, 4]

317.240 [Repealed by 1959 c.389 §7 (ORS 317.236 enacted in lieu of ORS 317.235 and 317.240)]

317.241 Assumption of liability. (1) Except as provided in subsections (2) and (3) of this section, if the taxpayer receives property which would be permitted to be received under subsection (3), (5) or (7) of ORS 317.231 without the recognition of gain if it were the sole consideration, and, as part of the consideration, another party to the exchange assumes a liability of the taxpayer, or acquires from the taxpayer property subject to a liability, then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of such subsection.

(2) If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition described in subsection (1) of this section was a purpose to avoid Oregon income or excise taxes on the exchange, or, if not such purpose, was not a bona fide business purpose, then such assumption or acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall be considered as money received by the taxpayer on the exchange. In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

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

[1959 c.389 §10 (enacted in lieu of 317.242); subsection (4) derived from 1959 c.389 §11; 1969 c.493 §93]

317.242 [1953 c.385 §9; repealed by 1959 c.389 §9 (ORS 317.241 enacted in lieu of ORS 317.242)]

317.245 Property received by corporation on complete liquidation of another corporation. No gain or loss shall be recognized

upon the receipt by a corporation of property, including money, distributed in complete liquidation of another corporation. For the purposes of this section a distribution shall be considered to be in complete liquidation only if:

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

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

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

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

317.247 Complete liquidation of corporation and distribution of all its assets. (1) If, on or after January 1, 1955, a corporation adopts a plan of complete liquidation with respect to which ORS 317.245 does not apply, and within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims, then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

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

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

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

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

(3) Notwithstanding any other provisions of this section, if substantially all of the property described in paragraph (a) of subsection (2) of this section which is attributable to a trade or business of the corporation is, in accordance with this section,

sold or exchanged to one person in one transaction, then for the purposes of subsection (1) of this section the term "property" includes:

(a) Such property so sold or exchanged; and

(b) Instalment obligations acquired in respect of such sale or exchange.

(4) In the case of a sale or exchange following the adoption of a plan of complete liquidation, if ORS 317.245 applies with respect to such liquidation, then:

(a) If the basis of the property of the liquidating corporation in the hands of the distributee is determined under subsection (10) of ORS 317.216, this section shall not apply; or

(b) If the basis of the property of the liquidating corporation in the hands of the distributee is determined under subsection (11) of ORS 317.216, this section shall apply only to that portion (if any) of the gain which is not greater than the excess of that portion of the adjusted basis (adjusted for any adjustment required under subsection (12) of ORS 317.216) of the stock of the liquidating corporation which is allocable, under regulations prescribed by the department, to the property sold or exchanged, over the adjusted basis, in the hands of the liquidating corporation, of the property sold or exchanged.

This subsection applies to taxable years ending after January 1, 1955.

[1955 c.354 §2; 1957 c.338 §2; part of subsection (4) derived from 1957 c.338 §3; subsection (5) enacted as 1963 c.180 §2; 1969 c.128 §1]

317.249 Involuntary conversion after December 31, 1952. (1) If, after December 31, 1952, property (as a result of its destruction in whole or in part, theft, seizure or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted:

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

(b) Into money or into property not similar or related in service or use to the converted property, the gain, if any, shall be recognized except to the extent provided in subsection (2) of this section.

(2) If the taxpayer, during the period specified in subsection (3) of this section, for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more tax years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the commission may by regulation prescribe. For the purposes of this subsection, no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition, and the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (9) of ORS 317.216, the unadjusted basis of such property or stock would be its cost within the meaning of ORS 317.210 to 317.220.

(3) The period referred to in subsection (2) of this section shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending:

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

(b) Subject to such terms and conditions as may be specified by the department, at the close of such later date as the department may designate upon application of the taxpayer made at such time and in such manner as the department may by regulations prescribe.

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

(5) This section is applicable to tax years beginning after December 31, 1952.

[1953 c.385 §9]

317.250 Involuntary conversion prior to January 1, 1953. (1) If, prior to January 1, 1953, property (as a result of its destruction in whole or in part or its theft or seizure, or as a result of exercise of the power of requisition or condemnation, or the threat or

imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the department, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized.

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

(3) The 1953 amendment to this section is applicable to tax years beginning after December 31, 1952.

[Amended by 1953 c.385 §9]

317.251 Involuntary conversion of real property. (1) For purposes of subsection (1) of ORS 317.249, if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) This special rule shall (a) not apply to the purchase of stock in the acquisition of control of a corporation described in paragraph (A) of subsection (3) of section 1033, Internal Revenue Code of 1954, in effect on December 31, 1966; and (b) shall apply with respect to the compulsory or involuntary conversion of any real property only if the conversion occurs after December 31, 1964.

[1965 c.154 §4; 1969 c.493 §94]

317.252 Reacquisition of real property used to secure indebtedness; treatment of debt. If a sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and the seller of such property reacquires such property in partial or full satisfaction of such indebtedness, then, except as provided in ORS 314.155 and 314.165, no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

[1965 c.178 §4]

DEDUCTIONS ALLOWED IN COMPUTING NET INCOME

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

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

(b) In the form of contributions to an employes' trust exempt from taxes on or measured by net income under the laws of this state,

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

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

[Amended by 1953 c.385 §9]

317.256 Amounts paid to employes' plan or trust in excess of current contribution. For taxable years beginning on and after January 1, 1955, there shall be allowed, in addition to the current contributions accruing during the year to a plan or an exempt employes' trust, which are allowed as a deduction under paragraph (a) or (b) of subsection (1) of ORS 317.255, a deduction for a reasonable amount transferred or paid to the plan or exempt employes' trust in excess of such current contributions when such amount (1) has not theretofore been allowable as a deduction, (2) is paid in recognition of past service and (3) is apportioned over a period of 10 consecutive years beginning with the year in which the transfer or payment is made.

[1955 c.609 §2]

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

317.262 Bond premiums. (1) In computing net income, at the election of the taxpayer as provided in subsection (3) of this section, there shall be allowed as a deduction with respect to a bond the interest on which is taxable under this chapter, the yearly amortizable bond premium.

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

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

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

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

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

(a) Taxes imposed by this chapter.

(b) Taxes upon or measured by net income or profits and imposed by the United States, any foreign country, this state or any state or territory. However, taxes and license fees imposed by counties, cities and other political subdivisions of this state and other states are deductible regardless of the subject or measure of the tax or license fee. Taxes paid to a foreign country upon dividends, interest or royalties arising from sources within such foreign country are deductible.

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

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

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

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

(2) If the net income of the taxpayer is computed under an accrual method of

accounting, then, at the election of the taxpayer, any real or personal property tax which is related to a definite period of time shall be accrued ratably over that period.

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

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

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

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

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

(4) The 1955 amendments to this section which pertain to the deduction of taxes and license fees imposed by counties, cities and other political subdivisions are applicable to any taxable year the return for which is open to adjustment on August 3, 1955. All other 1955 amendments to this section are applicable to taxable years ending after December 31, 1953.

(5) The 1957 amendments to this section are effective with respect to returns for tax years beginning on or after January 1, 1957.

[Amended by 1955 c.422 §1; subsection (4) derived from 1955 c.422 §2; 1957 c.607 §5; subsection (5) derived from 1957 c.607 §11 and 1957(s.s.) c.5 §1]

317.270 Losses. (1) In computing net income there shall be allowed as deductions losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in business. The basis for determining the amount of deduction for losses sustained under this section shall be computed according to the method prescribed for arriving at the adjusted basis in ORS 317.210 to 317.220.

(2) For purposes of subsection (1) of this section, any loss arising from theft or embezzlement shall be treated as sustained during the taxable year in which the taxpayer discovers such loss. This subsection shall first apply to tax years beginning on or after January 1, 1957.

[Amended by 1957 c.88 §1]

317.275 Loss from wash sales of securities. In case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed, unless the deduction is claimed by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business. If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities, the loss from the sale or other disposition of which is not deductible, shall be determined under rules and regulations prescribed by the department. If the amount

of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities, the acquisition of which (or the contract or option to acquire which), resulted in the nondeductibility of the loss shall be determined under rules and regulations prescribed by the department.

317.280 Bad debts. (1) In computing net income there shall be allowed as a deduction any debt which becomes worthless within the taxable year, and charged off in accordance with regulations prescribed by the department (or, in the discretion of the department, a reasonable addition to a reserve for bad debts).

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

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

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

(5) The 1955 amendments to this section are applicable to taxable years beginning after December 31, 1954.

[Amended by 1953 c.385 §9; 1955 c.584 §1]

317.285 Depreciation. (1) In computing net income there shall be allowed as a deduction a reasonable allowance for the depreciation, exhaustion, wear and tear and obsolescence of property used in the business. In no case shall the total amount recoverable through the depreciation allowance over the life of the property be in excess of the basis of the property as computed under subsection (5) of this section.

(2) "Reasonable allowance," as used in subsection (1) of this section, includes an allowance computed in accordance with regulations prescribed by the department under any of the following methods:

(a) The straight-line method;

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

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

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

(3) The regulations prescribed by the department pursuant to this section shall be designed to permit the adoption and use by the taxpayer of a uniform method of computing its allowance for depreciation for the purposes of this chapter and for federal income tax purposes.

(4) Paragraphs (b), (c) and (d) of subsection (2) of this section shall apply only in the case of property (other than intangible property) described in subsection (1) of this section with a useful life of three years or more:

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

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

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

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

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

(6) The amendments of this section made by section 9, chapter 15, Oregon Laws 1957 (special session), shall apply to all tax years beginning on and after January 1, 1957, and for prior tax years the law applicable to such tax years shall continue to apply.

[Amended by 1957(s.s.) c.15 §9]

317.287 Optional depreciation deduction for taxpayer holding federal certificate of necessity. (1) For taxable years ending after December 31, 1960, in lieu of the deduction for depreciation provided in ORS 317.285, the holder of a certificate of necessity issued after August 22, 1957, entitling the taxpayer

to amortize emergency facilities located in Oregon for federal income tax purposes, pursuant to section 168 of the Internal Revenue Code of 1954, may elect to amortize and deduct a like amount in each taxable year for the purposes of this chapter as is deducted for federal income tax purposes in the same taxable year, with a like adjustment to the basis in the property for the purpose of determining gain on the sale or exchange thereof.

(2) The taxpayer shall preserve and shall submit to the inspection of the department, upon its request, individual certificates of necessity and complete records with regard to each emergency facility and additions thereto, including all data of construction costs, depreciation and amortization and the dates thereof.

(3) This section is applicable only to emergency facilities as to which the construction, erection, installation or acquisition was begun after December 31, 1960, to be used to produce new or specialized defense items or components thereof, as defined in paragraph (4) of section 168(e), Internal Revenue Code of 1954, or to provide research, developmental or experimental services for the Department of Defense or the Atomic Energy Commission or their agencies.

[1961 c.608 §4]

317.290 Depletion. (1) In computing net income there shall be allowed as a deduction, in the case of mines, oil and gas wells, and other natural deposits, except in the case of metal mines as provided in subsection (3) of this section, a reasonable allowance for depletion according to the peculiar conditions in each case. Such reasonable allowance in all cases shall be computed on the cost of the property, and in the case of property acquired prior to January 1, 1929, the basis shall be the cost less depletion properly chargeable against the property to January 1, 1929.

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

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

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

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

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

(a) The term "expenditures which are paid or incurred by it during the tax year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of the erosion of land used in farming" means expenditures paid or incurred for the treatment or moving of earth,

including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control and protection of diversion channels, drainage ditches, earthen dams, water courses, outlets and ponds, the eradication of brush and the planting of windbreaks. Such term does not include the purchase, the construction, installation or improvement of structures, appliances or facilities which are of a character which is subject to the allowance for depreciation provided in ORS 317.285, or any amount paid or incurred which is allowable as a deduction without regard to this section. Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section.

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

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

[1957 c.19 §2]

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

(a) After December 31, 1946, to the United States, the State of Oregon or any political subdivision thereof for use exclusively for public purposes within the State of Oregon.

(b) After December 31, 1946, and before January 1, 1955, to corporations or associations operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(c) After December 31, 1954, to a corporation, trust, community chest, fund or foundation operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(d) After December 31, 1952, to posts or organizations of war veterans (including their auxiliary units and societies) located in the State of Oregon, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(e) After December 31, 1952, to a domestic fraternal society, order or association operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals.

(2) A corporation reporting its taxable income on the accrual basis may also elect to treat such a contribution as made within the tax year by claiming it as a deduction on the return for such tax year provided the board of directors authorized it during the tax year and payment of such contribution is made on or before the fifteenth day of the third month following the close of such tax year.

(3) Contributions or gifts described in subsection (1) of this section shall be allowable as deductions only if verified under rules and regulations prescribed by the department.

(4) The 1961 amendments to this section shall apply to all tax years beginning on or after January 1, 1961, and for prior tax years the law applicable to such tax years shall continue to apply.

[Amended by 1953 c.385 §9; 1955 c.722 §1; 1961 c.565 §1; subsection (4) enacted as 1961 c.565 §2]

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

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

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

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

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

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

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

(6) This section, including the 1959 amendments, applies only to net losses occurring after December 31, 1956.

[1957(s.s.) c.15 §§11, 12; 1959 c.92 §2]

317.298 Disallowance of ORS 317.255 and 317.260 deductions. (1) For tax years, the returns of which are subject to audit on August 9, 1961, and thereafter, no deduction shall be allowed for expenses, otherwise deductible under ORS 317.255, or interest, otherwise deductible under ORS 317.260, if:

(a) Within the period consisting of the taxable year of the taxpayer and two and one-half months after the close thereof such expenses or interest are not paid or constructively received, and the amount thereof is not includable in gross income of the person to whom the payment is to be made;

(b) By reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid or constructively received, includable in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(c) At the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons specified in any one of the paragraphs of subsection (2) of this section.

(2) The persons referred to in subsection (1) are:

(a) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(b) Corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly by or for the same individual, or corporation; or

(c) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for the person who is a grantor of a trust.

(3) For purposes of determining the ownership of stock in applying subsection (2) of this section, section 267, Internal Revenue Code of 1954, in effect on December 31, 1966, respecting related taxpayers, shall apply.

(4) Deductions for expenses which have been disallowed on audit, pursuant to subsections (1) to (3) of this section, shall be allowed as tax deductions in the tax year in which the amounts of the deductions have been actually paid and included in the gross income of the person to whom payment is made.

[1961 c.505 §§2, 3; 1969 c.493 §95]

317.299 Net losses of domestic insurer in prior years. In computing net income, a domestic insurer shall be allowed as a deduction an amount equal to the aggregate net losses of prior years as defined in ORS 317.297 and where necessary as modified by ORS 314.675.

[1969 c.600 §8]

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

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

(2) Any amount expended in restoring property or in making good the exhaustion

thereof for which an allowance is or has been made.

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

(4) Amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the department, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable. This subsection is applicable to tax years beginning after December 31, 1952, but the determination as to whether or not a taxpayer has properly charged to capital account any tax or carrying charge incurred prior to December 31, 1952, shall be made as if this subsection had not been enacted and without inferences drawn from the fact that this subsection was not expressly made applicable to tax years beginning before January 1, 1953.
[Amended by 1953 c.385 §9]

317.305 Election to amortize organizational expenditures. (1) The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with the regulations prescribed by the department), be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business).

(2) As used in this section, "organizational expenditures," means any expenditure which is:

(a) Incident to the creation of the corporation;

(b) Chargeable to capital accounts; and

(c) Of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life.

(3) The election provided by subsection (1) of this section may be made for any taxable year beginning after December 31, 1956, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The period so elected shall be adhered to in computing the taxable income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to expenditures paid or incurred after December 31, 1956.
[1957 c.74 §2]

317.320 Treatment of distributed and undistributed net income of certain small business corporations. Distributed and undistributed taxable income of an electing small business corporation under section 1372 of the Internal Revenue Code, as defined in subsection (1) of ORS 317.197, which is includable in taxable income of a shareholder under the Personal Income Tax Act of 1969, shall be deductible from gross income under this chapter and net operating losses of such corporation, to the extent attributed or made available to a shareholder under the Personal Income Tax Act of 1969, shall not be used by the corporation for further tax benefit.
[1969 c.493 §73]

SPECIAL PROVISIONS APPLICABLE TO CENTRALLY ASSESSED CORPORATIONS

317.350 Special provisions applicable to centrally assessed corporations. (1) The provisions of ORS 317.216, relating to basis of property, and the provisions of ORS 317.285, relating to depreciation, shall be applicable to every centrally assessed corporation, the property of which is assessed by the Department of Revenue under ORS 308.505 to 308.730, except that wherever the date "December 31, 1928" appears therein, there shall be substituted "December 31, 1958", and wherever the date "January 1, 1929" appears therein, there shall be substituted "January 1, 1959"; provided, however, that in the case of specific property acquired by a centrally assessed corporation before January 1, 1959, upon submission to the department of an affidavit showing that a determination of basis therefor, pursuant to ORS 317.216 and 317.285 as modified by this section as to dates, would be unduly onerous, expensive or impossible, it may elect to use the original cost or substituted basis established by it for federal income tax purposes under the Federal Internal Revenue Code, Title 26, U.S.C., in determining depreciation and gain and loss.

(2) The provisions of ORS 317.220, relating to adjusted and substituted basis, shall be applicable to every centrally assessed corporation, except that in paragraph (b) of subsection (2) of ORS 317.220 the

date "January 1, 1959" shall be substituted for "January 1, 1929", and the date "August 3, 1955" shall be substituted for "December 31, 1928."

(3) Taxes deductible by centrally assessed corporations in computing net income for taxable years beginning on or after January 1, 1959, shall include ad valorem taxes paid by them even though the measure of such taxes is affected by the earning power of the centrally assessed corporation.
[1959 c.631 §§4, 5]

RETURNS AND PAYMENT OF TAX

317.355 [Repealed by 1957 c.632 §1 (ORS 314.385 enacted in lieu of ORS 316.545 and 317.355)]

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

(2) For the purposes of this section two or more corporations are affiliated if:

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

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

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

317.365 [Repealed by 1957 c.632 §1 (ORS 314.365 enacted in lieu of ORS 316.550 and 317.365)]

317.370 [Repealed by 1957 c.632 §1 (ORS 314.420 enacted in lieu of ORS 316.620, 317.370 and 317.420)]

317.375 [Repealed by 1957 c.632 §1 (ORS 314.295 enacted in lieu of ORS 316.560 and 317.375)]

317.380 [Repealed by 1957 c.632 §1 (ORS 314.380 enacted in lieu of ORS 316.565 and 317.380)]

317.390 [Amended by 1957 c.607 §6; 1959 c.156 §2; subsection (3) derived from 1959 c.156 §3; repealed by 1969 c.166 §8]

317.395 Date return considered filed or advance payment considered made. A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed shall be considered as made on the last day prescribed by law for the payment of the tax. The last day prescribed by law for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer by the department.
[Amended by 1957 c.607 §7]

317.405 [Amended by 1955 c.587 §1; repealed by 1957 c.632 §1 (ORS 314.405 enacted in lieu of ORS 316.605 and 317.405)]

317.410 [Amended by 1953 c.385 §9; 1955 c.581 §2; 1957 c.20 §1; repealed by 1957 c.632 §1 (ORS 314.410 enacted in lieu of ORS 316.610 and 317.410)]

317.415 [Amended by 1953 c.385 §9; 1955 c.581 §1; repealed by 1957 c.632 §1 (ORS 314.415 enacted in lieu of ORS 316.615 and 317.415)]

317.420 [Amended by 1955 c.356 §1; repealed by 1957 c.632 §1 (ORS 314.420 enacted in lieu of ORS 316.620, 317.370 and 317.420)]

317.425 [Repealed by 1957 c.632 §1 (ORS 314.425 enacted in lieu of ORS 316.625 and 317.425)]

317.430 [Repealed by 1957 c.632 §1 (ORS 314.430 enacted in lieu of ORS 316.630 and 317.430)]

317.435 [Repealed by 1957 c.632 §1 (ORS 314.435 enacted in lieu of ORS 316.635 and 317.435)]

317.440 [Repealed by 1957 c.632 §1 (ORS 314.440 enacted in lieu of ORS 316.640, 317.440 and 317.445)]

317.445 [Repealed by 1957 c.632 §1 (ORS 314.440 enacted in lieu of ORS 316.640, 317.440 and 317.445)]

317.450 [Amended by 1957 c.607 §8; 1961 c.504 §4; repealed by 1969 c.166 §8]

317.455 [Repealed by 1957 c.632 §1 (ORS 314.445 enacted in lieu of ORS 316.650 and 317.455)]

317.460 [Repealed by 1957 c.632 §1 (subsections (1) and (2) of ORS 314.450 enacted in lieu of ORS 316.655 and 317.460)]

317.465 [Repealed by 1957 c.632 §1 (ORS 314.455 enacted in lieu of ORS 316.660 and 317.465)]

317.470 [Amended by 1953 c.385 §9; 1955 c.585 §1; repealed by 1957 c.632 §1 (ORS 314.460 enacted in lieu of ORS 316.665 and 317.470)]

317.475 [Repealed by 1957 c.632 §1 (ORS 314.465 enacted in lieu of ORS 316.670 and 317.475)]

317.480 [Repealed by 1957 c.632 §1 (ORS 314.470 enacted in lieu of ORS 316.675 and 317.480)]

317.505 [Repealed by 1957 c.632 §1 (ORS 314.805 enacted in lieu of ORS 316.705 and 317.505; and ORS 314.815 enacted in lieu of ORS 316.720 and 317.505)]

317.510 Requiring additional reports and information. The department may order additional reports or such other information it deems necessary in addition to the regular reports provided in this chapter. All reports and returns, as provided in this chapter, shall be upon standard forms, adopted by the department, with no more detailed information relating to the taxpayer's business than is necessary to enable the department to administer fully the provisions of this chapter.

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

317.520 [Repealed by 1957 c.632 §1 (ORS 314.820 enacted in lieu of ORS 316.725 and 317.520)]

317.525 [Repealed by 1957 c.632 §1 (ORS 314.825 enacted in lieu of ORS 316.730 and 317.525)]

317.530 [Repealed by 1957 c.632 §1 (ORS 314.830 enacted in lieu of ORS 316.735 and 317.530)]

317.535 [Amended by 1957 c.76 §1; repealed by 1957 c.632 §1 (ORS 314.835 enacted in lieu of ORS 316.740 and 317.535)]

317.540 [Repealed by 1957 c.632 §1 (ORS 314.840 enacted in lieu of ORS 316.745 and 317.540)]

317.545 [Repealed by 1957 c.632 §1 (ORS 314.845 enacted in lieu of ORS 316.750 and 317.545)]

317.550 [Repealed by 1957 c.632 §1 (ORS 314.855 enacted in lieu of ORS 316.760 and 317.550)]

317.590 Disposition of revenue. (1) The net revenue from the tax imposed by this chapter, after deduction of refunds, shall be paid over to the State Treasurer and held by him in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred. A working balance of unreceipted revenue from the tax imposed by this chapter may be retained for the payment of refunds, but such working balance shall not at the close of any fiscal year exceed the sum of $500,000.

(2) The amendment of this section by the Forty-seventh Legislative Assembly shall first apply to the state levy of taxes for the fiscal year 1953-54.

[Amended by 1953 c.309 §2; 1955 c.35 §1; 1957 c.528 §4]

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

317.610 [Renumbered 314.220]

317.615 [Renumbered 314.230]

UNRELATED BUSINESS INCOME OF CERTAIN EXEMPT CORPORATIONS

317.910 Definitions for ORS 317.910 to 317.950. As used in ORS 317.910 to 317.950:

(1) "Unrelated business taxable income" means, in the case of any corporation subject to the tax imposed by ORS 317.920, the gross income derived from any unrelated trade or business, as defined in subsection (2) of this section, regularly carried on by it, less the deductions allowed by this chapter which are directly connected with such trade or business, both computed with the exceptions, additions and limitations provided in ORS 317.930.

(2) "Unrelated trade or business" means any trade or business the conduct of which is not substantially related (aside from the need of such corporation for income or funds or the use it makes of the profits derived) to the exercise or performance of its purpose or function constituting the basis of its exemption under ORS 317.080, except that such term does not include:

(a) A trade or business carried on by the corporation primarily for the convenience or training of its members, students, patients or employes.

(b) The selling of merchandise, all of which has been received by the organization as gifts or contributions.

[1959 c.356 §3]

317.920 Tax imposed on unrelated business income of certain exempt corporations. Notwithstanding the provisions of ORS 317.080, for taxable years beginning on and after January 1, 1960, a corporation otherwise exempt from tax under subsection (1), (4), (5) or (6) of ORS 317.080 shall be subject to the tax imposed by and in accordance with the provisions of this chapter, but only as to its unrelated business taxable income, as defined in ORS 317.910.

[1959 c.356 §2]

317.930 Exemptions and limitations. The following exceptions and limitations shall be applicable in determining the unrelated business taxable income:

(1) There shall be excluded all dividends, interest and annuities and all deductions allowed under this chapter directly connected with such income.

(2) There shall be excluded, in the case of any school, college or university, which rents real property to its students or faculty, all rents derived therefrom, providing that

such property is actually a part of the school and that the continued presence of the students and faculty thereon is necessary to the educative function of the institution.

(3) There shall be excluded all income derived from the research performed for the United States, or any of its agents or instrumentalities, or for any state or political subdivision thereof; and there shall be excluded all deductions connected with such income.

(4) In the case of any organization operated primarily for the purpose of carrying on fundamental research, the results of which are freely available to the general public, there shall be excluded all income derived from such research and all deductions connected with such income.

(5) There shall be excluded all gains or losses from the sale or exchange of property of a kind which would properly be included in the computation of income under ORS 317.206 to 317.236 and 317.241 to 317.250; but there shall be included gains or losses upon the sale or other disposition of stock in trade or other property of a kind properly includible in the inventory of the organization at the close of the taxable year or property held primarily for sale to customers in the ordinary course of the trade or business.

(6) There shall be excluded all reasonable rents from real property (including personal property leased with the real property), and all deductions directly connected with such rents.

(7) Notwithstanding subsection (6) of this section, in the case of a business lease as defined in 26 U.S.C. § 514 (Internal Revenue Code of 1954, § 514), as in effect on January 1, 1959, for every type of corporation subject to the tax imposed by ORS 317.920, there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained using the provisions of 26 U.S.C. § 514 (a) (1) (Internal Revenue Code of 1954, § 514 (a) (1)), as in effect on January 1, 1959, and there shall be allowed as a deduction the amount ascertained using the provisions of 26 U.S.C. § 514 (a) (2) (Internal Revenue Code of 1954, § 514 (a) (2)), as in effect on January 1, 1959.

(8) There shall be allowed a specific deduction of $1,000.

[1959 c.356 §4]

317.940 Special provisions applicable to partnerships. If a trade or business is regularly carried on by a partnership of which a corporation described by ORS 317.080 is a member and such trade or business is unrelated with respect to the corporation, such corporation in computing its unrelated business net income shall, subject to the exceptions and limitations contained in ORS 317.930, include its share (whether distributed or not) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the corporation is different from that of the partnership, the amounts so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within the taxable year of the corporation.

[1959 c.356 §5]

317.950 Assessment of deficiency. If the department finds that unrelated business taxable income, or any portion thereof, has not been assessed, it may, at any time within three years after the return was filed, or in case no return was filed within five years from the time the return should have been filed, compute the tax and give notice to the corporation of the amount due, including penalty and interest thereon. These limitations to the assessment of such tax or additional tax, including penalty and interest thereon, do not apply to the assessment of additional taxes, and penalty and interest thereon, upon false or fraudulent returns or in cases where with a fraudulent intent no return has been filed. ORS 314.410 is also applicable to the extent that it is not inconsistent with the provisions of this section.

[1959 c.356 §6]

317.990 [Repealed by 1957 c.632 §1 (ORS 314.991 enacted in lieu of ORS 316.990 and 317.990)]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, 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