

Chapter 316

1981 REPLACEMENT PART

Personal Income Tax

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GENERAL PROVISIONS

316.002 Short title. This chapter may be cited as the Personal Income Tax Act of 1969. As used in this chapter, the term "this chapter" refers only to the Personal Income Tax Act of 1969. [1969 c 493 §1]

316.005 [1953 c 304 §1, repealed by 1969 c 493 §99]

316.007 Policy. It is the intent of the Legislative Assembly, by the adoption of this chapter, in so far as possible, to make the Oregon personal income tax law identical in effect to the provisions of the federal Internal Revenue Code of 1954 relating to the measurement of taxable income of individuals, estates and trusts, modified as necessary by the state's jurisdiction to tax and the revenue needs of the state; to achieve this result by the application of the various provisions of the federal Internal Revenue Code relating to the definition of income, exceptions and exclusions therefrom, deductions (business and personal), accounting methods, taxation of trusts, estates and partnerships, basis, depreciation and other pertinent provisions relating to gross income as defined therein, modified as provided in this chapter, resulting in a final amount called "taxable income", and to impose a tax on residents of this state measured by taxable income wherever derived and to impose a tax on the income of nonresidents that is ascribable to sources within this state. [1969 c 493 §2, 1971 ss c 4 §1]

316.010 [1953 c 304 §2, 1953 c 552 §1, repealed by 1969 c 493 §99]

316.012 Terms have same meaning as in federal laws. Any term used in this chapter has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined in this chapter. Any reference in this chapter to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they may be in effect for the taxable year of the taxpayer except where the Legislative Assembly has specifically provided otherwise [1969 c 493 §3, 1971 ss c 4 §2, 1975 c 672 §3]

Note: Section 2, chapter 613, Oregon Laws 1981, provides

Sec. 2. Notwithstanding ORS 316.012, for taxable years that begin on or after January 1, 1981, and prior to January 1, 1983, any reference in this chapter to the laws

of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they may be in effect and operative on December 31, 1980, or that were enacted by the United States before December 31, 1980, but that become effective or operative after December 31, 1980. Any change in the laws of the United States or in the Internal Revenue Code of 1954 relating to federal income taxes that is enacted after December 31, 1980, and that takes effect or becomes operative after December 31, 1980, shall not apply to this chapter for taxable years that begin on or after January 1, 1981, and before January 1, 1983, except where the Legislative Assembly has specifically provided otherwise

316.015 [1953 c 304 §3, 1953 c 552 §2, 1959 c 211 §3, 1959 c 593 §1 (referred and rejected), 1963 c 627 §2 (referred and rejected), repealed by 1969 c 493 §99, amended by 1969 c 520 §41]

316.016 [1973 c 119 §2, repealed by 1975 c 672 §8]

316.017 [1969 c 493 §3a, repealed by 1969 c 493 §3b]

316.020 [1953 c 304 §4, repealed by 1969 c 493 §99]

316.022 General definitions. (1) "Department" means the Department of Revenue

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

(3) "Individual" means a natural person, including aliens and minors.

(4) A "nonresident" means an individual who is not a resident of this state

(5) "Taxable income" means the taxable income defined in subsections (a) and (b), section 63, Internal Revenue Code of 1954, with such additions, subtractions and adjustments as are prescribed by this chapter.

(6) "Taxpayer" means any natural person, estate, trust, or beneficiary whose income is in whole or in part subject to the taxes imposed by this chapter, or any employer required by this chapter to withhold personal income taxes from the compensation of employes for remittance to the state [1969 c 493 §§4, 5, 6, 7, 9 and 1969 c 520 §42b]

316.025 [1953 c 304 §5, repealed by 1957 c 632 §1 (314 075 and 314 080 enacted in lieu of 316 025, 316 030, 317 015 and 317 020)]

316.027 "Resident" defined. (1) "Resident" or "resident of this state" means:

(a) An individual who is domiciled in this state unless he (A) maintains no permanent place of abode in this state, and (B) does maintain a permanent place of abode elsewhere, and (C) spends in the aggregate not more than 30 days in the taxable year in this state; or

(b) An individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate

gate more than 200 days of the taxable year in this state is presumed to be a resident unless he proves that he is in the state only for a temporary or transitory purpose.

(2) For purposes of paragraph (b) of subsection (1) of this section, a fraction of a calendar day shall be counted as a whole day. [1969 c 493 §8]

316.030 [1953 c 304 §6, repealed by 1957 c 632 §1 (314 075 and 314 080 enacted in lieu of 316 025, 316 030, 317 015 and 317 020)]

316.032 Department to administer law; policy as to federal conflicts. (1) The Department of Revenue shall administer and enforce this chapter.

(2) In so far as is practicable in the administration of this chapter, the department shall apply and follow the administrative and judicial interpretations of the federal income tax law. When a provision of the federal income tax law is the subject of conflicting opinions by two or more federal courts, the department shall follow the rule observed by the United States Commissioner of Internal Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of the department to audit the return of any taxpayer or to determine any fact relating to the tax liability of any taxpayer [1969 c 493 §10]

316.035 [1953 c 304 §117, repealed by 1969 c 493 §99 and 1969 c 520 §49]

316.037 Imposition and rate of tax; tax on tax preference items. (1) A tax is imposed for each taxable year on the entire taxable income of every resident of this state and on the taxable income of every nonresident that is derived from sources within this state. The amount of the tax shall be determined in accordance with the following table:

If the taxable income is:	The tax is:
Not over \$500	4% of taxable income
Over \$500 but not over \$1,000	\$20 plus 5% of the excess over \$500
Over \$1,000 but not over \$2,000	\$45 plus 6% of the excess over \$1,000
Over \$2,000 but not over \$3,000	\$105 plus 7% of the excess over \$2,000

Over \$3,000 but not over \$4,000	\$175 plus 8% of the excess over \$3,000
Over \$4,000 but not over \$5,000	\$255 plus 9% of the excess over \$4,000
Over \$5,000.....	\$345 plus 10% of the excess over \$5,000

(2) In addition to the tax imposed by subsection (1) of this section, a tax is imposed for each taxable year on the sum of the items of tax preference of every resident, and on the sum of the items of tax preference that are derived from sources within this state of every nonresident if:

(a) The sum of the taxpayer's adjusted gross income derived from sources subject to the taxing jurisdiction of this state plus his items of tax preference described in paragraphs (2) and (3) of subsection (a) of section 57 of the Internal Revenue Code of 1954 derived from sources subject to the taxing jurisdiction of this state is \$20,000 or more, and the sum of the items of tax preference is in excess of \$3,000; or

(b) The sum of the taxpayer's adjusted gross income derived from sources subject to the taxing jurisdiction of this state plus his items of tax preference described in paragraphs (2) and (3) of subsection (a) of section 57 of the Internal Revenue Code of 1954 derived from sources subject to the taxing jurisdiction of this state is less than \$20,000, and the sum of the items of tax preference are in excess of \$10,000.

(3) (a) Except as provided in paragraph (b) of this subsection, the amount of the tax imposed by subsection (2) of this section shall be determined in accordance with the following table:

If the sum of items of tax preference is:	The tax is:
Not over \$5,000	1% of the excess over \$3,000
Over \$5,000 but not over \$7,000	\$20 plus 1-1/2% of the excess over \$5,000

Over \$7,000 but not over \$9,000	\$50 plus 2% of the excess over \$7,000
Over \$9,000 but not over \$12,000	\$90 plus 2-1/2% of the excess over \$9,000
Over \$12,000.....	\$165 plus 3% of the excess over \$12,000

(b) In the case of a husband or wife who files a separate return for the taxable year, the amount of the tax imposed by subsection (2) of this section shall be determined in accordance with the following table:

If the sum of items of tax preference is:	The tax is:
Not over \$2,500	1% of the excess over \$1,500
Over \$2,500 but not over \$3,500	\$10 plus 1-1/2% of the excess over \$2,500
Over \$3,500 but not over \$4,500	\$25 plus 2% of the excess over \$3,500
Over \$4,500 but not over \$6,000	\$45 plus 2-1/2% of the excess over \$4,500
Over \$6,000.....	\$82.50 plus 3% of the excess over \$6,000

(4) As used in subsections (2) to (5) of this section:

(a) "Adjusted gross income" means adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954.

(b) "Items of tax preference" include those items of tax preference listed in section 57 of the Internal Revenue Code of 1954 and shall be determined, if applicable, in a manner consistent with sections 57 and 58 of the Internal Revenue Code of 1954 and this chapter in accordance with rules adopted by the Department of Revenue. However, gain attributable to the sale of a farm if that farm has been owned and dwelt upon by the taxpayer for a period of five years immediately preceding the date of sale shall not be considered an item of tax preference.

(5) In the case of a husband or wife who files a separate return for the taxable year, the \$20,000 amount specified in paragraph (a) of subsection (2) of this section shall be \$10,000 and the \$3,000 amount shall be \$1,500 and the \$10,000 amount specified in paragraph (b) of subsection (2) of this section shall be \$5,000. [1969 c 493 §11, 1975 c 674 §1, 1977 c 872 §1, 1979 c 649 §1]

316.040 | 1953 c 304 §7, repealed by 1969 c 493 §99 |

316.042 Amount of tax where joint return used. In the case of a joint return of husband and wife, pursuant to ORS 316.122 (2) or pursuant to ORS 316.367, the tax imposed by ORS 316.037 (1) shall be twice the tax which would be imposed if the taxable income were cut in half. For purposes of this section, a return of a head of household or a surviving spouse, as defined in subsection (b) of section 1 and subsection (b) of section 2 of the Internal Revenue Code, shall be treated as a joint return of husband and wife. [1969 c 493 §12, 1975 c 674 §2]

316.047 Transitional provision to prevent doubling income or deductions. If any provision of the Internal Revenue Code or of this chapter requires that any amount be added to or deducted from federal gross income or the net income taxable under this chapter that previously had been added to or deducted from net income taxable under the Oregon law in effect prior to the taxpayer's taxable year as to which this chapter is first effective, then, in such event, appropriate adjustment shall be made to the net income for the year or years subject to this chapter so as to prohibit the double taxation or the double deduction of any such amount that previously had entered into the computation of taxable income. Differences such as the difference in basis of property used by the taxpayer for federal and Oregon income tax returns and on account of the treatment of operating losses shall be resolved by application of this principle. However, the department, in its audit of a return, shall not apply any adjustment under this section which, in its opinion, if applied would result in an increase or decrease of tax liability of less than \$25. Where applicable, the provisions of ORS 314.275 shall be utilized. [1969 c 493 §13]

**COMPUTATION OF TAXABLE
INCOME
(Generally)**

316.048 Taxable income of resident.

The entire taxable income of a resident of this state is his federal taxable income as defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter. [Formerly 316 062]

316.049 Exemption for income derived from sources within federally recognized American Indian reservation; qualifications; payment of refund.

(1) Any income derived, on or after January 1, 1953, from sources within the boundaries of a then active Indian reservation in Oregon by an enrolled member of a federally recognized American Indian tribe residing on the reservation of his tribe at the time the income was earned, is exempt from tax under this chapter.

(2) If income exempt from tax under this section has been included on a personal income tax return or a withholding report or return resulting in a tax paid to the State of Oregon, the taxpayer or a personal representative or interested person defined in ORS 118.005, may apply for a refund of any tax paid on such income. Notwithstanding ORS 314.415 and 316.192, a claim for refund may be made any time prior to June 30, 1982.

(3) A copy of the return, evidence of withholding or payment of the tax, and an extract from the tribal rolls or other documentary proof of the taxpayer's enrolled status for each year for which a refund is claimed, and such additional proofs as may be required by the Department of Revenue, shall be attached to any application for refund made under this section.

(4) Payment of any refunds under this section shall be made by the Department of Revenue from the working balance of unrecipited revenue retained for the payment of income tax refunds pursuant to ORS 316.502.

[1977 c 755 §2]

316.050 Exemption for amounts received for condemnation of Indian tribal lands.

Amounts received as condemnation awards as a result of condemnation by the Federal Government of Indian tribal lands are exempt from the tax imposed by this chapter.

[1977 c.553 §2]

316.051 Modification of taxable income for adoption expenses.

For purposes of computing the adoption expense deduction provided in ORS 316.052, "adoption expenses" means expenses paid by the taxpayer during the taxable year that are not otherwise de-

ductible for federal or state income tax purposes, that are incurred during the course of the adoption of one or more children, and that are expenses of the following description:

- (1) Attorney fees
- (2) Court costs.
- (3) Adoption filing fees.
- (4) Social or adoption agency or doctor's adoption fees.

(5) Medical expenses described as follows that are incurred for the care of the natural mother or the child or children:

- (a) Hospital expenses.
- (b) Prenatal expenses.
- (c) Doctor's fees.
- (d) Laboratory fees and medical test expenses.
- (e) Pediatric expenses. [1977 c 390 §2]

316.052 Computation of adoption expense deduction.

If the taxpayer elects to itemize his deductions on his Oregon return, there shall be subtracted from federal taxable income the difference between the amount computed as a medical expense deduction for federal income tax purposes and the amount computed for the medical expense deduction for federal income tax purposes as if adoption expenses were included in the calculation of the deduction allowed by section 213 of the Internal Revenue Code. [1977 c 390 §3, 1979 c 691 §2]

316.053 Proof required. The deduction allowed by ORS 316.052 shall be substantiated, by submission with the tax return, of the receipts of the taxpayer evidencing payment of all adoption expenses or by submission of other information required by the Department of Revenue by rule. [1977 c 390 §4]

316.055 [1953 c 304 §8; 1953 c 552 §3, 1957 s.s c 15 §1, 1963 c 627 §3 (referred and rejected), repealed by 1969 c 493 §99]

316.057 Definitions for ORS 316.057 to 316.059.

(1) "Construction job site" means the specific location of a construction project.

(2) "Construction project" means the construction, alteration, repair, improvement, moving or demolition of a structure and appurtenances thereto.

(3) "Construction worker" means a person who is a member of a recognized construction trade, craft, union or industrial occupation

and who is lawfully engaged in the performance of labor, pursuant to contract or sub-contract, at a construction project.

(4) "Traveling expenses" means daily transportation expenses that:

(a) Are not otherwise deductible under the federal Internal Revenue Code.

(b) Are incurred by a construction worker in job-related travel between a construction job site located more than 50 miles from the principal residence of the construction worker.

(5) "Traveling expenses" includes gas, oil and automobile repairs and maintenance, but does not include meals unless the construction worker is required by the employer to stay overnight at the construction job site. [1977 c 872 §8]

316.058 Modification of taxable income for certain traveling expenses. In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income traveling expenses, as defined in ORS 316.057, incurred by a construction worker during the first year of continuous employment on the same construction job site. However, if employment on the same construction job site is temporarily interrupted for any reason whatsoever, the period of interruption shall not be taken into account in determining the one-year period [1977 c 872 §9]

316.059 Proof of expenses. The modification to federal taxable income by ORS 316.058 shall be substantiated by any proof required by the Department of Revenue by rule. [1977 c 872 §10]

316.060 [1953 c 304 §9, 1955 c 596 §1, part derived from 1955 c 596 §4, 1957 c 586 §1, 1957 s s c 15 §2, 1959 c 593 §2 (referred and rejected), 1963 c 627 §4 (referred and rejected), 1963 c 627 §4 (referred and rejected), repealed by 1969 c 493 §99, amended by 1969 c 520 §42]

316.061 Definitions for ORS 316.061 and 316.063. As used in ORS 316.061 and 316.063:

(1) "Forest products" means any merchantable form including but not limited to logs, poles and piling, into which a fallen tree may be cut before it undergoes manufacturing.

(2) "Logger" means a person commonly known as a faller or buckler who furnishes and maintains his own equipment in the commercial harvesting of forest products and who is paid on a per-unit cut basis.

(3) "Logging operation site" means the specific location of the commercial harvesting of forest products.

(4) "Traveling expenses" means daily transportation expenses that:

(a) Are not otherwise deductible under the federal Internal Revenue Code.

(b) Are incurred by a logger in job-related travel between a logging operation site located more than 50 miles from the principal residence of the logger.

(5) "Traveling expenses" includes gas, oil and automobile repairs and maintenance but does not include meals or lodging. [1979 c 887 §2]

316.062 [1969 c 493 §14, renumbered 316 048]

316.063 Deduction of travel expenses for loggers. (1) In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income traveling expenses, as defined in ORS 316.061, incurred by a logger in job-related travel.

(2) The modification to federal taxable income by subsection (1) of this section shall be substantiated by any proof required by the Department of Revenue by rule. [1979 c 887 §§3, 4]

316.064 Deduction for art object donation. (1) If an art object has not been previously sold or otherwise transferred by its creator and the creator makes a charitable contribution of the art object that qualifies for the deduction allowed by section 170 of the Internal Revenue Code for the taxable year to a donee that uses the art object for a purpose or function that constitutes the basis for its exemption under section 501 of the Internal Revenue Code, or to a governmental unit, there shall be subtracted from federal taxable income any positive amount obtained by subtracting:

(a) The amount otherwise deductible on the Oregon tax return of the taxpayer-creator for the taxable year as charitable contributions from

(b) The amount that would have been deductible by the taxpayer-creator if the deduction for charitable contributions had been computed without reduction in amount under section 170 (e) of the Internal Revenue Code for the art object charitably contributed by its creator.

(2) As used in this section, "art object" means a painting, sculpture, photograph, graphic or craft art, industrial design, costume or fashion design, tape or sound recording or film.

(3) No additional subtraction shall be allowed to the taxpayer-creator under this section unless the tax return is accompanied by a copy of an appraisal report showing the fair market value of the art object at the time the contribution was made. [1979 c 707 §2]

316.065 [1953 c 304 §10, repealed by 1959 c 593 §14 (referred and rejected), repealed by 1963 c 627 §23 (referred and rejected), repealed by 1969 c 493 §99]

316.066 [1973 c 753 §2, repealed by 1979 c 414 §7]

316.067 Modification of taxable income. (1) There shall be subtracted from federal taxable income:

(a) The interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. However, the amount subtracted under this section shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this section, and by any expenses incurred in the production of interest or dividend income described in this section to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.072, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c) Amounts received in the taxable year in compensation for personal services rendered in prior years, from a pension, annuity, retirement or similar fund under a public retirement system established by the United States, including the retirement system for the performance of service in the Armed Forces of the United States, or by this state or any municipal corporation or political subdivision of this state (but excluding the Public Employees' Retirement System established by ORS chapter 237). In the case of a public retirement system established by the United States, including the retirement system for the performance of service in the Armed

Forces of the United States, the maximum amount excludable from taxable income from such pensions or annuities shall be in the amount of \$3,400. However, if the retiree is under 62, the \$3,400 subtraction is reduced dollar for dollar to the extent of any earned income, as defined in subsection (3) of this section, received during the taxable year. If the retiree receives \$25,000 or more of household income, as defined in ORS 310.630, the subtraction is zero.

(d) The amount of any payments received from the Public Employees' Retirement Fund under ORS 237.001 to 237.315 which are exempt from state taxation under ORS 237.201

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

(f) For taxable years open to audit on October 5, 1973, the amount of any deferred income which was added to federal taxable income for state tax purposes under paragraph (e) of subsection (2) of this section in a prior taxable year and which is now added to federal taxable income. For purposes of this paragraph, the amount subtracted shall not exceed the amount of gain now reported on the federal return. If the gain is a capital gain or subject to capital gain treatment, the adjustments under this paragraph shall be similar to the adjustments made under paragraph (e) of subsection (2) of this section in the prior year.

(g) For taxable years beginning on and after January 1, 1972, any expenses under ORS 118.070 (6) that have not been deducted in computing federal taxable income and have not been and will not be claimed as deductions for Oregon inheritance tax purposes under ORS 118.070.

(2) There shall be added to federal taxable income:

(a) Interest or dividends on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state.

(b) Interest or dividends on obligations of any authority, commission, instrumentality and territorial possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income taxes.

(c) The amount of any federal estate taxes allocable to income in respect of a decedent not taxable by Oregon.

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 614 and 615, Internal Revenue Code of 1954.

(e) For taxable years beginning on and after January 1, 1969, the amount of any gain which is deferred for tax recognition purposes upon the voluntary or involuntary conversion or exchange of tangible real or personal property where the property newly acquired by the taxpayer has a situs outside the jurisdiction of the State of Oregon. However, for taxable years beginning on and after January 1, 1979, this paragraph shall not apply to the principal residence newly acquired by the taxpayer even if its situs is outside the jurisdiction of the State of Oregon.

(f) For taxable years beginning on and after January 1, 1972, any expenses under ORS 118.070 (6) that have been or will be claimed as deductions for Oregon inheritance tax purposes in an amount not to exceed the deductions actually claimed by the taxpayer on the federal income tax return for the same taxable year.

(3) In the case of amounts received from the retirement system for performance of service in the Armed Forces of the United States as described in paragraph (c) of subsection (1) of this section the \$3,400 exclusion shall be granted only to retirees age 65 or older and such exclusion is further reduced dollar for dollar to the extent of any earned income received during the taxable year. "Earned income" means salaries, wages, or professional fees and other amounts received as compensation for personal services rendered, past or present, but does not include amounts received from such retirement system. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors only 50 percent of the income from such trade or business shall be considered to be from personal services. [1969 c 493 §15, 1971 c 686 §12, 1971 c 736 §1, 1973 c 1 §1, 1973 c 88 §1, 1973 c 402 §18, 1973 c 753 §3; 1977 c 784 §1, 1979 c 414 §5, 1979 c 436 §1; 1979 c 579 §7]

316.068 Additional modification of taxable income. (1) In addition to the modifications to federal taxable income contained in

this chapter, there shall be added to or subtracted from federal taxable income:

(a) If, in computing federal income tax for a taxable year, the taxpayer deducted excess itemized deductions, as defined in section 63(c) of the Internal Revenue Code, the taxpayer shall add the excess itemized deductions to federal taxable income.

(b) If, in computing federal income tax for a taxable year, the taxpayer is required to add an unused zero bracket amount, as defined in section 63(e) of the Internal Revenue Code, the taxpayer shall subtract the unused zero bracket amount from federal taxable income.

(c) From federal taxable income there shall be subtracted the larger of.

(A) The taxpayer's itemized deductions as defined in section 63(f) of the Internal Revenue Code exclusive of his or her Oregon income tax; or

(B) A standard deduction that is the larger of \$1,050 or 13 percent of federal adjusted gross income, not to exceed \$1,500. However, if the taxpayer is a married individual filing a separate return, the standard deduction under this subparagraph is the larger of \$525 or 13 percent of federal adjusted gross income, not to exceed \$750. This subparagraph shall not apply to a husband or wife filing a separate return where the other spouse has claimed itemized deductions under subparagraph (A) of this paragraph; a nonresident alien individual; an Oregon resident entitled to the benefits of section 931 of the Internal Revenue Code (relating to income from sources within possessions of the United States); an individual making a return for a period of less than 12 months on account of a change in his or her annual accounting period; an estate or trust; a common trust fund; or a partnership. For purposes of this subparagraph, "federal adjusted gross income" means the taxpayer's adjusted gross income shown on his or her federal return without the modifications provided in this chapter.

(2) In addition to the modifications to federal taxable income contained in this chapter:

(a) If the dollar amount allowed under section 151 of the Internal Revenue Code for a personal exemption for the taxable year is greater than the dollar amount of the deduction for personal exemption allowed for state personal income tax purposes as recomputed by the Department of Revenue under section 3, chapter 240, Oregon Laws 1979, there shall

be added to federal taxable income an amount equal to the difference between the dollar amount allowed and the dollar amount of the deduction for personal exemption allowed for state personal income tax purposes as recomputed by the Department of Revenue under section 3, chapter 240, Oregon Laws 1979, multiplied by the number of personal exemptions claimed on the Oregon return.

(b) If the dollar amount allowed under section 151 of the Internal Revenue Code for a personal exemption for the tax year is less than the dollar amount of the deduction for personal exemption allowed for state personal income tax purposes as recomputed by the Department of Revenue under section 3, chapter 240, Oregon Laws 1979, there shall be subtracted from federal taxable income an amount equal to the difference between the dollar amount allowed and the dollar amount of the deduction for personal exemption allowed for state personal income tax purposes as recomputed by the Department of Revenue under section 3, chapter 240, Oregon Laws 1979, multiplied by the number of personal exemptions claimed on the Oregon return.

(3) There shall be subtracted from federal taxable income any portion of the distribution of a pension, profit-sharing, stock bonus or other retirement plan, representing that portion of contributions which were taxed by the State of Oregon but not taxed by the Federal Government under laws in effect for tax years beginning prior to January 1, 1969.

(4) (a) Except as provided in paragraph (b) of this subsection, in addition to the adjustments to federal taxable income required by ORS 316.067, there shall be added to federal taxable income the amount of any federal income taxes in excess of \$7,000, accrued by the taxpayer during the taxable year as described in ORS 316.072, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(b) In the case of a husband and wife filing separate tax returns, the amount added shall be in the amount of any federal income taxes in excess of \$3,500, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(5)(a) In addition to the adjustments required by ORS 316.117, a nonresident individual shall add to his or her taxable income a proportion of any accrued federal income taxes as computed under ORS 316.072 in

excess of \$7,000 in the proportion provided in ORS 316.117 (5).

(b) In the case of a husband and wife filing separate tax returns, the amount added under this subsection shall be computed in a manner consistent with the computation of the amount to be added in the case of a husband and wife filing separate returns under subsection (4) of this section. The method of computation shall be determined by the Department of Revenue by rule.

(6) Paragraph (b) of subsection (4) and paragraph (b) of subsection (5) of this section shall not apply to married individuals living apart as defined in section 143(b) of the Internal Revenue Code.

(7)(a) If the dollar amount of interest and dividend income that is excludable from federal taxable income under section 116 of the Internal Revenue Code is less than \$200 for an individual (\$400 in the case of a joint return), there shall be subtracted from federal taxable income an amount of interest and dividend income, received by the taxpayer for the taxable year, in excess of the amount excludable under section 116 of the Internal Revenue Code.

(b) The subtraction allowed under this subsection shall not exceed the difference between the exclusion provided under section 116 of the Internal Revenue Code and \$200 for an individual (\$400 in the case of a joint return).

(c) The subtraction allowed under this subsection shall not include any interest and dividend income otherwise excluded from Oregon taxable income. [1975 c 672 §§2, 2a, 10b, 13, subsection (7) enacted as 1975 c 650 §2, 1977 c 795 §10, 1977 c 872 §12, 1978 c 9 §1, 1979 c 240 §1, 1979 c 436 §6, 1981 c 679 §1, 1981 c 896 §1]

Note: ORS 316 068 (4) to (6) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 316 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

Note: Section 2, chapter 679 and section 4, chapter 896, Oregon Laws 1981, each provide

Sec. 2. The amendments to ORS 316 068 by section 1 of this Act apply to tax years beginning on or after January 1, 1983

Sec. 4. The amendments to ORS 316 068 by section 1 of this Act first apply to tax years beginning on or after January 1, 1983

NOTE: Section 3, chapter 240, Oregon Laws 1979, as amended by section 2, chapter 896, Oregon Laws 1981, provides

Sec. 3. (1) For each taxable year beginning on or after January 1, 1983, the Department of Revenue shall recompute the dollar amount of the deduction for personal exemption allowed for state personal income tax purposes. The computation shall be made as follows:

(a) Divide the Portland Consumer Price Index for July of the current calendar year by the Portland Consumer Price Index for July of 1982.

(b) Recompute the dollar amount of deduction for personal exemption by multiplying \$1,000 by the appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round off the dollar amount obtained under this paragraph to the nearest \$10.

(2) As used in this section, "Portland Consumer Price Index" means the Consumer Price Index for All Urban Consumers (Portland- all items) as published by the Bureau of Labor Statistics of the United States Department of Labor for the Portland, Oregon Standard Metropolitan Statistical Area.

316.069 Exemption of cash payments for energy conservation. Any amount received as a cash payment for energy conservation measures under ORS 316.069, 317.071, 317.083, 318.090 and 469.631 to 469.687 is exempt from the tax imposed under this chapter. [1981 c 778 §34]

316.070 [1953 c 304 §13, repealed by 1969 c 493 §99]

316.071 Deduction of foreign income taxes. (1) Subject to subsection (2) of this section, in addition to other modifications provided in this chapter, and if a taxpayer elects to take foreign income taxes imposed for the taxable year by a foreign country as a credit on the federal income tax return or does not itemize personal deductions on the federal income tax return, there shall be subtracted from federal taxable income in the computation of state taxable income the amount of foreign income taxes imposed for the taxable year by a foreign country.

(2) The deduction for foreign country income taxes provided by this section shall be limited as follows:

(a) Except as provided in paragraph (b) of this subsection, the sum of foreign country income taxes deducted in computing state taxable income and the modification for federal income taxes authorized by ORS 316.067 (1)(b) as limited by ORS 316.068 (4) shall not exceed \$7,000.

(b) In the case of a husband and wife filing separate tax returns, the sum described in paragraph (a) of this subsection shall be limited to \$3,500. [1981 c 801 §2]

316.072 Federal income tax deductions; accrual method of accounting required. (1) Notwithstanding ORS 314.275 and any provision of the Personal Income Tax Act of 1969, for tax years beginning on and after January 1, 1969, the federal income tax deduction provided by ORS 316.067 shall be as reported on the taxpayer's original return and shall be computed on the accrual method of accounting. Any adjustments to the federal income tax deduction now or hereafter required by Oregon law, including but not limited to the elimination of the self-employment tax, also shall be computed and eliminated according to the accrual method of accounting.

(2) Cash basis taxpayers who have made payments of taxes for years beginning prior to January 1, 1969, in tax years beginning on or after January 1, 1969, shall be entitled to a deduction for such taxes paid for those years in accordance with their usual method of accounting.

(3) Cash basis taxpayers receiving a refund of federal income taxes paid for years beginning prior to January 1, 1969, in tax years beginning on and after January 1, 1969, shall include such refunds in income in accordance with the method of accounting in effect for tax years beginning prior to January 1, 1969.

(4) If refunds or additional assessments result from an adjustment whether initiated by the federal or state government or the taxpayer after the filing of the original return by the taxpayer, any additional federal taxes shall be deductible by the Oregon taxpayer under this section in the year in which the adjustment is finally determined or paid whichever is later. In the case of a refund the tax reduction will be added to the taxpayer's income in the year in which the refund is received.

(5) For purposes of this chapter, federal income tax does not include the following:

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

(b) Taxes paid pursuant to the Self-Employment Contribution Act, subtitle A,

chapter 2, Internal Revenue Code of 1954.
[1969 c 467 §6, 1979 c 376 §1, 1981 c 705 §1]

316.073 Tax rebates. The amount of any tax rebate, grant or other payment paid directly by the Federal Government to a taxpayer under section 6428 of the Internal Revenue Code of 1954 as amended by Public Law 94-12, March 29, 1975, shall be exempt from the tax imposed by this chapter. [1975 c 672 §12]

316.074 Exemption for service in Vietnam on missing status. (1) Any compensation or gratuity received from any source by any individual by reason of civilian or military service on and after February 28, 1961, during the Vietnam conflict, for any month during any part of which such individual is in a missing status as a result of that conflict, is exempt from tax under this chapter. Any such compensation or gratuity is exempt from tax without regard to:

(a) The identity of the recipient of the compensation or gratuity;

(b) The death of the individual whose service in a missing status results in payment of the compensation or the gratuity; or

(c) A date of death established for the individual whose service in a missing status results in payment of the compensation or the gratuity.

(2) As used in this section:

(a) "Compensation" does not include any pension or retirement allowance.

(b) "Missing status" means the status of an individual who is carried or determined to be in a status of missing; missing in action; interned in a foreign country; captured, beleaguered or besieged by a hostile force; or detained in a foreign country against his will. "Missing status" does not include the status of an individual for a period during which he is officially determined to be absent from his post of duty without authority.

(3) If income exempt from tax under this section has been included on a return resulting in a tax paid to the State of Oregon, the person who filed the return, a surviving spouse or the executor as defined in ORS 118.005, may apply for a refund of any tax paid on such income. Notwithstanding ORS 314.415, a claim for refund may be made any time prior to June 30, 1981.

(4) In addition to the income tax relief provided by subsections (1), (2) and (3) of this section, any provision in the laws of the United

States or in the Internal Revenue Code of 1954 providing income tax relief for returning prisoners of war, persons in a missing status, their spouses, heirs, devisees or executors shall apply to the measurement of the taxable income of individuals, estates and trusts under this chapter in the same taxable year as that provided in such federal laws. [1973 c 475 §§2, 3, 1975 c 672 §4]

316.075 [1953 c 304 §11, 1953 c 522 §4, 1959 c 593 §3 (referred and rejected), 1963 c 627 §5 (referred and rejected), repealed by 1969 c 493 §99]

316.076 Deduction for physician in medically disadvantaged area. (1) Any person who becomes licensed under ORS chapter 677 on or after January 1, 1974, and prior to January 1, 1982, and enters the practice of medicine in any medically disadvantaged area of this state may deduct as an expense from income earned from his practice of medicine an amount equal to his annual expense incurred for each year in attending medical school, including tuition, fees, living expenses and other actual and necessary expenses, but not to exceed \$10,000 for any year.

(2) In order to qualify for the exemption granted by subsection (1) of this section, the person must apply to the department on or before April 15, following the first tax year for which the deduction is claimed on a form prescribed by the department and accompanied by evidence from the Board of Medical Examiners for the State of Oregon that the area in which the person is practicing was medically disadvantaged when the physician entered practice there.

(3) The deduction authorized by subsection (1) of this section shall be applicable for four tax years. [1973 c 644 §6, 1979 c 699 §1]

316.077 Fiduciary adjustment. There shall be added to or subtracted from federal taxable income, as the case may be, the taxpayer's share of the fiduciary adjustment determined under ORS 316.287. [1969 c 493 §16]

316.078 Tax credit for household and dependent care. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to 40 percent of the credit the taxpayer is entitled to and claims as a credit on his federal income tax return, pursuant to section 44a of the Internal Revenue Code as of October 3, 1979, relating to expenses for household and dependent care services necessary for gainful employment.

(2) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117 (5)

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 316.215, or if the department terminates the taxpayer's taxable years under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 316.215.

(4) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.397. [1975 c 672 §15a; 1977 c 872 §3, 1979 c 691 §4]

316.079 Credit for certain disabilities. A \$50 credit, against income taxes owed, shall be allowed a taxpayer who as of the close of his taxable year has suffered a permanent and complete loss of function of both legs or both arms or one leg and one arm as certified to by a public health officer. The certificate shall be in a form prescribed by the department and shall be filed with the first return in which the credit is claimed. [1973 c 120 §2]

316.080 [1953 c 304 §12, renumbered 316 475]

316.081 Special computation of gain or loss where farm use value used. Notwithstanding any other provision of this chapter, when gain or loss is included in federal taxable income:

(1) From property, the gain or loss from the disposition of which is taxable under this chapter, and which was valued for inheritance tax purposes under ORS 118.155, or

(2) From property, the basis of which is computed in whole or in part with respect to property that was valued for inheritance tax purposes under ORS 118.155,

there shall be added to federal taxable income the difference between the taxable gain or loss that would otherwise be determined under this chapter and the gain or loss that would be taxable had the basis for federal tax purposes been computed using the forest or farm use value provided for under ORS 118.155 instead of the basis computed pursuant to section 1014 of the Internal Revenue Code. [1973 c 503 §15, 1975 c 705 §11, 1981 c 502 §1]

Note: Section 35, chapter 666, Oregon Laws 1977, as amended by section 2, chapter 502, Oregon Laws 1981, provides

Sec. 35. ORS 316 081 shall not apply in any case in which a carryover basis was elected for certain property acquired from a decedent dying after December 31, 1976, and before November 7, 1978, is provided by section 1023 of the Internal Revenue Code (Tax Reform Act of 1976)

(Residents)

316.082 Credit for taxes paid another state. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual for the taxable year by another state of the United States or the District of Columbia on income derived from sources therein and that is also subject to tax under this chapter.

(2) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other taxing jurisdiction bears to the entire adjusted gross income of the taxpayer as modified by this chapter.

(3) The department shall provide by rule the procedure for obtaining credit provided by this section and the proof required.

(4) No credit allowed under this section or ORS 316.292 shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax is restored to income on the Oregon return. [1969 c 493 §17, 1981 c 801 §3]

316.083 Exception to ORS 316.081. ORS 316.081 shall not apply in any case in which a carryover basis for certain property acquired from a decedent dying after December 31, 1976, is provided by section 1023 of the Internal Revenue Code (Tax Reform Act of 1976). [1977 c 666 §35]

316.084 Credit for fish habitat improvement. (1) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter, based upon the cost of a fish habitat improvement project certified under ORS 496.260. The amount of the credit shall be 25 percent of the amount certified.

(2) To qualify for the credit under this section:

(a) The fish habitat improvement project must have been given final certification by the State Department of Fish and Wildlife as provided in ORS 496.260.

(b) The credit must be claimed for the year in which final certification for the project is granted.

(c) The taxpayer who is allowed the credit must be the person who actually expended funds for construction or installation of the project.

(d) The fish habitat improvement project must not be required by existing federal or state statute.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) 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 and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117 (5).

(6) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.397.

(7) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 316.215, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 316.215.

(9) If the taxpayer is a shareholder of a Subchapter S corporation that has elected to take the credit on behalf of its shareholders as provided in ORS 317.087, the credit shall be computed and afterwards apportioned to each shareholder on the basis of the shareholder's pro rata share of the corporation's cost of the fish habitat improvement project. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law.

(10) The tax claim for tax credit shall be substantiated by submission, with the tax return, of the State Department of Fish and Wildlife notice of final project certification.

[1981 c 720 §16]

Note: Section 24, chapter 720, Oregon Laws 1981, provides

Sec. 24. Sections 16, 18 and 20 of this Act apply to tax years beginning on or after January 1, 1983

316.086 Credit for connection to geothermal heating system. (1) As used in this section:

(a) "Cost of connecting to a geothermal heating system" includes, but is not limited to, the cost of acquisition and installation of connecting pipe and other fixtures or equipment within a dwelling or between a dwelling and a trunk line necessary to allow a dwelling to utilize the services provided by a geothermal heating district.

(b) "Dwelling" means real or personal property within the state inhabited as the principal residence of an owner or renter and which is occupied at the time the dwelling is connected to a geothermal heating system provided by a geothermal heating district.

(2) A resident individual shall be allowed a credit against taxes otherwise due under this chapter, based upon the cost of connecting to a geothermal heating system provided by a geothermal heating district.

(3) To qualify for the credit under this section:

(a) The dwelling must be connected to a geothermal heating system provided by a geothermal heating district on or after October 3, 1979;

(b) The taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling served by the geothermal heating system; and

(c) The taxpayer must claim the credit in the tax year during which the cost of connect-

ing to the geothermal heating system provided by a geothermal heating district was incurred.

(4) The taxpayer who is allowed the credit shall not be entitled to more than one credit under this section in any one taxable year.

(5) The credit allowed under this section for any dwelling shall not exceed the lesser of:

(a) Twenty-five percent of the actual cost of connecting to a geothermal heating system; or

(b) \$1,000.

(6) A credit under this section may be claimed by a taxpayer for connecting to a geothermal heating system in those tax years which begin on or after January 1, 1980, but prior to January 1, 1990.

(7) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(8) 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, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(9) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117 (5).

(10) If a change in the taxable year of a taxpayer occurs as described in ORS 316.215, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 316.215.

(11) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.397.

(12) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been

allowed on a joint return in proportion to the contribution of each. However, a husband or wife living in his or her separate principal residence may claim the tax credit in the same amount as permitted a single person.

(13) Any amount used as the basis for a tax credit under ORS 316.116 shall not be used as a basis for a tax benefit under this section. [1979 c 733 §2]

316.087 Federal income tax credit for the elderly. (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to 15 percent of the credit for the elderly the taxpayer is entitled to and claims as a credit on his federal income tax return, pursuant to section 37 of the Internal Revenue Code as of October 3, 1979.

(2) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117 (5).

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 316.215, or if the department terminates the taxpayer's taxable years under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 316.215.

(4) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.397. [1969 c 493 §18, 1971 c 736 §2; 1977 c.872 §4; 1979 c 691 §5]

316.088 Credit for weatherization. (1) As used in this section:

(a) "Dwelling" means real or personal property within the state inhabited as the principal residence of an owner or renter and which is occupied at the time weatherization materials are installed. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and an individual unit within multiple unit residential housing. It does not include a recreational vehicle as defined in ORS 446.003.

(b) "Weatherization materials" means items primarily designed to improve the efficiency of space heating and energy utilization of a dwelling. Such items include, but are not limited to, caulking, weatherstripping and

other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts and hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Weatherization materials" includes mobile home weatherization materials.

(c) "Mobile home weatherization materials" means items primarily designed to improve the efficiency of space heating and energy utilization of a dwelling. Such items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, floor insulation, ground cover, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers.

(2)(a) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter, based upon the cost of purchasing and installing weatherization materials in the dwelling.

(b) The Department of Energy shall furnish to the department a specific list of items which qualify as "weatherization materials" under this section. Wherever necessary, the list shall include any qualifications as to quality, quantity or other relevant standards which are necessary requirements as to the item before it meets the test of improving the efficiency of space heating and energy utilization of a dwelling. In addition, the Department of Energy shall identify from time to time additional weatherization materials that qualify under this section. A list shall be provided to the department prior to January 1, 1980, and prior to January 1 of each year thereafter for purposes of determining what items qualify for the tax credit in the next calendar year. For purposes of the 1977, 1978 and 1979 tax years, the items previously listed in the rules of the Department of Revenue in effect for such years shall qualify as "weatherization materials."

(3) To qualify for the credit under this section:

(a) The weatherization materials must be installed in a mobile home or floating home on or after January 1, 1979, and in other dwellings on or after October 4, 1977. The weatherization materials also must:

(A) In all cases other than that listed in subparagraph (B) of this paragraph, be installed before January 1, 1981; or

(B) If the taxpayer owns a dwelling heated by fuel oil, be installed in that dwelling before September 1, 1981.

(b) A statement certifying compliance with the requirements of this section, in a form prescribed by the department, must accompany the tax return in which the credit is claimed.

(c) The taxpayer who is allowed the credit under this section must be the owner of the dwelling in which the weatherization materials are installed or the purchaser of the dwelling under a recorded instrument of sale at the time such materials are installed.

(4) The taxpayer who is allowed the credit shall be entitled to a credit under this section for only one dwelling in any one taxable year.

(5) The credit allowed under this section for any dwelling shall not exceed the lesser of:

(a) Twenty-five percent of the actual cost of the acquisition and installation of the weatherization materials; or

(b) \$125.

(6)(a) A credit under this section may be claimed by a taxpayer for weatherization materials in those tax years which begin on or after January 1, 1977, but before:

(A) January 1, 1981, if the credit is claimed for the purchase of weatherization materials and the installation of those materials in a dwelling not heated by fuel oil; or

(B) January 1, 1982, if the credit is claimed for the purchase of weatherization materials and the installation of those materials in a dwelling heated by fuel oil.

(b) Notwithstanding paragraph (a) of this subsection, a credit under this section may be carried forward as provided in subsection (9) of this section.

(7) The credit allowed in any one taxable year shall not exceed the tax liability of the taxpayer.

(8) The total amount of credits allowed under this section for any particular dwelling shall not exceed \$125.

(9) 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 on such next succeed-

ing 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, and any credit not used in that third succeeding year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(10) A nonresident shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117 (5).

(11) If a change in the taxable year of a taxpayer occurs as described in ORS 316.215, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 316.215.

(12) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.397.

(13) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each. However, a husband or wife living in his or her separate principal residence may claim the tax credit in the same amount as permitted a single person.

(14) The dollar amount of costs allowed as a credit under this section shall not be allowed as a deduction for purposes of computation of state taxable income, nor shall the dollar amount of the costs allowed as a credit be added to the basis of the property for purposes of depreciation or computation of gain or loss on sale or other disposition of the property.

(15) Any amount of assistance, aid, grant, refund or subsidized loan for weatherization materials received under the laws or regulations of this state and any amount used as the basis for a tax benefit for weatherization materials for state income tax purposes under state law or regulation other than ORS 308.690 and this section shall not be used as a basis for a tax benefit under this section. [1977 c.811 §2, 1979 c 534 §1, 1981 c 894 §1]

316.089 Definitions for ORS 316.091.
As used in ORS 316.091.

(1) "Gleaning" means the harvesting of an agricultural crop or a portion of a crop that is donated by the grower of the crop to a gleaning cooperative at such a time that:

(a) The grower of the crop has supplied his crop contract quota with the wholesale or retail buyer; or

(b) If the grower of the crop is a party to a contingent supply contract, the wholesale or retail buyer reduces the crop quota that was reasonably anticipated to be supplied by the grower; or

(c) Harvesting the crop for sale in the normal course of business is no longer economically feasible; and

(d) The crop would otherwise go to waste.

(2) "Gleaning cooperative" means a non-profit federally tax exempt organization that is organized to provide and distribute produce to individuals who meet the low-income eligibility guidelines of the federal State Community Services Program established pursuant to the federal Community Services Act of 1974 (Public Law 93-744).

(3) "Wholesale market price" means the lowest monthly wholesale market price for the produce in the nearest regional market:

(a) Without consideration of grade or quality of the produce;

(b) During the month of the donation; and

(c) As determined by the State Department of Agriculture. [1977 c 852 §2]

Note: Sections 2 and 4, chapter 622, Oregon Laws 1979, provide

Sec. 2. ORS 316 089 is amended to read

316.089. As used in ORS 316.091

(1) "Gleaning" means the harvesting of an agricultural crop or a portion of a crop grown primarily to be sold for cash that is donated by the grower of the crop to a gleaning cooperative at such a time that the crop is still usable as food for human beings and

(a) The grower of the crop has supplied his crop contract quota with the wholesale or retail buyer; or

(b) If the grower of the crop is a party to a contingent supply contract, the wholesale or retail buyer reduces the crop quota that was reasonably anticipated to be supplied by the grower, or

(c) Harvesting the crop for sale in the normal course of business is no longer economically feasible, and

(d) The crop would otherwise go to waste

(2) "Gleaning cooperative" means a nonprofit federally tax exempt organization that is organized to provide and distribute produce to individuals who meet the low-income eligibility guidelines of the federal State Community Services Program established pursuant to the federal Community Services Act of 1974 (Public Law 93-744)

(3) "Wholesale market price" means the market price for the produce determined either by

(a) The amount paid to the grower by the last previous cash buyer of the particular crop, or

(b) In the event there is no previous cash buyer, a market price determined by the gleaning cooperative based upon the market price of the nearest regional wholesale buyer or the regional u-pick market price

Sec. 4. The amendments to ORS 316.089 and 316.091 by sections 2 and 3 of this Act apply to taxable years beginning on or after January 1, 1979, but prior to January 1, 1983

316.091 Credit for crop gleaning. (1) An individual who is a grower of a crop and who permits the gleaning of his crop shall be allowed a credit against the taxes otherwise due under this chapter.

(a) In the case of a donation made under circumstances described in ORS 316.089 (1)(a) and (b), the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price.

(b) In the case of a donation made under circumstances described in ORS 316.089 (1)(c) and (d), the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price that the grower would have received had the quantity of the crop donated been salable.

(2) At the time of donation, the director, supervisor or other appropriate official of the gleaning cooperative to which a donation is made shall supply to the grower of the crop donated two copies of a form prescribed by the Department of Revenue. The forms shall contain:

(a) The name and address of the grower;

(b) The description and quantity of the donated crop;

(c) The signature of the director, supervisor or other appropriate official of the gleaning cooperative verifying that the produce was or will be distributed to low-income individuals meeting the guidelines described in ORS 316.089 (2); and

(d) Other information required by the Department of Revenue and the State Department of Agriculture by rule.

(3) The grower of the crop donated shall promptly send to the State Department of Agriculture one copy of the form supplied by the gleaning cooperative

(4) Prior to the 15th day of the month following the month in which a donation was made, the director or other appropriate official of the State Department of Agriculture shall:

(a) Compute and add to the form the applicable wholesale market price of the donated crop;

(b) Sign the form, verifying the wholesale market price; and

(c) Send the verified form to the individual who donated the crop.

(5) In the event that the State Department of Agriculture fails to transmit the form to the individual who donated the crop within the time required, the form supplied to the individual by the gleaning cooperative shall be conclusive proof that the donation was made.

(6) Tax claim for tax credit shall be substantiated by submission with the tax return, of the form verified by the State Department of Agriculture and a statement verified by the taxpayer that the donation was made under circumstances described in ORS 316.089 (1). In the event that the State Department of Agriculture failed to transmit the form to the individual, tax claim for tax credit shall be substantiated by submission, with the tax return, of the form supplied to the individual by the gleaning cooperative upon which the wholesale market price for the month in which a donation was made is subsequently verified by the State Department of Agriculture. [1977 c 852 §3]

Note: Sections 3 and 4, chapter 622, Oregon Laws 1979, provide

Sec. 3. ORS 316.091 is amended to read

316.091. (1) An individual who is a grower of a crop and who permits the gleaning of his crop shall be allowed a credit against the taxes otherwise due under this chapter

(a) In the case of a donation made under circumstances described in paragraphs (a) and (b) of subsection (1) of ORS 316.089, the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price

(b) In the case of a donation made under circumstances described in paragraphs (c) and (d) of subsection (1) of ORS 316.089, the amount of the credit shall be 10 percent of the value of the quantity of the crop donated computed at the wholesale market price that the grower

would have received had the quantity of the crop donated been salable

(2) At the time of donation, the director, supervisor or other appropriate official of the gleaning cooperative to which a donation is made shall supply to the grower of the crop donated two copies of a form prescribed by the Department of Revenue. The forms shall contain

- (a) The name and address of the grower,
- (b) The description and quantity of the donated crop;
- (c) The signature of the director, supervisor or other appropriate official of the gleaning cooperative verifying that the produce was or will be distributed to low-income individuals meeting the guidelines described in subsection (2) of ORS 316 089,
- (d) The wholesale market price determined by the gleaning cooperative, in the event there is no previous cash buyer of the crop, and
- (e) Other information required by the Department of Revenue by rule

(3) Tax claim for tax credit shall be substantiated by submission with the tax return, of the form described in subsection (2) of this section, a statement verified by the taxpayer that the donation was made under circumstances described in subsection (1) of ORS 316 089 and a copy of an invoice or other statement identifying the price received by the grower for the crops of comparable grade or quality if there is a previous cash buyer

Sec. 4. The amendments to ORS 316 089 and 316 091 by sections 2 and 3 of this Act apply to taxable years beginning on or after January 1, 1979, but prior to January 1, 1983

316.092 [1969 c 493 §19; repealed by 1973 c 402 §30]

316.093 Qualified economic development investment credit. (1) A credit against the taxes otherwise due under this chapter, based upon the amount of the qualified investment which has been certified under ORS 280.610 to 280.670, shall be allowed.

(2) To qualify for the credit under this section:

(a) The qualified investment must be made in accordance with the provisions of ORS 280.610 to 280.670 and the rules adopted thereunder and a certificate issued thereunder;

(b) The taxpayer who is allowed the credit must be the owner or contract purchaser of the trade or business that makes the qualified investment, or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that makes the qualified investment;

(c) The taxpayer must claim the credit in the tax year during which the qualified investment is placed in service;

(d) The actual cost of the qualified investment must be \$25,000 or more; and

(e) The property acquired, constructed, reconstructed or improved must have an estimated useful life of three years or more.

(3) A credit under this section may be claimed by a taxpayer for a qualified investment in those tax years which begin on or after January 1, 1978.

(4) (a) Subject to paragraphs (b) to (d) of this subsection, the amount of the credit allowed under this section for the taxable year shall be equal to 10 percent of the cost of the qualified investment.

(b) For purposes of paragraph (a) of this subsection, if the useful life of the qualified investment is three years or more, but less than five years, the cost of the qualified investment shall be an amount determined by multiplying the actual cost of the qualified investment by 33-1/3 percent.

(c) For purposes of paragraph (a) of this subsection, if the useful life of the qualified investment is five years or more, but less than seven years, the cost of the qualified investment shall be an amount determined by multiplying the actual cost of the qualified investment by 66-2/3 percent.

(d) For purposes of paragraph (a) of this subsection, if the useful life of the qualified investment is seven years or more, the cost of the qualified investment shall be its actual cost.

(5) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction for the qualified investment to which the taxpayer otherwise may be entitled under this chapter and the credit shall not affect the computation of basis for the qualified investment under this chapter.

(6) The credit allowed in any one taxable year shall not exceed the tax liability of the taxpayer.

(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.

(8) The Department of Revenue may require independent proof of the actual cost of the acquisition, construction, reconstruction or improvement for which a credit is claimed under this section.

(9) If property for which a credit has been allowed under this section is sold, exchanged, transported or otherwise disposed of for use outside an eligible area before the end of the useful life of such property:

(a) The taxpayer who was allowed the credit shall give notice thereof to the Director of the Economic Development Department, who shall revoke the certificate for the qualified investment relating to such property and shall so notify the Department of Revenue; and

(b) For the taxable year of disposition, the Department of Revenue shall add to the taxes of such taxpayer otherwise due under this chapter, an amount equal to the difference between:

(A) The amount of the credit which has been allowed under this section; and

(B) The amount of the credit which would have been allowed under this section if the useful life of the property for which a credit was allowed had been estimated for a period commensurate with a period ending next preceding the date of disposition of such property.

(10) If the taxpayer is a shareholder of a Subchapter S corporation that has elected to take tax credit relief pursuant to ORS 280.650 (9), the credit shall be computed using the shareholder's pro rata share of the corporation's certified cost of the qualified investment. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law. [1977 c 839 §8, 1979 c 412 §5a]

316.094 Credit for reforestation of underproductive forest lands. (1) Except as provided in subsection (2) of this section, a credit against taxes imposed by this chapter shall be allowed in an amount equal to 10 percent of reforestation project costs on underproductive Oregon forest lands. Such costs include, but are not limited to, site preparation and tree planting and exclude that portion of expenses paid through a federal or state cost share program.

(2) (a) Subject to subsection (6) of this section, one-half of the credit, provided under this section may be taken in the taxable year the project is completed. Subject to subsection (6) of this section, the balance of such credit may be taken in the taxable year in which the taxpayer presents to the Department of Revenue a certification from the State Forester that the new forest is established, as defined by the Oregon Forest Practices Act. In any one tax year, the credit allowed under this section shall not exceed the tax liability of the taxpayer.

(b) In the event the State Forester inspects the land in order to provide a certification and finds that the forest is not established as defined by the Oregon Forest Practices Act, the State Forester shall forthwith file a report of his findings with the Department of Revenue. The report filed under this paragraph shall be the basis for the Department of Revenue to recover any credit granted under paragraph (a) of this subsection.

(3) To qualify for the credit the project must be completed to specifications approved by the State Forester. In addition, the taxpayer's portion of the project cost must be \$500 or more.

(4) The taxpayer must be a private individual, group, Indian tribe or other native group, association or other nonpublic legal entity owning or leasing 10 to 500 acres of Oregon commercial forest land.

(5) (a) No credit is allowed under this section for any costs incurred in order to comply with the Oregon Forest Practices Act reforestation requirements or any other legal responsibility.

(b) A tax credit will be allowed only for those projects completed in tax years beginning on or after January 1, 1980.

(6) 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. In all cases the taxpayer must be the person who made the investment into the project.

(7) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the reforestation project and the credit shall not affect the computation of basis for the property.

(8) In compliance with ORS 183.310 to 183.550, the Department of Revenue may promulgate rules consistent with law for carrying out the provisions of this section.

(9) As used in this section, "underproductive Oregon forest lands" means Oregon commercial forest lands not meeting the minimum stocking standards of the Oregon Forest Practices Act. [1979 c 578 §7]

316.097 Credit for pollution control facility. (1) A credit against taxes imposed by this chapter for a pollution control facility or facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (5) of this section and has not claimed an exemption therefor under ORS 307.405.

(2)(a) For a facility qualifying under ORS 468.165 (1)(a) or (b), and having a useful life of 10 years or longer, the maximum credit allowed in any one tax 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, water or noise pollution is 80 percent 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, water or noise 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, water or noise 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, water or noise 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, water or noise

pollution is less than 20 percent, one percent of the cost of the facility.

(b) For a facility qualifying under ORS 468.165 (1)(a) or (b), and having a useful life of less than 10 years, the maximum credit allowed in any one taxable year shall be the lesser of the tax liability of the taxpayer or the following:

(A) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 80 percent or more, 50 percent of the cost of the facility, divided by the number of years of useful life of the facility.

(B) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 60 percent or more and less than 80 percent, 40 percent of the cost of the facility, divided by the number of years of useful life of the facility.

(C) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 40 percent or more and less than 60 percent, 30 percent of the cost of the facility, divided by the number of years of useful life of the facility.

(D) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 20 percent or more and less than 40 percent, 20 percent of the cost of the facility, divided by the number of years of useful life of the facility.

(E) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is less than 20 percent, 10 percent of the cost of the facility, divided by the number of years of useful life of the facility.

(c) For facilities having a useful life of less than 10 years and for which some portion of the maximum total credit is allowed or allowable in tax years beginning on or after January 1, 1977, such remaining credit shall be prorated over the remaining useful life of the property under administrative rules to be prepared by the department.

(3)(a) For a facility qualifying under ORS 468.165 (1)(c), and having a useful life of 10 years or longer, the maximum credit allowed in any one tax year shall be five percent of the cost of the facility or facilities, but shall not exceed the tax liability of the taxpayer.

(b) For a facility qualifying under ORS 468.165 (1)(c), and having a useful life of less than 10 years, the maximum credit allowed in any one tax year shall be 50 percent of the cost of the facility divided by the number of years of useful life of the facility, but shall not exceed the tax liability of the taxpayer.

(4) To qualify for the credit the pollution control facility must be erected, constructed or installed in accordance with the provisions of ORS 468.165 (1).

(5)(a) The taxpayer who is allowed the credit must be:

(A) The owner of the trade or business that utilizes Oregon property requiring a pollution control facility to prevent or minimize pollution;

(B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or

(C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a beneficial interest in a pollution control facility used for resource recovery as defined in ORS 459.005. Such person may, but need not, operate such facility or conduct a trade or business that utilizes property requiring such a facility. If more than one person has an interest under this subparagraph in a resource recovery facility, and without regard to ORS 468.170 (10), one or more persons receive a certificate and make an election of tax credit relief with respect to such facility pursuant to ORS 468.170 (5), such person or persons may allocate all or any part of the certified cost of such facility among any persons and their successors or assigns having an interest under this subparagraph. Such allocation shall be evidenced by a written statement signed by the person or persons receiving the certificate and designating the persons to whom the certified costs have been allocated and the amount of certified cost allocated to each; this statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate certified costs allocated between or among more than one person exceed the amount of the total certified cost of the facility. 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, except as otherwise provided in subparagraph (C) of paragraph (a) of this

subsection, and must have been in use and operation during the tax year for which the credit is claimed.

(6) Regardless of when the facility is erected, constructed or installed, a credit under this section may be claimed by a taxpayer:

(a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin on or after January 1, 1967.

(b) For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after January 1, 1973.

(7) For a facility qualifying under ORS 468.165 (1)(a) or (b), 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, water or noise 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, water or noise 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, water or noise 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, water or noise 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, water or noise pollution is less than 20 percent, 10 percent of the cost of such facility or facilities.

(8) For a facility qualifying under ORS 468.165 (1)(c), the maximum total credit allowable shall not exceed 50 percent of the cost of such facility.

(9) The credit provided by this section is not 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.

(10) Upon any sale, exchange, or other disposition of a 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 468.170, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an electing small business corporation as defined in section 1371 of the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a facility for purposes of this subsection.

(11) 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 ORS 468.170.

(12) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(13) If the taxpayer is a shareholder of a Subchapter S corporation that has elected to take tax credit relief pursuant to ORS 468.170 (6), the credit shall be computed using the shareholder's pro rata share of the corporation's certified cost of the facility. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law. [See 316.480, 1973 c 831 §8; 1977 c 795 §11, 1977 c 866 §10; 1979 c.691 §6, 1981 c 408 §1]

316.102 Credit for political contributions. (1) Unless a taxpayer has claimed a deduction for a political contribution on the taxpayer's federal tax return for the taxable year, a credit against taxes shall be allowed for voluntary contributions in money made in the taxable year:

(a) To a national political party as defined in section 41 of the Internal Revenue Code or

to a committee thereof or to a minor political party as defined in ORS 248.008;

(b) To or for the use of a candidate for federal, state or local elective office whose name is listed on a primary, general or special election ballot in this state, or who has filed, or on behalf of whom has been filed in this state a declaration of candidacy or a certificate of nomination as provided by law or a copy of the candidate's nominating petition filed pursuant to ORS chapter 249; or

(c) To any trust, committee, association or organization (whether or not incorporated) organized and operated exclusively for any part or all of the following purposes:

(A) Influencing, or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any federal, state or local elective public office to be voted upon within this state if used by the trust, committee, association or organization to further the candidacy of an individual or individuals for nomination or election to such office; or

(B) Supporting or opposing ballot measures or questions to be voted upon within this state if the trust, committee, association or organization has certified the name of its political treasurer to the filing officer in the manner provided by law.

(2) The credit allowed by subsection (1) of this section shall be the lesser of:

(a) One-half of the total contribution, not to exceed \$25 on a separate return; one-half of the total contribution, not to exceed \$50 on a joint return; or

(b) The tax liability of the taxpayer.

(3) Tax claim for tax credit shall be substantiated by submission, with the tax return, of official receipts of the candidate, agent, trust, committee, association or organization to whom contribution was made. [1969 c 432 §2, 1973 c 119 §3, 1975 c 177 §1; 1977 c.268 §1, 1979 c 190 §413]

316.105 [1953 c 304 §14, 1953 c 552 §5, repealed by 1969 c 493 §99]

316.106 [1967 c.274 §7; repealed by 1969 c 493 §99]

316.107 Federal tax credits allowable only as specified. No credits applied directly to the income tax calculated for federal purposes pursuant to the Internal Revenue Code shall be applied in calculating the tax due under this chapter except those applicable

under ORS 316.082, 316.087 and 316.292.
[1969 c 493 §20, 1973 c 402 §19]

316.108 [1967 c 118 §2; repealed by 1969 c 493 §99]

316.109 Credit for tax by another jurisdiction on sale of residential property. (1) For taxable years beginning on and after January 1, 1979, if gain on the sale of residential property is taxed under this chapter the adjusted basis of the property for purposes of this chapter shall be the same as its adjusted basis for federal income tax purposes.

(2) A credit against the tax otherwise due under this chapter shall be allowed to the taxpayer for the amount of any taxes imposed on the taxpayer by another state of the United States, a foreign country or the District of Columbia which tax is attributable to gain which is subject to tax as described in subsection (1) of this section.

(3) The amount of the credit allowed under subsection (2) of this section shall not exceed the amount of the gain taxed by the other taxing jurisdiction multiplied by eight percent.

(4) The Department of Revenue shall provide by rule the procedure for obtaining credit provided by subsection (2) of this section and the proof required.

(5) No credit allowed under subsection (2) of this section shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction for Oregon personal income tax purposes, unless the tax is restored to income on the Oregon return. [1979 c.579 §2; 1981 c.705 §2]

316.110 [1953 c 304 §15; 1953 c 552 §6, 1957 c 582 §1, 1961 c 506 §1; 1963 c 253 §1, repealed by 1969 c.493 §99]

316.111 [1965 c.360 §2; repealed by 1969 c 493 §99]

316.112 [1959 c.211 §2, 1963 c.627 §5 (referred and rejected), repealed by 1969 c 493 §99]

316.113 [1967 c 61 §2; repealed by 1969 c 493 §99]

316.114 [1967 c 449 §2, repealed by 1969 c.493 §99]

316.115 [1953 c.304 §16, 1959 c 555 §1; subsection (4) derived from 1959 c 555 §2, repealed by 1969 c 493 §99]

316.116 Credit for alternative energy device. (1) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter, based upon the cost of the alternative energy device which has been certified under ORS 469.160 to 469.180.

(2)(a) To qualify for the credit under this section:

(A) The alternative energy device must be constructed, installed and operated in accordance with the provisions of ORS 469.160 to 469.180 and a certificate issued thereunder;

(B) The taxpayer who is allowed the credit must be the owner or contract purchaser of the dwelling or dwellings served by the alternative energy device or the tenant of the owner or of the contract purchaser;

(C) Except as provided in paragraph (b) of this subsection, the taxpayer who is allowed the credit must use the dwelling or dwellings served by the alternative energy device as a principal or secondary residence; and

(D) The credit must be claimed for the tax year during which the alternative energy device which has been certified under ORS 469.160 to 469.180 first is placed in service. However, for tax years beginning on or after January 1, 1982, the credit may be claimed for the tax year in which the application for preliminary certification is filed with the Department of Energy if the system is operational by April 1 of the next following tax year.

(b) Notwithstanding the requirements of subparagraph (C) of paragraph (a) of this subsection, a taxpayer who otherwise qualifies for the credit allowed under this section but who does not use the dwelling or dwellings served by the alternative energy device as a principal or secondary residence, shall be allowed the credit if the taxpayer rents or leases the dwelling or dwellings to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(3) The taxpayer who is allowed the credit shall not be entitled to more than one credit under this section for any one taxable year.

(4) For collective or noncollective investment, the credit allowed under this section for each dwelling shall not exceed the lesser of:

(a) The portion of the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer, multiplied by 25 percent; or

(b) \$1,000 per dwelling utilizing the alternative energy device.

(5) A credit under this section may be claimed by a taxpayer for an alternative energy device for those tax years which begin on or after January 1, 1978, but before January 1, 1985.

(6) The credit provided by this section shall not affect the computation of basis for the dwelling or dwellings under this chapter.

(7) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(8) 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, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(9) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117 (5).

(10) If a change in the taxable year of a taxpayer occurs as described in ORS 316.215, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 316.215.

(11) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.397.

(12) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each. However, a husband or wife living in his or her separate principal residence may claim the tax credit in the same amount as permitted a single person.

(13) As used in this section, unless the context requires otherwise:

(a) "Collective investment" means an investment by two or more taxpayers for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(b) "Dwelling" has the meaning given in ORS 469.160.

(c) "Noncollective investment" means an investment by an individual taxpayer for the acquisition, construction and installation of an alternative energy device for one or more dwellings.

(14) As used in this section, "taxpayer" includes a transferee of a preliminary certificate under ORS 469.175 (6) who subsequently obtains a final certificate. [1977 c 196 §8, 1979 c 670 §2, 1981 c.894 §3]

Note: Chapter 367, Oregon Laws 1977, provides

Sec. 1. It is the policy of the State of Oregon to assist in the development of jobs for the unemployed by providing tax relief for Oregon employers

Sec. 2. As used in this Act, unless the context requires otherwise:

(1) "Qualified employer" means business and manufacturing employers which have been held to be subject to taxation under ORS chapters 316 and 317

(2) "Qualified employe" means employes who work not less than 30 hours per week and who immediately prior to employment were

(a) Receiving unemployment insurance benefits under ORS chapter 657 and who furnish the employer a certificate verifying receipt of unemployment insurance benefits immediately prior to employment as required under this Act;

(b) Receiving public assistance under ORS chapter 411;

(c) Receiving training in a publicly or privately funded training or rehabilitation program designed to upgrade job skills, wages and employment or promotional possibilities, including high school;

(d) Receiving training under a program operated by the Corrections Division of the Department of Human Resources, or

(e) Receiving workers' compensation under ORS chapter 656

(3) "Increase in the number of full-time employes" means

(a) Except as provided in paragraph (b) of this subsection, the excess of

(A) The number of full-time employes employed in Oregon by the qualified employer in Oregon as of the last day of its taxable year during which the credit is applied for, over

(B) The nearest whole number determined by multiplying the number of full-time employes employed by the qualified employer in Oregon as of the last day of its previous taxable year by a coefficient of 1.03.

(b) For employers not having a taxable year on or before December 31, 1976, or for employers not having

any employes in the taxable year ending on or before December 31, 1976, the increase in the number of full-time employes equals the excess of

(A) The number of full-time employes employed by the qualified employer in Oregon as of the last day of its taxable year during which the credit is applied for, over

(B) For the first taxable year for which a credit is allowed under this Act, the nearest whole number determined by multiplying the number of full-time employes employed in Oregon as of the last day of the employer's first taxable year in which it had any employes by a coefficient of 1.00, or, for all subsequent taxable years for which a credit is allowed under this Act, the nearest whole number determined by multiplying the number of full-time employes employed in Oregon as of the last day of the employer's previous taxable year by a coefficient of 1.02

Sec. 3. There shall be allowed to qualified employers a credit against taxes otherwise due under ORS chapters 316 and 317 for the increase in the number of qualified full-time employes not to exceed the amount of the increase in the number of full-time employes calculated as provided in subsection (3) of section 2 of this Act. The amount of the credit for each qualified employe is determined by multiplying \$50 times the number of full months the qualified full-time employe has been employed by a qualified employer. The credit in any year for any qualified employe shall not exceed \$500. A credit under this section shall not be allowed to a qualified employer for the amount of the increase in the number of full-time employes which is due to the hiring of an employe who was employed by such qualified employer immediately prior to receiving unemployment insurance benefits under ORS chapter 657 or workers' compensation under ORS chapter 656. This credit applies to taxable years beginning on or after July 1, 1977, and before January 1, 1982.

(Nonresidents)

316.117 Taxable income; deductions allowed. (1) The taxable income of a nonresident individual is adjusted gross income attributable to sources within this state determined by ORS 316.127 less the deductions allowed by this section.

(2) A nonresident shall be allowed the deduction for a standard deduction or itemized deductions allowable to a resident under ORS 316.068 (1), in the proportion provided in subsection (5) of this section.

(3) A nonresident taxpayer shall be entitled to claim the personal exemptions as defined in section 151 of the Internal Revenue Code, as modified under ORS 316.068 (2), in the proportion provided in subsection (5) of this section.

(4) A nonresident taxpayer shall be allowed to deduct the amount of any accrued federal income taxes and foreign country income taxes as provided in ORS 316.071 in

the proportion provided in subsection (5) of this section.

(5) The proportion for making the proration required under this section is the federal adjusted gross income of the taxpayer from Oregon sources divided by the taxpayer's federal adjusted gross income from all sources. If the numerator of the fraction described in this subsection is greater than the denominator, the proportion of 100 percent shall be used in the prorations required by this section. [1969 c 493 §21, 1971 c 672 §1, 1973 c.269 §1, 1975 c 672 §5; 1977 c 872 §5; 1981 c 801 §4]

316.122 Separate or joint federal returns for husband and wife. (1) If the federal taxable income of husband and wife (both nonresidents of this state) is determined on separate federal returns, their taxable incomes in this state shall be separately determined.

(2) If the federal taxable income of husband and wife (both nonresidents) is determined on a joint federal return, their tax shall be determined in this state on their joint taxable income.

(3) If either husband or wife is a nonresident and the other a resident, separate taxes shall be determined on their separate taxable incomes in this state on such forms as the department shall prescribe, unless both elect to determine their joint taxable income in this state as if both were residents. If a husband and wife (one being a resident, the other a nonresident) file a joint federal income tax return but determine their taxable income in this state separately, they shall compute their taxable incomes in this state as if their federal adjusted gross incomes had been determined separately. [1969 c 493 §22]

316.125 [1953 c 304 §17, repealed by 1969 c 493 §99]

316.127 Income of nonresident from Oregon sources. (1) The adjusted gross income of a nonresident derived from sources within this state is the sum of the following:

(a) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income that are derived from or connected with sources in this state including (A) his distributive share of partnership income and deductions and (B) his share of estate or trust income and deductions; and

(b) The portion of the modifications, additions or subtractions to federal taxable income provided in this chapter that relate to adjusted gross income derived from sources in this

state, including any modifications attributable to him as a partner.

(2) Items of income, gain, loss and deduction derived from or connected with sources within this state are those items attributable to:

(a) The ownership or disposition of any interest in real or tangible personal property in this state; and

(b) A business, trade, profession or occupation carried on in this state.

(3) Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, constitutes income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state.

(4) Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources in this state, under regulations to be prescribed by the department, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(5) Notwithstanding subsection (3) of this section, the distributed and undistributed taxable income of an electing small business corporation for federal income tax purposes derived from or connected with sources in this state does constitute income derived from sources within this state for a nonresident individual who is a shareholder of such a corporation, and a net operating loss of such corporation derived from or connected with sources in this state does constitute a loss or deduction connected with sources in this state for such a nonresident individual.

(6) If a business, trade, profession or occupation is carried on partly within and partly without this state, the determination of net income derived from or connected with sources within this state shall be made by apportionment and allocation under ORS 314.605 to 314.670.

(7) Compensation paid by the United States for service in the Armed Forces of the United States performed by a nonresident does not constitute income derived from sources within this state.

(8) The "adjusted gross income," as used in this section, means the adjusted gross income

as defined in section 62 of the Internal Revenue Code with the necessary adjustments to items of Oregon income required by this chapter except for any adjustment required for federal income taxes by ORS 316.067 (1) or for Oregon income taxes by ORS 316.067 (2) or both. [1969 c 493 §23, 1971 c 672 §2, 1973 c 269 §2; 1975 c 705 §4]

(Severely Disabled Persons)

316.135 Definitions of ORS 316.135 to 316.138. For purposes of ORS 316.135 to 316.138:

(1) A person is "severely disabled" if the person:

(a) Has lost the use of one or more lower extremities;

(b) Has lost the use of both hands; or

(c) Suffers an affliction that limits the abilities of the person to earn a living, maintain a household or transport himself without employing special orthopedic or medical equipment or outside help.

(2) "Orthopedic or medical equipment" includes, but is not limited to, wheelchairs, braces, prostheses or special crutches.

(3) "Outside help" includes, but is not limited to, unrelated individuals whom the severely disabled taxpayer employs to keep house, maintain the house or yard, or to transport the taxpayer. [1979 c 554 §2]

316.136 Additional personal exemption for severely disabled persons. In addition to the personal exemption allowed by this chapter for state personal income tax purposes, there shall be subtracted from federal taxable income an additional personal exemption for the taxpayer if the taxpayer is severely disabled at the close of the taxable year. The amount subtracted shall be an amount equal to the amount allowed as the personal exemption for the taxpayer for the state personal income tax purposes for the taxable year. [1979 c 554 §3]

316.137 Additional personal exemption for spouse of severely disabled person; conditions. (1) An additional exemption in the same amount as allowed under ORS 316.136 for a severely disabled taxpayer shall be allowed for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse:

(a) Is severely disabled;

(b) Has no gross income for the calendar year in which the taxable year of the taxpayer begins; and

(c) Is not the dependent of another taxpayer.

(2) In the case of a joint return, each spouse who is severely disabled shall be allowed the additional exemption in the amount provided under ORS 316.136 if the spouse otherwise qualifies under this section.

(3) For purposes of this section, the determination of whether the spouse is severely disabled shall be made as of the close of the taxable year of the taxpayer except that if the spouse dies during such taxable year such determination shall be made as of the time of the death of the spouse. [1979 c 554 §4]

316.138 Proof of status for exemption.

Each person qualifying for the additional exemption allowed in ORS 316.136 and 316.137 may claim the subtraction on the personal income tax return. However, the claim shall be substantiated by a letter from a licensed physician or osteopath describing the nature and extent of the physical disability.

[1979 c 554 §5]

(Energy Conservation Facilities)

316.140 Credit for energy conservation facility. (1) A credit is allowed against the taxes otherwise due under this chapter, based upon the certified cost of the facility during the period for which that facility is certified under ORS 469.185 to 469.225. The credit allowed in each of the first two tax years in which the credit is claimed shall be 10 percent of the certified cost of the facility, but shall not exceed the tax liability of the taxpayer. The credit allowed in each of the succeeding three years shall be five percent of the certified cost, but shall not exceed the tax liability of the taxpayer.

(2) The facility must be in Oregon and owned during the tax year by the taxpayer claiming the credit.

(3) A credit under this section may be claimed by a taxpayer for a facility only in those tax years which begin on and after January 1, 1980.

(4) The maximum total credit or credits allowed for a facility under this section to eligible taxpayers shall not exceed 35 percent of the certified cost of such facility.

(5) Upon any sale, termination of the lease, exchange or other disposition of the facility, notice thereof shall be given to the Director of the Department of Energy who shall revoke the certificate covering the facility as of the date of such disposition. The transferee, or upon re-leasing of the facility, the lessor, may apply for a new certificate under ORS 469.215, but the tax credit available to that transferee shall be limited to the amount of credit not claimed by the transferor or, for a lessor, the amount of credit not claimed by the lessor under all previous leases.

(6) 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 that 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 (1) of this section only as provided in this subsection.

(7) The credit provided by this section is not 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.

(8) The taxpayer's adjusted basis for determining gain or loss shall not be decreased by any tax credits allowed under this section.

(9) If the taxpayer is a shareholder of a Subchapter S corporation, the credit shall be computed using the shareholder's pro rata share of the corporation's certified cost of the facility. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law.

(10) A credit under the provisions of this section shall not be allowed to:

(a) A public utility, as defined in ORS 757.005, that retails electricity or natural gas to more than 100 customers;

(b) A people's utility district, as defined in ORS 261.010, a municipal utility or a cooperative utility that retails electricity or natural gas to more than 100 customers; or

(c) A subsidiary or an affiliated interest, as defined in ORS 757.015, of a public utility described in paragraph (a) of this subsection.

[1979 c 512 §12, 1981 c 894 §10]

316.141 Other grants or credits as offset to cost of facility. If a taxpayer obtains a grant or tax credit from the Federal Government other than an investment credit granted under section 46 of the Internal Revenue Code of 1954 as it reads on August 22, 1981, in connection with a facility which has been certified by the Director of the Department of Energy, the certified cost of the facility shall be reduced on a dollar for dollar basis. Any income tax credits which such taxpayer would be entitled to under ORS 316.140 to 316.142 and 469.185 to 469.225 after any such reduction shall not be reduced by such federal grants or tax credits. Taxpayers applying for federal grants or credits shall notify the Department of Revenue by certified mail within 30 days of each such application, and of the receipt of any such grant. [1979 c 512 §15, 1981 c 894 §11]

316.142 Credit limited if facility financed in part by governmental body; ineligibility of recipients of other credits or tax relief. (1) If a facility eligible for a credit under ORS 316.140 is financed in part by any governmental or quasi-governmental body or municipal corporation, as defined in ORS 297.405, a tax credit may be claimed only on the portion of the cost that is privately financed.

(2) A taxpayer is eligible to participate in both this tax credit program and low interest, government-sponsored loans.

(3) A taxpayer who receives a tax credit or ad valorem tax relief on a pollution control facility or an alternate energy device under ORS 307.405, 316.097 or 316.116 is not eligible for a tax credit on the same facility or device under ORS 316.140 to 316.142 and 469.185 to 469.225. [1979 c 512 §16, 17, 1981 c 894 §12]

(Substitute Fuel Plants)

316.145 Deduction of portion of income attributable to production of substitute fuel. If a commercial plant produces methanol, ethanol or other substitute fuel and 75 percent of the production is used in making gasohol in any tax year, that portion of the taxable net income attributable to the production of methanol, ethanol or other substitute

fuel for such tax year is exempt from any tax imposed under this chapter. To qualify for the exemption authorized by this section, there shall be filed with the tax return of the taxpayer claiming the exemption a certificate furnished by the Department of Energy that the plant produced a commercially marketable grade of methanol, ethanol or other substitute fuel and that 75 percent of the production during the tax year was used or committed for use in making gasohol. [1979 c 561 §4]

Note: Section 10, chapter 561, Oregon Laws 1979, provides

Sec. 10. The exemption from ad valorem taxation authorized by section 2 of this Act shall apply to the assessment and tax rolls prepared for assessment years beginning on or after January 1, 1980, but prior to January 1, 1986. The exemption from taxes on or measured by net income provided in sections 4 and 6 of this Act and by the amendments to ORS 318.030 by section 7 of this Act shall apply to tax years beginning on or after January 1, 1980, but prior to January 1, 1985.

(Costs in Lieu of Nursing Home Care)

316.147 Definitions for ORS 316.147 to 316.149. As used in ORS 316.147 to 316.149, unless the context requires otherwise:

(1) "Eligible taxpayer" includes any individual who must pay taxes otherwise imposed by this chapter and:

(a) Who pays or incurs expenses for the care of a "qualified individual," as defined in subsection (2) of this section, through a payment method determined by rule of the Department of Revenue; and

(b) Who has a "household income," as defined by ORS 310.630, for the taxable year, not to exceed the maximum amount of household income allowed in ORS 310.640 for a homeowner or renter refund.

(2) "Qualified individual" includes an individual at least 60 years of age on the date that the expenses described in paragraph (a) of subsection (1) of this section are paid or incurred by the eligible taxpayer:

(a) Whose household income, as defined by ORS 310.630 (7) and (8), does not exceed \$7,500 for the calendar year in which the taxable year of the taxpayer begins;

(b) Who is eligible for home care services under Oregon Project Independence provided by the Department of Human Resources;

(c) Who is certified by the Department of Human Resources; and

(d) Whose care or any portion thereof is not paid for under ORS chapter 414. [1979 c 494 §2]

316.148 Credit for expenses in lieu of nursing home care; limitation. (1) A credit against the taxes otherwise due under this chapter shall be allowed to an eligible taxpayer with respect to food, clothing, medical care and transportation expenses paid or incurred by the taxpayer during the taxable year on behalf of a qualified individual in order that the qualified individual is not placed or maintained in a nursing home unnecessarily. The amount of the credit shall be \$250 or eight percent of the expenses paid or incurred during the taxable year, whichever is less.

(2) No credit shall be allowed under this section for expenses paid or incurred for any period of time in which the qualified individual is a resident in a nursing home or is receiving aid from Oregon Project Independence. [1979 c 494 §3]

316.149 Evidence of eligibility for credit. Evidence of payments made or expenses incurred that form the basis of the credit allowed under ORS 316.147 to 316.149 shall be submitted to the Department of Revenue in accordance with any rules adopted by the department relative to the submission of evidence of such payments. [1979 c 494 §4]

(Building Renovation for Handicapped Access)

316.150 Deduction for building renovation projects improving access for handicapped persons. (1) As used in this section, unless the context otherwise requires:

(a) "Building, facility or transportation vehicle" means a building, facility or transportation vehicle, or part thereof, which is intended to be used, and is actually used by the taxpayer, the family of the taxpayer or the general public, either in the trade or business of the taxpayer or at the residence of the taxpayer. If the use of the building, facility or transportation vehicle is at the residence of the taxpayer, the residence must be located in Oregon.

(b) "Elderly individual" means an individual who is 65 years of age or older before the close of the calendar year for which the deduction is claimed.

(c) "Handicapped individual" means any individual who has a physical or mental dis-

bility which for the individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment which substantially limits one or more major life activities of such individual.

(d) "Renovation project" means the repair or remodeling of an existing building, facility or transportation vehicle owned or leased by the taxpayer at the time of the repair or remodeling if the purpose of the repair or remodeling is:

(A) To permit handicapped or elderly individuals to enter or leave such building, facility or transportation vehicle;

(B) To increase the access that handicapped or elderly individuals would have to such building, facility or transportation vehicle; or

(C) To allow handicapped or elderly individuals more effective use of such building, facility or transportation vehicle.

(2) In addition to and not in lieu of the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the cost of a renovation project. The subtraction may be taken only for the taxable year in which the renovation project is completed and is in addition to any depreciation or amortization of the cost of the renovation project. The subtraction for any taxable year shall not exceed \$25,000.

(3) If any building, facility or transportation vehicle is owned by more than one person, a taxpayer may deduct a portion of the costs of the renovation project apportionate to the interest in such building, facility or transportation vehicle which is owned by the taxpayer.

(4) In order to qualify for the subtraction allowed by this section, a building or facility must, after renovation, meet any applicable state standards and specifications developed under ORS 447.210 to 447.280 or other state law. In absence of state standards applicable to the project, applicable federal standards shall be used.

(5) If, on or after January 1, 1980, the Federal Government allows a similar deduction to that authorized by this section, the subtraction provided by this section shall be reduced by the amount of the deduction permitted by federal law. [1979 c 414 §2]

COLLECTION OF TAX AT SOURCE OF WAGES

316.160 [1953 c 304 §18, 1965 c 26 §3, repealed by 1969 c 493 §99]

316.162 Definitions for ORS 316.162 to 316.212. As used in ORS 316.162 to 316.212:

(1) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under ORS 316.182, except that if no such certificate is in effect, the number of withholding exemptions claimed is considered to be zero.

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

(a) For active service in the Armed Forces of the United States as to which no withholding is required by the Internal Revenue Code.

(b) To an employe of a common carrier to the extent that sections 1512 and 11504, title 49, United States Code prohibits the remuneration from withholding for state income taxes.

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

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

(e) To an employe whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops if the total amount paid to such employe is less than \$300 annually.

(f) To seamen who are exempt from garnishment, attachment or execution under title 46 of the United States Code.

(g) To persons temporarily employed as emergency forest fire fighters.

(h) To employes' trusts exempt from tax under provisions of the federal Internal Revenue Code.

(3) "Employer" means:

(a) A person who is in such relation to another person that the person may control the work of that other person and direct the manner in which it is to be done; or

(b) An officer or employe of a corporation, or a member or employe of a partnership, who as such officer, employe or member is under a duty to perform the acts required of employers by ORS 316.167, 316.182, 316.197, 316.202

and 316.207. [1969 c 493 §24, 1971 c 690 §1, 1973 c 229 §1, 1977 c 604 §1, 1981 c 705 §3]

316.165 [1953 c 304 §19, repealed by 1969 c 493 §99]

316.167 Withholding of tax required; elective provisions for certain employes.

(1) Every employer at the time of the payment of wages to any employe shall deduct and retain from such wages an amount determined, at the employer's election, either (a) by a "percentage method" withholding table or (b) by "wage bracket" withholding tables, prepared and furnished under the rules and regulations of the department. However, in the case of wages paid to an employe whose services to the employer consist solely of labor in connection with the planting, cultivating or harvesting of seasonal agricultural crops, the employer may elect to withhold two percent of the total wages paid without regard to any withholding exemptions.

(2) Except in the case of an agricultural employe, the amount withheld shall be computed on the basis of the total amount of the wages and the number of withholding exemptions claimed by the employe, without deduction for any amount withheld.

(3) If a lender, surety or other person who supplies funds to or for the account of an employer for the purpose of paying wages of the employes of such employer has actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the tax required to be deducted and withheld, such lender, surety or other person shall be liable to the State of Oregon in a sum equal to the taxes together with interest which are not timely paid over to the department. Such liability shall be limited to the principal amount supplied by such lender, surety or other person, and any amounts so paid to the department shall be credited against the liability of the employer.

[1969 c 493 §25, 1975 c 394 §1, 1977 c 604 §2]

316.170 [1953 c 304 §20, repealed by 1969 c 493 §99]

316.172 Tax withholding tables to be prepared by department.

(1) The department shall prepare a table for use with the percentage method that provides for the deduction and withholding of a tax equal to a specific percent (to be determined by the department) of the amount by which the wages for a given payroll period (daily, weekly, bi-weekly, semimonthly, monthly, quarterly, semiannually or annually, as the case may be) exceed the number of withholding exemptions

claimed, multiplied by the amount of one such exemption for each payroll period (such amount being determined by the department for each such period). The determinations of the department shall result, so far as is practicable, in withholding from the employe a sum substantially equivalent to the amount of the tax that the employe will be required to pay under this chapter upon such wages. To accomplish this purpose, the department may make special provision for employes who are in the state for limited periods of time.

(2) The department shall prepare tables for use in computing withholding of tax by wage brackets. The wage brackets shall be graduated so that the amount withheld is, as far as practicable, substantially equivalent to the amount of the tax that the employe will be required to pay under this chapter upon such wages. [1969 c 493 §26, 1973 c 402 §20]

316.175 [1953 c 304 §21; repealed by 1969 c 493 §99]

316.177 Withholding exemptions. An employe shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employe, except where the employe claims a different number of withholding exemptions in this state. [1969 c 493 §27]

316.180 [1953 c 304 §22, repealed by 1969 c 493 §99]

316.182 Exemption certificate. An employer shall use the exemption certificate filed by the employe with the employer under the income tax withholding provisions of the Internal Revenue Code for determining the number of withholding exemptions to be used in computing the tax to be withheld under ORS 316.167 and 316.172. However, the department may require such exemption certificate to be filed on a form prescribed by the department in any circumstance where the department finds that the exemption certificate filed under the Internal Revenue Code does not properly reflect the number of withholding exemptions allowable under this chapter, except no exemption certificate need be procured from an employe whose wages consist of wages as defined in ORS 316.162 (2)(e). [1969 c 493 §28]

316.185 [1953 c 304 §23; 1955 c 129 §1; subsection (5) derived from 1955 c 129 §2; 1965 c.26 §4; repealed by 1969 c 493 §99]

316.187 Amount withheld is in payment of employe's tax. The amounts deducted from the wages of an employe during any calendar year in accordance with ORS 316.167 and 316.172 shall be considered to be in part payment of the tax on such employe's income for his taxable year which begins within such calendar year, and the return made by the employer pursuant to ORS 316.202 shall be accepted by the department as evidence in favor of the employe of the amounts so deducted from his wages. [1969 c 493 §29]

316.190 [Amended by 1953 c 304 §24, 1955 c 92 §1, subsection (3) derived from 1955 c 92 §2, repealed by 1969 c 493 §99]

316.192 Refunds to employes. (1) If the total amount deducted under ORS 316.167 and 316.172 exceeds the amount of the tax on the employe's entire income as computed under this chapter, or when his income is not taxable under this chapter, the department, after examining or auditing the annual return filed by the employe in accordance with ORS 314.385, shall refund the amount of the excess deducted, with interest thereon as provided by law. No refund shall be made to an employe who fails to file such return within two years after the due date of the return in respect of which the tax withheld might have been credited. If the excess tax deducted is less than \$1, no refund shall be made and in no event shall the excess be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which such excess was withheld.

(2) The department may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the department. If a taxpayer entitled to a refund under this section dies, the department may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490 to 293.500, exercising the same powers and subject to the same restrictions pursuant to which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes. [1969 c 493 §30, 1971 c 333 §2]

316.195 [1953 c.304 §25; repealed by 1969 c.493 §99]

316.197 Payment to department by employer. (1) Except as provided in subsection (2) of this section, each employer quarter-

ly, on or before the last day of April, July, October and January, shall pay over to the department the amount required by ORS 316.167 and 316.172 to be deducted and retained from the wages paid to any employe during the preceding three months. The department may permit an employer who has withheld taxes that do not exceed \$50 per month to pay over such withheld amounts and furnish reports less frequently than quarterly.

(2) If the amount of taxes required to be deducted and retained from wages by any employer, pursuant to ORS 316.167 and 316.172, exceeds \$500 in any quarter, the department may require by written notice to the employer that amounts deducted and withheld on and after the date indicated on such notice shall be paid on a monthly basis. Amounts so due for the first and second months of any calendar quarter shall be paid by the employer to the department on or before the 15th day of the following month and for the third month on or before the last day of the month following the end of such quarter.

(3) Every amount so paid over shall be accounted for as part of the collections under this chapter. No employe has any right of action against his employer in respect of any moneys deducted from his wages and paid over in compliance or intended compliance with this section. [1969 c 493 §31, 1975 c 594 §1]

316.200 [1953 c.304 §26, 1965 c 26 §5, repealed by 1969 c.493 §99]

316.202 Reports by employer; effect of failure to report. (1) With each payment made by him to the department, every employer shall deliver to the department, on a return in the form prescribed by the department showing the total amount of wages, salaries, bonuses or other emoluments paid to his employes, the amount deducted therefrom in accordance with ORS 316.167 and 316.172, and supply such other information as the department may require. The employer is charged with the duty of advising the employe of the amount of moneys withheld, in accordance with such regulations as the department may prescribe, using printed forms furnished or approved by the department for such purpose.

(2) The employer shall make an annual return to the department on forms provided or approved by it, summarizing the total compensation paid and the tax withheld for each employe during the calendar year and shall

file the same with the department before February 16 of the year following that for which report is made. Failure to file the annual report without reasonable excuse on or before the 30th day after notice has been given to the employer of his failure subjects the employer to a penalty of \$100. [1969 c 493 §32; 1973 c.83 §1]

316.205 [1953 c 304 §27; repealed by 1957 c 632 §1 (314 280 enacted in lieu of 316 205 and 317 180)]

316.207 Liability for tax; warrant for collection. (1) Every employer who deducts and retains any amount under ORS 316.167 and 316.172 shall hold the same in trust for the State of Oregon and for the payment thereof to the department in the manner and at the time provided in ORS 316.167 and 316.172.

(2) At any time the employer fails to remit any amount withheld, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued, docketed and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes. [1969 c 493 §33]

316.210 [1953 c 304 §28, repealed by 1957 c 632 §1 (314 285 enacted in lieu of 316 210 and 317 185)]

316.212 Application of penalties, interest and jeopardy assessment; employer as taxpayer. The provisions of the income tax laws in ORS chapter 314 and this chapter, relating to penalties, interest, misdemeanors and jeopardy assessments, apply to employers subject to the provisions of ORS 316.162 to 316.212, and for these purposes any amount deducted or required to be deducted and remitted to the department under ORS 316.162 to 316.212 is considered the tax of the employer and with respect to such amount he is considered as a taxpayer. [1969 c 493 §34]

ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

316.215 Period for computation of taxable income. (1) For purposes of the tax imposed by this chapter, a taxpayer's taxable year shall be the same as his taxable year for federal income tax purposes.

(2) If a taxpayer's taxable year is changed for federal income tax purposes, his taxable

year for purposes of the tax imposed by this chapter shall be similarly changed. If a change in taxable year results in a taxable period of less than 12 months, the personal deductions and the deduction for personal exemption allowed by the Internal Revenue Code, modified as provided in this chapter, shall be prorated under regulations prescribed by the department.

(3) Notwithstanding subsections (1) and (2) of this section, if the department terminates the taxpayer's taxable year under ORS 314.440 (relating to tax in jeopardy), the tax shall be computed for the period determined by such action. [1969 c 493 §35; 1975 c.672 §6, 1978 c 9 §2]

Note: See note after 316.068

316.217 Accounting method. (1) For purposes of the tax imposed by this chapter, a taxpayer's method of accounting shall be the same as his method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, taxable income for purposes of this chapter shall be computed under such method that in the opinion of the department fairly reflects income.

(2) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this chapter shall similarly be changed and used in the first return filed after such change is effective. ORS 314.275 applies to the degree applicable. [1969 c 493 §36]

316.222 Adjustments to prevent duplications or omissions. In computing a taxpayer's taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the department, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted. [1969 c.493 §37]

316.227 Effect of accounting change. (1) If a taxpayer's method of accounting is changed, other than from an accrual to an instalment method, any additional tax that results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable

years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made, under ORS 314.275.

(2) If a taxpayer's method of accounting is changed from an accrual to an instalment method, any additional tax for the year of such change of method and for any subsequent year that is attributable to the receipt of instalment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such instalment payments, under regulations prescribed by the department. [1969 c.493 §38]

ESTATES AND TRUSTS (Generally)

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

316.256 [1959 c 581 §2 (enacted in lieu of 316.255), subsection (4) derived from 1959 c 581 §11, repealed by 1969 c 493 §99]

316.257 [1963 c 435 §4; repealed by 1969 c 493 §99]

316.258 [1961 c.225 §2; repealed by 1969 c 493 §99]

316.260 [1953 c 304 §30, repealed by 1969 c 493 §99]

316.265 [1953 c 304 §31; 1953 c 552 §7; repealed by 1959 c.581 §3 (316.266 enacted in lieu of 316 265)]

316.266 [1959 c 581 §4 (enacted in lieu of 316 265), last sentence derived from 1959 c 581 §11, last sentence of subsection (6) enacted as 1961 c.225 §3; 1969 c.103 §1, repealed by 1969 c 493 §99]

316.267 Application of chapter to estates and certain trusts. The tax imposed by this chapter on individuals applies to the taxable income of estates and trusts, except for trusts taxed as corporations under ORS chapter 317 or 318. [1969 c 493 §39, 1973 c 115 §3]

316.270 [1953 c 304 §32; repealed by 1969 c.493 §99]

316.272 Computation and payment on estate or trust. The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual except as otherwise provided by this chapter. The tax shall be computed on such taxable income and shall be paid by the fiduciary. [1969 c.493 §40]

316.275 [1953 c.304 §33; 1959 c 591 §19, subsection (2) derived from 1959 c.591 §21; repealed by 1969 c.493 §99]

316.277 Associations taxable as corporations exempt from chapter. (1) An association, trust or other unincorporated organization that is taxable as a corporation

for federal income tax purposes is not subject to tax under this chapter, but is taxable as a corporation under ORS chapter 317 or 318, or both, as provided therein.

(2) An association, trust or other unincorporated organization that is not taxable as a corporation for federal income tax purposes but by reason of its purposes or activities is exempt from federal income tax except with respect to its unrelated business taxable income, is taxable under this chapter on such federally taxable income. [1969 c 493 §41, 1973 c 402 §21]

316.279 Treatment of business trusts and business trusts income. A domestic or foreign business trust of the type defined in ORS 128.560 is subject to tax under ORS chapter 317 or 318 and amounts distributed by it to its shareholders shall be treated as distributions by a corporation for the purposes of ORS chapters 316, 317 and 318. [1973 c 115 §2]

316.280 [1953 c 304 §34, 1953 c 552 §8, 1955 c 256 §1, paragraph (d) of subsection (6) of 1957 Replacement Part derived from 1955 c.256 §2, repealed by 1959 c 581 §5 (316 281 enacted in lieu of 316 280)]

316.281 [1959 c 581 §6 (enacted in lieu of 316 280), subsection (8) derived from 1959 c.581 §11; 1965 c 99 §1; repealed by 1969 c.493 §99]

(Resident Estates and Trusts)

316.282 Definitions for ORS 316.282 to 316.298. (1) A "resident trust" means a trust of which the fiduciary is a resident of Oregon, or a trust the administration of which is carried on in Oregon.

(2) "Resident estate" means an estate of which the fiduciary was appointed by an Oregon court or the administration of which is carried on in Oregon.

(3) The "taxable income" of a resident estate or trust means its federal taxable income modified by the addition or subtraction, as the case may be, of its share of the fiduciary adjustment determined under ORS 316.287. [1969 c 493 §§42, 43]

316.285 [1953 c.304 §35, repealed by 1959 c.581 §7 (316 286 enacted in lieu of 316.285)]

316.286 [1959 c 581 §8 (enacted in lieu of 316.285); subsection (6) derived from 1959 c 581 §11, repealed by 1969 c 493 §99]

316.287 "Fiduciary adjustment" defined; shares proportioned. (1) The "fiduciary adjustment" is the net amount of the

modifications to federal taxable income described in this chapter (ORS 316.077 being applicable if the estate or trust is a beneficiary of another estate or trust) that relates to its items of income or deduction of an estate or trust.

(2) The respective shares of an estate or trust and its beneficiaries (including solely for the purpose of this allocation, nonresident beneficiaries) in the fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under state law or the terms of the instrument, that is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.

(3) The department may by regulation authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as the department may require. [1969 c 493 §44, 1975 c 705 §6]

316.290 [1953 c 304 §36, repealed by 1959 c 581 §9 (316 291 enacted in lieu of 316 290)]

316.291 [1959 c 581 §10 (enacted in lieu of 316 290), subsection (4) derived from 1959 c 581 §11, repealed by 1969 c 493 §99]

316.292 Credit for taxes paid another state or country. A resident estate or trust shall be allowed the credit provided in ORS 316.082 (relating to an income tax imposed by another state or foreign country) except that the limitation shall be computed by reference to the taxable income of the estate or trust. [1969 c.493 §45]

316.295 [1953 c 304 §37; 1965 c.202 §1; repealed by 1969 c 493 §99]

316.296 [1965 c.154 §2, repealed by 1969 c 493 §99]

316.297 [1963 c 343 §2; repealed by 1969 c.493 §99]

316.298 Accumulation distribution credit. (1) A resident beneficiary of a trust whose adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this chapter for all or a proportionate part of any tax,

paid by the trust under this chapter for any preceding taxable year, that would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in section 666 of the Internal Revenue Code.

(2) The credit under this section shall not reduce the tax otherwise due from the beneficiary under this chapter to an amount less than would have been due if the accumulation distribution or his part thereof were excluded from his adjusted gross income. [1969 c 493 §46]

316.299 [1965 c 178 §2, repealed by 1969 c 493 §99]

(Nonresident Estates and Trusts)

316.302 Definitions for ORS 316.302 to 316.317. A "nonresident estate or trust" means an estate or trust that is not a resident. [1969 c 493 §47]

316.305 [1953 c 304 §38, 1963 c 283 §2; 1963 c 627 §7 (referred and rejected); repealed by 1969 c.493 §99]

316.306 [1955 c 608 §2, repealed by 1969 c 493 §99]

316.307 Taxable income of nonresident estate or trust. For purposes of ORS 316.302 to 316.317:

(1) Items of income, gain, loss and deduction mean those derived from or connected with sources in this state.

(2) Items of income, gain, loss and deduction entering into the definition of federal distributable net income include such items from another estate or trust of which the first estate or trust is a beneficiary.

(3) The source of items of income, gain, loss or deduction shall be determined under regulations prescribed by the department in accordance with the general rules in ORS 316.127 as if the estate or trust were a nonresident individual.

(4) The taxable income of a nonresident estate or trust consists of:

(a) Its share of items of income, gain, loss and deduction that enter into the federal definition of distributable net income;

(b) Increased or reduced by the amount of any items of income, gain, loss or deduction that are recognized for federal income tax purposes but excluded from the federal definition of distributable net income of the estate or trust;

(c) Less the amount of the deduction for its federal exemption. [1969 c.493 §48]

316.310 [1953 c.304 §39, 1957 c 18 §1, repealed by 1969 c 493 §99]

316.312 Determination of Oregon share of income. (1) The share of a nonresident estate or trust of items of income, gain, loss and deduction entering into the definition of distributable net income and the share for purpose of ORS 316.127 of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss and deduction shall be determined as follows:

(a) To the amount of items of income, gain, loss and deduction that enter into the definition of distributable net income there shall be added or subtracted, as the case may be, the modifications to federal taxable income described in this chapter to the extent they relate to items of income, gain, loss and deduction that also enter into the definition of distributable net income. No modification shall be made under this section that has the effect of duplicating an item already reflected in the definition of distributable net income.

(b) The amount determined under paragraph (a) of this subsection shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income. The amounts so allocated have the same character as for federal income tax purposes. If an item entering into the computation of such amounts is not characterized for federal income tax purposes, it has the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(c) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined under paragraph (a) of this subsection shall be in proportion to his share of the estate or trust income for such year, under state law or the terms of the instrument, that is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(2) The department may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state, and in the modifications related thereto, as may be

appropriate and equitable. [1969 c 493 §49, 1975 c 705 §7]

316.315 [1953 c 304 §10, 1955 c 285 §1; subsection (4) of 1955 Replacement Part derived from 1955 c 285 §2, 1957 c 540 §1, 1959 c 593 §4 (referred and rejected), 1963 c 627 §8 (referred and rejected), 1967 c 127 §1, repealed by 1969 c 493 §99]

316.317 Credit to beneficiary for accumulation distribution. A nonresident beneficiary of a trust whose adjusted gross income derived from sources in this state includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this chapter, computed in the same manner and subject to the same limitation as provided by ORS 316.298 with respect to a resident beneficiary. [1969 c 493 §50]

316.320 [1953 c 304 §41, 1957 c 73 §1, 1965 c 410 §5, repealed by 1969 c 493 §99]

316.325 [1953 c 304 §42, repealed by 1969 c 493 §99]

316.330 [1953 c 304 §43, 1955 c 580 §1, repealed by 1969 c 493 §99]

316.335 [1953 c 304 §44, 1957 s s c 15 §3, repealed by 1969 c 493 §99]

316.336 [1961 c.608 §2, repealed by 1969 c 493 §99]

316.337 [1957 c 16 §2, repealed by 1969 c 493 §99]

316.340 [1953 c 304 §45, 1953 c 552 §9, 1955 c.589 §1, repealed by 1969 c 493 §99]

PARTNERS AND PARTNERSHIPS

316.342 Partnership not taxable. A partnership as such is not subject to the tax imposed by this chapter. Persons carrying on business as partners are liable for the tax imposed by this chapter only in their separate or individual capacities. [1969 c 493 §51]

316.345 [1953 c 304 §46; 1953 c.552 §10; 1959 c 593 §5 (referred and rejected), 1963 c 627 §9 (referred and rejected), 1965 c 337 §1; repealed by 1969 c.493 §99]

316.347 Partnership income has same character as under federal law. (1) Each item of partnership income, gain, loss or deduction has the same character for a partner under this chapter as it has for federal income tax purposes. If an item is not characterized for federal income tax purposes, it has the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

(2) If a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by a special provision in the partnership agreement with respect to such item, and the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the partner's distributive share of such item and any modification required with respect thereto shall be determined in accordance with his distributive share of the taxable income or loss of the partnership generally (that is, exclusive of those items requiring separate computation under section 702 of the Internal Revenue Code). [1969 c 493 §52]

316.350 [1953 c 304 §47, repealed by 1969 c 493 §99]

316.352 Income of nonresident partner. (1) In determining the adjusted gross income of a nonresident partner of any partnership, there shall be included only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss and deduction entering into his federal adjusted gross income, as such part is determined under regulations prescribed by the department in accordance with the general rules in ORS 316.127.

(2) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(a) Characterizes payments to the partner as being for services or for the use of capital, or allocated to the partner, as income or gain from sources outside this state, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subsection (4) of this section; or

(b) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (4) of this section.

(3) Any modification to federal taxable income described in this chapter that relates to an item of partnership income, gain, loss or deduction, shall be made in accordance with the partner's distributive share, for federal income tax purposes of the item to which the modification relates, but limited to the portion

of such item derived from or connected with sources in this state.

(4) The department may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as it may require.

(5) A nonresident partner's distributive share of items of income, gain, loss or deduction shall be determined under ORS 316.347 (1). The character of partnership items for a nonresident partner shall also be determined under ORS 316.347 (1). The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (2) of this section, having as a principal purpose the avoidance or evasion of tax under this chapter, shall be determined under ORS 316.347 (2). [1969 c 493 §53, 1975 c 705 §8]

316.353 [1957 s s c 15 §6; subsection (6) derived from 1957 s s c 15 §8; 1959 c 92 §1, 1963 c 627 §12 (referred and rejected), 1965 c 410 §6, repealed by 1969 c 493 §99]

316.355 [1953 c 304 §48, repealed by 1969 c 493 §99]

316.360 [1953 c.304 §49, repealed by 1969 c 493 §99]

RETURNS; PAYMENTS

316.362 Persons required to make returns. An income tax return with respect to the tax imposed by this chapter shall be made by the following:

(1) Every resident individual (a) who is required to file a federal income tax return for the taxable year, or (b) who has federal net income of more than \$600 if single or more than \$1,200 if married, or (c) who, having attained the age of 65 before the close of his taxable year, has federal net income of more than \$1,200 if single, more than \$1,800 if married and his spouse has not attained the age of 65, or more than \$2,400, if both have attained the age of 65, before the close of the taxable year.

(2) Every nonresident individual (a) who has federal gross income from sources in this state of more than \$600 if single and \$1,200 if married, or (b) who, having attained the age of 65 before the close of his taxable year, has federal gross income from sources within this state of more than \$1,200 if single, more than \$1,800 if married and his spouse has not yet attained the age of 65, or more than \$2,400 if both have attained the age of 65, before the

close of the taxable year, or (c) who have any taxable income.

(3) Every resident estate or trust that is required to file a federal income tax return.

(4) Every nonresident estate that has federal gross income of \$600 or more for the taxable year from sources within this state.

(5) Every nonresident trust that for the taxable year has from sources within this state (a) any taxable income, or (b) gross income of \$600 or more regardless of the amount of taxable income.

(6) Nothing contained in this section shall preclude the department from requiring any individual, estate or trust to file a return when, in the judgment of the department, a return should be filed. [1969 c 493 §54]

316.363 Returns; instructions. The instructions to the individual state income tax return form required to be filed by this chapter shall:

(1) Be written in simple words used in their commonly understood senses that convey meanings clearly and directly;

(2) Be written in primarily simple, rather than compound or complex, sentences that are as short as possible;

(3) Limit the use of definitions to definitions of words that cannot be properly explained or qualified in the text;

(4) Include an index at the beginning of the instructions to provide a useful guide to the use of the form. The index shall give a comprehensive listing of return form parts in a logical sequence, and the index listings shall clearly state the contents of each section;

(5) Have the text of the instructions printed in roman type at least as large as 10-point modern type, two points lead;

(6) Have margins that are adequate for purposes of readability, and have a line length of the text not exceeding four inches for a column;

(7) Have section headings printed in a contrasting color, typeface or size; and

(8) Be printed so that the contrast and legibility of the ink and paper used is substantially the equivalent of black ink on white paper. [1977 c 736 §2]

316.364 Flesch reading ease score for instructions. (1) The instructions to an individual state income tax return form shall have a total Flesch Reading Ease Score of 60

or higher.

(2) As used in this section:

(a) "Flesch Reading Ease Score" means $206.835 - (x + y)$ where x equals average sentence length multiplied by 1.015 and y equals average word length multiplied by 84.6.

(b) "Average sentence length" means the total number of words in the instructions to the state income tax return form divided by the total number of sentences in the instructions.

(c) "Average word length" means the total number of syllables in the instructions to the state income tax return form divided by the total number of words in the instructions.

[1977 c 736 §3]

316.365 [1953 c 304 §50, 1953 c 552 §11; 1957 c 586 §15, 1959 c 593 §6 (referred and rejected), 1961 c 411 §1, 1963 c 627 §13 (referred and rejected), repealed by 1969 c 493 §99]

316.367 Joint return by husband and wife. (1) A husband and wife may make a joint return with respect to the tax imposed by this chapter even though one of the spouses has neither gross income nor deductions, except that:

(a) No joint return shall be made under this chapter if the spouses are not permitted to file a joint federal income tax return;

(b) If the federal income tax liability of either spouse is determined on a separate federal return, their income tax liabilities under this chapter shall be determined on separate returns;

(c) If the federal income tax liabilities of husband and wife, other than a husband and wife described in subsection (2) of this section, are determined on a joint federal return, they shall file a joint return under this chapter and their tax liabilities shall be joint and several; and

(d) If neither spouse is required to file a federal income tax return and either or both are required to file an income tax return under this chapter, they may elect to file separate or joint returns and pursuant to such election their liabilities shall be separate or joint and several.

(2) If either husband or wife is a resident and the other is a nonresident, they shall file separate income tax returns in this state on such forms as may be required by the department, in which event their tax liabilities shall be separate; but they may elect to determine

their joint taxable income as if both were residents and, in such case, their liabilities shall be joint and several. [1969 c 493 §55]

316.370 [1953 c 304 §51, repealed by 1969 c 493 §99]

316.372 Minor to file return; unpaid tax assessable against parent. A minor shall file his own return and include therein all items of income, including income attributable to his personal services, and such income shall not be included on the return of his parent. All expenditures by the parent or the minor attributable to such income are considered to have been paid or incurred by the minor. However, any tax assessed against the minor, to the extent, attributable to income from personal services, if not paid by the minor, for all purposes shall be considered as having also been properly assessed against the parent. For the purposes of this section the term "parent" includes an individual who is entitled to the services of a minor by reason of having parental rights and duties in respect of such minor. [1969 c 493 §56]

316.375 [1953 c 304 §52, 1957 c 16 §3, repealed by 1969 c 493 §99]

316.377 Individual under disability. An income tax return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his duly authorized agent, his committee, guardian, conservator, fiduciary or other person charged with the care of his person or property other than a receiver in possession of only a part of the individual's property. [1969 c 493 §57]

316.380 [1953 c 304 §53, repealed by 1969 c 493 §99]

316.382 Returns by fiduciaries. (1) An income tax return, in the name of the decedent, for any deceased individual shall be made and filed by his personal representative or other person charged with the care of his property, and this duty extends to any unfilled return prior to decedent's death. The tax shall be levied upon and collected from his estate. A final return of a decedent shall be due when it would have been due if the decedent had not died.

(2) The income tax return of an estate or trust shall be made and filed by the fiduciary thereof, whether the income is taxable to the estate or trust or to the beneficiaries thereof. If two or more fiduciaries are acting jointly, the return may be made by any one of them. [1969 c.493 §58, 1975 c 705 §9]

316.385 [1963 c 435 §2, repealed by 1969 c 493 §99]

316.387 Final account of a fiduciary; tax settlement. (1) No final account of a fiduciary shall be allowed by any court unless the account shows, and the judge of the court finds, that all taxes imposed by this chapter upon the fiduciary that have been payable have been paid, and that all taxes that may become due are secured by bond, deposit or other security acceptable to the department. No order closing an estate shall be entered unless the fiduciary files with the clerk of the court the department's certificate of release, or shows that 60 days have elapsed since the mailing to the department of a request for such release and that the department has not filed any objection to the final account.

(2) For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the department, on behalf of the state, may agree upon the amount of taxes at any time due or to become due from such fiduciaries under this chapter with respect to a tax return or returns of or for a decedent individual or an estate or trust, and payment in accordance with such agreement shall be in full satisfaction of the taxes to which the agreement relates. [1969 c 493 §59, 1971 c 333 §3]

316.390 [1963 c 435 §3, repealed by 1969 c 493 §99]

316.392 Notice of qualification of receiver and others. Every receiver, trustee in bankruptcy, assignee for benefit of creditors or other like fiduciary, shall give notice of his qualification as such to the department, as may be required by regulation. [1969 c.493 §60]

316.397 Change of status from resident to nonresident. The taxable income of an individual who changes his status during his taxable year from resident to nonresident or from nonresident to resident shall be determined as provided in this chapter for residents and for nonresidents as if the individual's taxable year for federal income tax purposes were limited to the period of his resident and nonresident status respectively. For purposes of making the computation required by this section, the personal exemptions, the itemized deductions or zero bracket amount allowable on his federal tax return, all modified as provided in this chapter, and the federal and foreign country income tax deduction shall be allowed in each period in the proportion that the federal adjusted gross income of the taxpayer from Oregon sources bears to the total federal adjusted gross income from all

sources. If the numerator of the fraction is greater than the denominator, the proportion of 100 percent shall be used in the prorations required by this section. [1969 c 493 §61, 1971 c 332 §1, 1975 c 672 §7, 1978 c 9 §3, 1981 c 801 §5]

316.402 [1969 c 493 §62, repealed by 1971 c 332 §2]

316.405 [1975 c 410 §2, 1967 c 110 §1, repealed by 1969 c 493 §99]

316.406 [1959 c 591 §21, repealed by 1965 c 410 §7]

316.407 Time and place for filing returns and paying tax. (1) The income tax return required by this chapter shall be filed with the department on or before the 15th day of the fourth month following the close of the taxpayer's taxable year. A person required to make and file a return under this chapter, without assessment, notice or demand, shall pay any tax due thereon to the Department of Revenue on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return).

(2) The tax may be paid with uncertified check during such time and under such regulations as the department shall prescribe, but if a check so received is not paid by the bank on which it is drawn the taxpayer by whom such check is tendered remains liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered. [1969 c 493 §63, 1971 c 354 §6, 1975 c 593 §18, 1979 c.470 §1, 1980 ss c 7 §23]

316.408 [1959 c 591 §2, 1963 c 388 §3, 1963 c 627 §14 (referred and rejected), repealed by 1965 c 410 §7]

316.410 [1959 c 591 §3, repealed by 1965 c 410 §7]

316.411 [1963 c 388 §§2, 4, repealed by 1965 c 410 §7]

316.412 [1959 c 591 §4, repealed by 1963 c 627 §23 (referred and rejected); repealed by 1965 c 410 §7]

316.414 [1959 c 591 §5, repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.415 [1965 c 410 §3, repealed by 1969 c 493 §99]

316.417 Date return considered made or advance payment made. (1) A return filed before the last day prescribed by law for the filing thereof is considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed is considered as made on the last day prescribed by law for the payment of the tax or, if the taxpayer elected to pay the tax in instalments, on the last day prescribed for the payment of the first instalment. The last day prescribed by law for filing the return or paying the tax shall be determined without

regard to any extension of time granted the taxpayer by the department.

(2) ORS 305.820 applies to returns filed by mail and to due dates that fall on a Saturday, Sunday or legal holiday. [1969 c 493 §64]

316.420 [1959 c 591 §6, repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.422 [1969 c 493 §65; repealed by 1971 c 354 §7]

316.425 [1965 c 410 §4, repealed by 1969 c 493 §99]

316.426 [1959 c 591 §7; repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.430 [1959 c 591 §8, repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.432 [1959 c 591 §9, repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.434 [1959 c 591 §10; repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.436 [1959 c 591 §11, repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.438 [1959 c 591 §12, repealed by 1963 c 627 §23 (referred and rejected), repealed by 1965 c 410 §7]

316.440 [1959 c 591 §13, repealed by 1965 c 410 §7]

316.442 [1959 c 591 §14, repealed by 1965 c 410 §7]

316.444 [1959 c 591 §15, repealed by 1965 c 410 §7]

316.446 [1959 c 591 §16, repealed by 1965 c 410 §7]

316.448 [1959 c 591 §17, repealed by 1965 c 410 §7]

316.450 [1959 c 591 §18, repealed by 1965 c 410 §7]

316.454 [1965 c 248 §3, repealed by 1969 c 493 §99]

316.455 [1953 c 304 §54, 1953 c 552 §12, 1955 c 596 §2, 1957 c 586 §2, 1957 s s c 15 §4; 1963 c 486 §1, 1963 c 627 §15 (referred and rejected), 1965 c 248 §1, repealed by 1969 c 493 §99]

316.457 Department may require copy of federal return. If directed to do so by the department, through regulations or instructions upon the state income tax return form, every taxpayer required by this chapter to file an income tax return with the department shall also file with such return a true copy of the federal tax return filed by the taxpayer pursuant to the requirements of the Internal Revenue Code for the same taxable year. The department may, in its discretion, promulgate regulations or instructions that permit taxpayers to submit specified excerpts from federal returns in lieu of submitting copies of the entire federal return. The federal return or any part thereof required to be filed with the state income tax return is incorporated in and shall be a part of the state income tax return. [1969 c 493 §66; 1977 c 872 §6]

316.462 Change of election. Any election expressly authorized by this chapter may be changed on such terms and conditions as the department may prescribe by regulation. [1969 c 493 §67]

316.467 Partnership information return. Every partnership having a resident partner or having any income derived from sources in this state, determined in accordance with the applicable rules as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction, and the names and addresses of the individuals (whether residents or nonresidents) who would be entitled to share in the net income, if distributed, and the amount of the distributive share of each individual, and such other pertinent information as the department may prescribe by regulations and instructions. Such return shall be filed on or before the 15th day of the fourth month following the close of each taxable year. For purposes of this section, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under this chapter. [1969 c 493 §68]

316.472 Tax treatment of common trust fund; information return required. (1) The tax treatment of common trust funds and participants therein, under this chapter, is governed by the provisions of the Internal Revenue Code.

(2) Every bank or trust company maintaining a common trust fund shall make a return to the department for each tax year, stating specifically, with respect to such fund, the items of gross income and deductions, and shall include in the return information sufficient to identify the trusts and estates entitled to share in the net income of the common trust fund and the amount of the proportionate share of each such participant. The return shall be made at such time as is designated by the department. [1969 c 493 §69]

316.475 [Formerly 316 080, amended by 1961 c 218 §1, repealed by 1969 c 493 §99]

316.480 [1967 c 592 §7; 1969 c 340 §2, repealed by 1969 c 493 §99, see 316 097]

316.485 Arts Development Fund contribution from refund. (1) Resident individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Arts Devel-

opment Fund by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form for residents a space for taxpayers to designate that a contribution be made to the Arts Development Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes in the amount of \$1, \$5, \$10 or other dollar amount. [1981 c 411 §1]

Note: 316 485 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

DISTRIBUTION OF REVENUE

316.502 Distribution of revenue to General Fund; working balance. (1) The net revenue from the tax imposed by this chapter, after deducting refunds, shall be paid over to the State Treasurer and held by him in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

(2) 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 \$1 million.

(3) Moneys are continuously appropriated to the Department of Revenue to make the refunds authorized under subsection (2) of this section. [1969 c 493 §70, 1977 c 761 §2]

316.505 [1953 c.304 §55; 1953 c 552 §13; 1955 c 596 §3, subsection (3) derived from 1955 c 596 §4, 1957 c 586 §3, 1963 c 627 §16 (referred and rejected), repealed by 1969 c 493 §99]

316.510 [1953 c 304 §56; 1957 c.586 §4, repealed by 1969 c.493 §99]

316.512 [1965 c.592 §2; repealed by 1969 c 493 §99]

316.513 [1965 c 592 §3, repealed by 1969 c 493 §99]

316.515 [1953 c.304 §57, repealed by 1969 c.493 §99]

316.520 [1953 c 304 §58; repealed by 1957 c 632 §1 (314 355 enacted in lieu of 316 520)]

316.525 [1953 c 304 §59, repealed by 1969 c 493 §99]

316.530 [1953 c 304 §60, repealed by 1969 c 493 §99]

316.535 [1953 c 304 §61; repealed by 1957 c.632 §1 (314.360 enacted in lieu of 316 535)]

316.540 [1953 c 304 §62, repealed by 1969 c 493 §99]

316.545 [1953 c 304 §63, repealed by 1957 c 632 §1 (314 385 enacted in lieu of 316 545 and 317 355)]

316.550 [1953 c 304 §64, repealed by 1957 c 632 §1 (314 365 enacted in lieu of 316.550 and 317 365)]

316.555 [1953 c 304 §65, repealed by 1957 c 632 §1 (314 370 enacted in lieu of 316 555)]

PAYMENT OF ESTIMATED TAXES

316.557 "Estimated tax" defined. As used in ORS 314.395, 314.400, 316.407 and 316.557 to 316.589, "estimated tax" means the amount of income tax imposed under this chapter for the taxable year, as estimated by the individual, minus the sum of any credits as estimated by the individual against tax provided by this chapter. [1980 s s c 7 §4]

316.559 Application of ORS 316.557 to 316.589 to estates and trusts. ORS 316.557 to 316.589 do not apply to an estate or trust. [1980 s s c 7 §9]

316.560 [1953 c 304 §66, repealed by 1957 c 632 §1 (314 295 enacted in lieu of 316 560 and 317 375)]

316.563 When declaration of estimated tax required; exception; effect of short tax year; content; amendment. (1) Except as provided in subsection (2) of this section, every individual shall declare an estimated tax for the taxable year if:

(a) The gross income for the taxable year can be reasonably expected to include more than \$1,000 from sources other than wages as defined in ORS 316.162 (2); or

(b) The gross income for the taxable year can be reasonably expected to exceed:

(A) \$20,000 in the case of:

(i) A single individual, including a head of household as defined in section 2 (b) of the Internal Revenue Code of 1954, or a surviving spouse as defined in section 2 (a) of the Internal Revenue Code of 1954; or

(ii) A married individual entitled under ORS 316.567 to file a joint declaration with a spouse, but only if the spouse has not received wages, as defined in ORS 316.162 (2) for the taxable year; or

(B) \$10,000 in the case of a married individual entitled under ORS 316.567 to file a joint declaration with a spouse, but only if each spouse has received wages as defined in ORS 316.162 (2) for the taxable year; or

(C) \$5,000 in the case of a married individual not entitled under ORS 316.567 to file a joint declaration with a spouse.

(2) No declaration is required if the estimated tax as defined in ORS 316.557 is less than \$100.

(3) An individual with a taxable year of less than 12 months shall make a declaration in accordance with rules adopted by the department.

(4) An individual may amend the declaration filed during the taxable year under rules prescribed by the department.

(5) The declaration shall contain information required by the department by rule. [1980 s s c 7 §§2, 2a, 5, 8, 1981 c 678 §1a]

Note: Sections 10a and 15a, chapter 7, Oregon Laws 1980, provide:

Sec. 10a. Except as provided in section 12 of this 1980 Act, declarations of estimated tax required by section 2 of this 1980 Act for tax years beginning on or after January 1, 1981, and prior to January 1, 1982, from individuals who are neither farmers nor fishermen for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of section 2 of this 1980 Act are first met

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year; or

(2) After June 1, no declaration shall be filed

Sec. 15a. (1) For taxable years beginning on or after January 1, 1981, and prior to January 1, 1982, an individual shall pay estimated tax, with respect to which a declaration is required under section 2 of this 1980 Act, as provided in subsections (2) to (4) of this section.

(2) If the declaration is filed on or before April 15 of the taxable year, one-half of the estimated tax shall be paid in two equal instalments. The first instalment shall be paid at the time of the filing of the declaration, and the second on or before June 15

(3) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by section 10a of this 1980 Act to be filed on or before April 15 of the taxable year, one-half of the estimated tax shall be paid on or before June 15

(4) If no declaration is required by section 10a of this Act, then no estimated tax need be paid

(5) If the declaration is filed after the time prescribed in section 10a of this 1980 Act, subsections (2) and (3) of this section shall not apply. Instead, there shall be paid at the time of filing all instalments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 10a of this 1980 Act, and the remaining instalments shall be paid at the time at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

316.565 [1953 c 304 §67; repealed by 1957 c 632 §1 (314 380 enacted in lieu of 316 565 and 317 380)]

316.567 Joint declaration of husband and wife; liability; effect on nonjoint returns. (1) Except as provided in subsection (2) of this section, a husband and wife may make a single declaration jointly under ORS 314.395, 314.400, 316.407 and 316.557 to 316.589. The liability of the husband and wife making such a declaration shall be joint and several.

(2) A husband and wife may not make a joint declaration:

(a) If either the husband or the wife is a nonresident alien;

(b) If they are separated under a decree of divorce or of separate maintenance; or

(c) If they have different taxable years.

(3) If a husband and wife make a joint declaration but not a joint return for the taxable year, the husband and wife may:

(a) Treat the estimated tax for the year as the estimated tax of either the husband or of the wife; or

(b) Divide the estimated tax between them. [1980 s.s c 7 §3]

316.569 When declaration required of nonresident. No declaration shall be required of a nonresident individual under ORS 314.395, 314.400, 316.407 and 316.557 to 316.589 unless:

(1) Withholding under this chapter is made applicable to the wages, as defined in ORS 316.162, of the nonresident individual; or

(2) The nonresident individual has income, other than compensation for personal services subject to deduction and withholding under ORS 316.162, which is effectively connected with the conduct of a trade or business within this state. [1980 s.s c 7 §10]

316.570 [1953 c 304 §68; 1957 c.586 §16; 1959 c 632 §1; 1961 c 504 §2; 1969 c.166 §6, repealed by 1969 c 493 §99]

316.573 When individual not required to file declaration. (1) An individual need not file a declaration of estimated tax required by ORS 316.563 (1) of this 1980 Act, if:

(a) The estimated gross income of the individual from farming or fishing, including oyster farming, for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year; or

(b) The gross income of the individual from farming or fishing, including oyster farming, shown on the return of the individual in the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return.

(2) For purposes of computing gross income under this section, an individual who is a stockholder of one or more electing small business corporations for federal income tax purposes shall consider his or her share of the gross income of the electing small business corporation as his or her individual income. The electing small business corporation gross income shall be classed as farming, fishing, nonfarming or nonfishing as the case may be in carrying out the provisions of this section.

[1980 s s c 7 §12]

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

316.577 Date of filing declaration.

Except as provided in ORS 316.573, declarations of estimated tax required by ORS 316.563 (1) from individuals who are neither farmers nor fishermen for the purpose of that section shall be filed for tax years beginning on or after January 1, 1982, on or before April 15 of the taxable year, except that if the requirements of ORS 316.563 (1) are first met:

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or after June 15 of the taxable year;

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year; or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding year. [1980 s s c 7 §11, 1981 c 678 §2]

316.579 Amount of estimated tax to be paid with declaration; instalment schedule; prepayment of instalment. (1) For taxable years beginning on or after January 1, 1982, an individual shall pay the estimated tax, with respect to which a declaration is required under ORS 316.563 (1), as provided in subsections (2) to (6) of this section.

(2) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal instalments. The first instalment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15 of the

taxable year, and the fourth on January 15 of the succeeding year.

(3) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by ORS 316.577 to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal instalments. The first instalment shall be paid at the time of the filing of the declaration, the second on September 15 of the calendar year, and the third on January 15 of the succeeding taxable year.

(4) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by ORS 316.577 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal instalments. The first instalment shall be paid at the time of filing of the declaration, and the second on January 15 of the succeeding taxable year.

(5) If the declaration is filed after September 15 of the taxable year and is not required by ORS 316.577 to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of filing of the declaration.

(6) If the declaration is filed after the time prescribed in ORS 316.577, subsections (3) to (5) of this section shall not apply. Instead, there shall be paid at the time of filing all instalments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in ORS 316.577, and the remaining instalments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(7) If a taxpayer does not file a declaration but files a return on or before January 31 of the succeeding year and pays in full the amount stated as due on the return:

(a) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, the return shall be considered as the declaration; and

(b) If the tax shown on the return, as reduced by the sum of the credits against the tax provided by this chapter, is greater than the estimated tax shown in an earlier declaration, or in the last amendment thereof, the return shall be considered as the amendment of the declaration permitted by ORS 316.563 (4) to be filed on or before January 15.

(8) In the application of this section to a taxable year beginning on any date other than January 1, there shall be substituted for the 15th or last day of the month specified in this section, the 15th or last day of the corresponding month.

(9) An individual may pay an instalment of the estimated tax before the date prescribed for its payment. [1980 s s c 7 §§16, 20, 1981 c 678 §3]

316.580 [1953 c 304 §70, 1955 c 595 §2, 1957 c 586 §17, renumbered 316 751]

316.583 Effect of payment of estimated tax or instalment; credit for overpayment of prior year taxes. (1) Payment of the estimated income tax or any instalment shall be considered payment on account of the income taxes imposed by this chapter for the taxable year.

(2) The department may adopt rules which enable the taxpayer or department to credit against the estimated income tax the amount the taxpayer or the department determines to be an overpayment of the income tax for a preceding taxable year. [1980 s s c 7 §§19, 21]

316.585 [1953 c 304 §71, 1955 c 595 §3, 1957 c 586 §18, renumbered 316 770]

316.587 Effect of underpayment of estimated tax; computation of underpayment. (1) Except as provided in subsection (4) of this section, if an individual makes an underpayment of estimated tax, interest shall accrue at the rate of one and one-half percent per month, or fraction thereof, on the amount underpaid for the period the estimated tax or any instalment remains unpaid. The penalty provisions contained in ORS chapter 314 for underpayment of tax shall not apply to underpayments of estimated tax under ORS 314.395, 314.400, 316.407 and 316.557 to 316.589.

(2) For purposes of subsection (1) of this section, the amount of underpayment shall be:

(a) When an individual files a return, the excess of the amount of the instalment which would be due if the estimated tax were equal to 80 percent of the tax shown on the return for the taxable year over any amount of the instalment paid on or before the last date prescribed for the payment; or

(b) When no return is filed, the excess of the amount of the instalment which would be due if the estimated tax were equal to 80 percent of the tax for the taxable year over

any amount of the instalment paid on or before the last date prescribed for the payment

(3) The period of underpayment shall run from the date the instalment was due to the earlier of the following dates:

(a) The 15th day of the fourth month following the close of the taxable year; or

(b) With respect to any portion of the underpayment, the date on which the portion is paid.

(4) Interest accruing under subsection (1) of this section shall not be imposed if the total of all payments of estimated tax made on or before the last date prescribed for the payment of such instalment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the lesser of:

(a) The tax shown on the return of the individual for the preceding taxable year, if the return showing a liability for tax was filed by the individual for the preceding taxable year and the preceding taxable year was a taxable year of 12 months;

(b) An amount equal to 80 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the instalment is required to be paid;

(c) An amount equal to 90 percent of the tax computed at the rates applicable to the taxable year on the basis of the actual taxable income for the months in the taxable year ending before the month in which the instalment is required to be paid as if such months constituted the taxable year; or

(d) An amount equal to the tax computed at the rates applicable to the taxable year on the basis of the taxpayer's status with respect to personal exemptions under section 151 of the 1954 Internal Revenue Code, as modified by this chapter, for the taxable year, but otherwise on the basis of the facts shown on the return for, and the law applicable to, the preceding taxable year.

(5) For purposes of this section, the estimated tax shall be computed without any reduction for the amount of credit estimated to be allowed to the individual for the taxable year under ORS 316.187. The amount of the credit allowed under ORS 316.187 for the taxable year shall be considered a payment of estimated tax. An equal part of the credit shall be considered paid on each instalment

date for the taxable year, unless the taxpayer establishes the date on which all amounts were actually withheld, in which case the amount so withheld shall be considered payment of estimated tax on the dates on which the amounts were actually withheld.

(6) For purposes of subsections (2) and (4) of this section, the term "tax" means the tax imposed by this chapter minus any credits against tax allowed by this chapter, other than the credit against tax provided by ORS 316.187. [1980 s s c 7 §22]

316.589 Application to short tax years and tax years beginning on other than January 1. (1) The application of ORS 314.395, 314.400, 316.407 and 316.557 to 316.589 to taxable years of less than 12 months shall be in accordance with rules adopted by the Department of Revenue.

(2) In the application of ORS 314.395, 314.400, 316.407 and 316.557 to 316.589 to a taxable year beginning on any date other than January 1 there shall be substituted, for the months specified in ORS 314.395, 314.400, 316.407 and 316.557 to 316.589, the months which correspond thereto. [1980 s s c 7 §§14, 15]

316.590 [1953 c 304 §72, repealed by 1969 c 493 §99]

316.605 [1953 c 304 §73, 1955 c 590 §1; repealed by 1957 c 632 §1 (314 405 enacted in lieu of 316 605 and 317 405)]

316.610 [1953 c 304 §74, 1953 c 552 §14, 1957 c 17 §1; repealed by 1957 c 632 §1 (314 410 enacted in lieu of 316 610 and 317 410)]

316.615 [1953 c 304 §75, 1953 c 552 §15, 1955 c 583 §1, 1957 c 23 §1, repealed by 1957 c 632 §1 (314 415 enacted in lieu of 316 615 and 317 415)]

316.620 [1953 c 304 §76, 1955 c 355 §1, repealed by 1957 c 632 §1 (314 420 enacted in lieu of 316 620, 317 370 and 317 420)]

316.625 [1953 c 304 §77, repealed by 1957 c 632 §1 (314 425 enacted in lieu of 316 625 and 317 425)]

316.630 [1953 c 304 §78, repealed by 1957 c 632 §1 (314 430 enacted in lieu of 316 630 and 317 430)]

316.635 [1953 c 304 §79; repealed by 1957 c 632 §1 (314 435 enacted in lieu of 316 635 and 317 435)]

316.640 [1953 c 304 §80; repealed by 1957 c 632 §1 (314 440 enacted in lieu of 316 640, 317 440 and 317 445)]

316.645 [1953 c 304 §81, 1961 c 504 §3; repealed by 1969 c 166 §8 and 1969 c 493 §99]

316.650 [1953 c 304 §82, 1953 c 552 §16, repealed by 1957 c 632 §1 (314 445 enacted in lieu of 316 650 and 317 455)]

316.655 [1953 c 304 §83, 1953 c 552 §17, repealed by 1957 c 632 §1 (subsections (1) and (2) of 314 450 enacted in lieu of 316 655 and 317 460)]

316.660 [1953 c 304 §84; repealed by 1957 c 632 §1 (314 455 enacted in lieu of 316 660 and 317 465)]

316.665 [1953 c 304 §85, 1953 c 552 §18, 1955 c 588 §1, repealed by 1957 c 632 §1 (314 460 enacted in lieu of 316 665 and 317 470)]

316.670 [1953 c 304 §86, repealed by 1957 c 632 §1 (314 465 enacted in lieu of 316 670 and 317 475)]

316.675 [1953 c 304 §87, 1953 c 552 §19, repealed by 1957 c 632 §1 (314 470 enacted in lieu of 316 675 and 317 480)]

316.705 [1953 c 304 §88; repealed by 1957 c 632 §1 (314 805 enacted in lieu of 316 705 and 317 505)]

316.706 [1957 c 586 §6, 1959 c 76 §1, 1961 c 506 §2, 1961 c 623 §1, repealed by 1969 c 493 §99]

316.710 [1953 c 304 §89, repealed by 1957 c 632 §1 (subsections (2), (3) and (4) of 306 040 enacted in lieu of 316 710)]

316.711 [1957 c 586 §7, 1959 c 593 §7 (referred and rejected), 1961 c 623 §2, repealed by 1969 c 493 §99]

316.714 [1957 c 586 §7, 1959 c 593 §8 (referred and rejected), 1963 c 627 §17 (referred and rejected), repealed by 1969 c 493 §99]

316.715 [1953 c 304 §90, repealed by 1957 c 632 §1 (314 810 enacted in lieu of 316 715)]

316.720 [1953 c 304 §91, repealed by 1957 c 632 §1 (314 815 enacted in lieu of 316 720 and 317 505)]

316.721 [1957 c 586 §12, repealed by 1969 c 493 §99]

316.725 [1953 c 304 §92, repealed by 1957 c 632 §1 (314 820 enacted in lieu of 316 725 and 317 520)]

316.730 [1953 c 304 §93, repealed by 1957 c 632 §1 (314 825 enacted in lieu of 316 730 and 317 525)]

316.731 [1957 c 586 §13, repealed by 1969 c 493 §99]

316.735 [1953 c 304 §94, repealed by 1957 c 632 §1 (314 830 enacted in lieu of 316 735 and 317 530)]

316.740 [1953 c 304 §95, 1957 c 75 §1, repealed by 1957 c 632 §1 (314.835 enacted in lieu of 316 740 and 317 535)]

316.741 [1957 c 586 §8, repealed by 1969 c 493 §99]

316.745 [1953 c 304 §96, repealed by 1957 c 632 §1 (314 840 enacted in lieu of 316 745 and 317 540)]

316.750 [1953 c 304 §97, repealed by 1957 c 632 §1 (314 845 enacted in lieu of 316 750 and 317 545)]

316.751 [Formerly 316 580; repealed by 1969 c 493 §99]

316.755 [1953 c 304 §98; repealed by 1957 c 632 §1 (314 850 enacted in lieu of 316 755)]

316.760 [1953 c 304 §99, repealed by 1957 c 632 §1 (314 855 enacted in lieu of 316 760 and 317 550)]

316.761 [1957 c 586 §9, 1963 c 627 §18 (referred and rejected), 1963 s s c 3 §1; repealed by 1969 c 493 §99]

316.770 [Formerly 316 585, 1963 c 83 §1, repealed by 1969 c 493 §99]

316.775 [1957 c 586 §10, 1959 c 234 §3, repealed by 1969 c 493 §99]

316.780 [1957 c 586 §11, repealed by 1969 c 493 §99]

316.790 [1953 c 304 §116, 1957 c 528 §3, repealed by 1969 c 493 §99]

MISCELLANEOUS

316.802 Effect of chapter 493, Oregon Laws 1969. This chapter is intended to supersede any conflicting provisions of law in effect on August 22, 1969, to the extent of such conflict. [1969 c 493 §71]

316.805 [1953 c 304 §100, repealed by 1969 c 493 §99]

316.810 [1953 c 304 §101, repealed by 1969 c 493 §99]

316.815 [1953 c 304 §102, 1955 c 582 §1; repealed by 1969 c 493 §99]

316.820 [1953 c 304 §103, 1963 c 627 §19 (referred and rejected), repealed by 1969 c 493 §99]

316.825 [1953 c 304 §104, repealed by 1969 c 493 §99]

316.827 [1957 s s c 15 §7, last sentence derived from 1957 s s c 15 §8, 1963 c 627 §20 (referred and rejected), repealed by 1969 c 493 §99]

316.830 [1953 c 304 §105, repealed by 1969 c 493 §99]

316.835 [1953 c 304 §106, repealed by 1969 c 493 §99]

316.840 [1953 c 304 §107, 1961 c 506 §3, repealed by 1969 c 493 §99]

316.855 [1953 c 304 §108, 1963 c 305 §1, repealed by 1969 c 493 §99]

316.860 [1953 c 304 §109, repealed by 1969 c 493 §99]

316.865 [1953 c 304 §110, repealed by 1969 c 493 §99]

316.870 [1953 c 304 §111, repealed by 1969 c 493 §99]

316.875 [1953 c 304 §112, repealed by 1969 c 493 §99]

316.880 [1953 c 304 §113, repealed by 1969 c 493 §99]

316.885 [1953 c 304 §114, repealed by 1969 c 493 §99]

316.990 [1953 c 304 §115, repealed by 1957 c 632 §1 (314 991 enacted in lieu of 316 990 and 317 990)]

