

Chapter 317

1985 REPLACEMENT PART

Corporation Excise Tax

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GENERAL PROVISIONS

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

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

(1) "Centrally assessed corporation" means every corporation the property of which is assessed by the Department of Revenue under ORS 308 505 to 308.660 and 308 705 to 308 730

(2) "Department" means the Department of Revenue

(3) (a) "Consolidated federal return" means the return permitted or required to be filed by a group of affiliated corporations under section 1501 of the Internal Revenue Code

(b) "Consolidated state return" means the return required to be filed under ORS 317 710 (5)

(4) "Doing business" means any transaction or transactions in the course of its activities conducted within the state by a national banking association, or any other corporation, provided, however, that a foreign corporation whose activities in this state are confined to purchases of personal property, and the storage thereof incident to shipment outside the state, shall not be deemed to be doing business unless such foreign corporation is an affiliate of another foreign or domestic corporation which is doing business in Oregon Whether or not corporations are affiliated shall be determined as provided in section 1504 of the Internal Revenue Code

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

(6) "Financial institution" or "financial corporation" means a bank or trust company organized under ORS chapter 707, national banking association or production credit association organized under federal statute, building and loan association, savings and loan association, mutual savings bank, and any other corporation whose principal business is in direct competition with national and state banks

(7) "Internal Revenue Code" means the laws of the United States relating to income taxes as they may be amended on or before December 31, 1984, even where the amendments take effect or become operative after that date

(8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS

317 476, except as otherwise provided with respect to domestic insurers in subsection (11) of this section and ORS 317 650 to 317 665

(9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to domestic insurers in subsection (11) of this section and ORS 317 650 to 317.665

(10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a corporation for which no federal taxable income or loss is determined, as would be determined, under chapter 1, Subtitle A of the Internal Revenue Code, with the additions, subtractions, adjustments and other modifications as are specifically prescribed by this chapter except that in determining taxable income or loss for any year, no deduction under ORS 317.476 shall be allowed If the corporation is a corporation to which ORS 314 280 or 314.605 to 314 675 (requiring or permitting apportionment of income from transactions or activities carried on both within and without the state) applies, to derive taxable income or loss, the following shall occur

(a) From the amount otherwise determined under this subsection, subtract nonbusiness income, or add nonbusiness loss, whichever is applicable.

(b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon apportionment percentage defined under ORS 314 280, 314 650 or 314 670, whichever is applicable The resulting product shall be Oregon apportioned income or loss

(c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this subsection, add nonbusiness income allocable entirely to Oregon under ORS 314 280 or 314 625 to 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314 280 or 314 625 to 314 645 The resulting figure is "taxable income or loss" for those corporations carrying on taxable transactions or activities both within and without Oregon

(11) As used in ORS 317 122 and 317 650 to 317 665, "domestic insurer" has the meaning defined by ORS 731 082 (1) and 731 142 (1) and (2) but does not include title insurers or health care service contractors operating pursuant to ORS 750 005 to 750 065 [Amended by 1953 c 385 §9, 1959 c 631 §1, 1963 c 571 §1, subsection (18) enacted as 1969 c 600 §2, 1975 c 368 §4, 1977 c 866 §2, 1983 c 162 §3, 1984 c 1 §5, 1985 c 802 §20]

317.013 Adoption of parts of Internal Revenue Code and application of federal laws and regulations and technical correc-

tions pertaining to corporate taxpayers.

(1) Those portions of chapter 1 and subchapter A, chapter 6, Subtitle A and chapter 79, Subtitle F, Internal Revenue Code, pertaining to the determination of taxable income of corporate taxpayers, are adopted by reference as a part of this chapter. Those portions of the Internal Revenue Code have full force and effect under this chapter unless modified by other provisions of this chapter.

(2) Insofar 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.

(3) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (1) of this section refer to rules or regulations prescribed by the Secretary of the Treasury, they are regarded as rules adopted by the department under and in accord with the provisions of this chapter, whenever they are prescribed or amended.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (1) of this section are later corrected by an Act of the United States Congress designated as an Act to make technical corrections, then notwithstanding the date that the Act becomes law, those portions of the Internal Revenue Code, as so corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided in this section or ORS 317 010 or 317 018 [1983 c 162 §11, 1984 c 1 §6, 1985 c 802 §32]

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

317 016 [1967 c 274 §§2, 3, 5, 1975 c 705 §10, repealed by 1983 c 162 §57]

317.017 Application of certain substantiation requirements of Internal Revenue Code; luxury automobiles and other mixed-use property. (1) Notwithstanding ORS 317 010, 317 013 and 317 018, Oregon taxable income shall be determined using section 274 (d) of the Internal Revenue Code, and any regulations adopted thereunder, as that section and its regulations are in effect for the tax year of the taxpayer for federal income tax purposes

(2) Notwithstanding ORS 317 010, 317 013 and 317 018, section 280F of the Internal Revenue Code, and any regulations adopted thereunder, as that section and its regulations are in effect and applicable for the tax year of the taxpayer for federal income tax purposes, shall apply in deriving Oregon taxable income. This subsection shall apply to property placed in service on or after January 1, 1985, in tax years beginning on or after January 1, 1985 [1985 c 802 §48]

317.018 Statement of purpose. It is the intent of the Legislative Assembly, by the changes to the corporate excise tax laws contained in ORS 317 010, 317.013, 317 022, 317.038, 317 259 to 317 374, 317 476, 317 625 and 317 635, to accomplish the following:

(1) To make the Oregon corporate excise tax law, insofar as it relates to the measurement of taxable income, identical to the provisions of the federal Internal Revenue Code of 1954, as amended on or before December 31, 1984, even where the amendments take effect or become operative after that date, to the end that taxable income of a corporation for Oregon purposes is the same as it is for federal income tax purposes, subject to Oregon's jurisdiction to tax, and subject to the additions, subtractions, adjustments and modifications contained in this chapter.

(2) To achieve the results desired under subsection (1) of this section by application of the various provisions of the federal Internal Revenue Code relating to the definitions for corporations, of income, deductions, accounting methods, accounting periods, taxation of corporations, basis and other pertinent provisions relating to gross income. It is not the intent of the Legislative Assembly to adopt federal Internal Revenue Code provisions dealing with the computation of tax, tax credits or any other provisions designed to mitigate the amount of tax due.

(3) To impose on each corporation doing business within this state an excise tax for the privilege of carrying on or doing that business measured by its federal taxable income as adjusted in this chapter [1983 c 162 §2, 1984 c 1 §7, 1985 c 802 §21]

317.019 Application of Payment-in-kind Tax Treatment Act of 1983. The Payment-in-kind Tax Treatment Act of 1983 (P L 98-4, as amended by section 1061 of P L 98-369) shall apply in deriving Oregon taxable income under this chapter, notwithstanding that the Act is not part of the Internal Revenue Code [1985 c 802 §44]

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

317.021 Application of Deficit Reduction Act of 1984. (1) Notwithstanding ORS 317 010, 317 013 and 317 018 (all 1983 Replacement Part), and subject to all other provisions of this chapter in effect and applicable to transactions occurring on or after January 1, 1984, the Deficit Reduction Act of 1984 (P L 98-369) insofar as it applies to transactions occurring on or after January 1, 1984, shall apply to the same transactions for Oregon tax purposes

(2)(a) If a deficiency is assessed against any taxpayer for a tax year for which subsection (1) of this section applies and the deficiency, or any portion thereof, is attributable to any retroactive treatment for Oregon tax purposes given P.L. 98-369 under subsection (1) of this section, then any interest or penalty assessed under ORS chapter 305, 314 or this chapter with respect to the deficiency or portion shall be canceled

(b) If a refund is due any taxpayer for a tax year for which subsection (1) of this section applies and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment given P.L. 98-369 for Oregon tax purposes under subsection (1) of this section, then notwithstanding ORS 314 415 or other law, the refund shall be paid without interest

(3)(a) At the election of the taxpayer and if the taxpayer is required to file an Oregon return for a tax year beginning in 1985, any changes required on account of subsection (1) of this section for a tax year beginning prior to January 1, 1985, may be made either by filing an amended return or be made on a tax return filed for a tax year beginning in 1985 in the manner determined by the department by rule. An election made under this paragraph shall apply to all changes required on account of subsection (1) of this section

(b) Exercise of the election provided under paragraph (a) of this subsection shall not operate to modify any election made on the return to which the change relates or on the return in which the change is made unless otherwise provided by the department by rule

(c) If a taxpayer is not required to file an Oregon return for a tax year beginning in 1985 the taxpayer shall reflect the change in an amended return for the tax year to which the change relates

(d) If a taxpayer fails to make an election under paragraph (a) of this subsection, the department shall make any changes under para-

graph (a) of this subsection on the return to which the change or changes relate within the period as specified for assessing a deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1985 return is filed, whichever period expires later [1985 c 802 §60]

317.022 Certain provisions of ORS construed as continuation of existing law.

Insofar as the provisions of this section and ORS 317 013, 317 018, 317 038, 317 259 to 317 362, 317 625 and 317 635 are substantially the same as existing law relating to the taxation of corporations, they shall be construed as restatements and continuations, and not as new enactments [1983 c 162 §41, 1984 c 1 §8]

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

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

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

317.038 Corporation not required to include income or permitted to deduct expense more than once. (1) Nothing contained in this chapter shall be construed to require a corporation to include an item of income, or to permit a corporation to deduct an expense item, more than once in computing Oregon taxable income

(2) The changes to the corporate excise and income tax laws by chapter 162, Oregon Laws 1983, shall not be applied to preclude a corporation from taking into account a deduction or a loss to which it otherwise would be entitled

(3) The changes to the corporate excise and income tax laws by chapter 162, Oregon Laws

1983, shall not be applied to preclude a corporation from including income which it otherwise would be required to include [1983 c 162 §40, 1985 c 802 §21e]

IMPOSITION OF TAX

317 055 [Amended by 1957 c 607 §1, subsection (2) of 1961 Replacement Part derived from 1957 c 607 §11 and 1957 s s c 5 §1, 1963 c 571 §2, repealed by 1975 c 368 §8]

317.056 Financial corporations; applicable taxes. Except as otherwise required by federal law, every financial corporation located within this state shall be subject to county, city, district, political subdivision and all other local taxes imposed generally on a nondiscriminatory basis throughout the jurisdiction of the taxing authority, at the same rates and in all respects in the same manner and to the same extent as are mercantile, manufacturing and business corporations, and shall pay annually to the state an excise tax according to or measured by its Oregon taxable income, to be computed in the manner provided by this chapter at the rates provided in ORS 317 061 [1975 c 368 §3, 1983 c 162 §4]

317 060 [Amended by 1957 c 607 §2, subsection (2) of 1961 Replacement Part derived from 1957 c 607 §11 and 1957 s s c 5 §1, 1963 c 571 §3, repealed by 1975 c 368 §8]

317.061 Tax rate. The rate of the tax imposed by and computed under this chapter is seven and one-half percent [1975 c 368 §2, 1983 c 162 §5]

317 065 [Repealed by 1975 c 368 §8]

317 066 [1977 c 597 §2, repealed by 1983 c 162 §57]

317.067 Tax on homeowners association income. A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association at the rates provided in ORS 317 061 and as though the homeowners association were a corporation [1977 c 597 §3, 1983 c 162 §6]

317.070 Tax on centrally assessed, mercantile, manufacturing and business corporations. Every centrally assessed corporation, the property of which is assessed by the Department of Revenue under ORS 308 505 to 308 660 and 308 705 to 308 730 and every mercantile, manufacturing and business corporation doing or authorized to do business within this state, except as provided in ORS 317 080 and 317 090, shall annually pay to this state, for the privilege of carrying on or doing business by it within this state, an excise tax according to or measured by its Oregon taxable income, to be computed in the manner provided by this chapter, at the rates provided in ORS 317 061

[Amended by 1957 c 607 §3, 1957 c 709 §1, subsection (3) of 1963 Replacement Part derived from 1957 c 607 §11, 1957 c 709 §2 and 1957 s s c 5 §1, 1959 c 631 §2, 1963 c 627 §22 (referred and rejected), 1965 c 322 §1, 1965 c 544 §1, 1971 c 247 §1, 1975 c 368 §5, 1977 c 866 §3, 1982 c 16 §11, 1983 c 162 §7, 1985 c 565 §55]

317 071 [1977 c 887 §8, 1931 c 778 §40, 1981 c 894 §30, renumbered 317 111]

317 072 [1967 c 592 §9, 1969 c 340 §3, 1973 c 831 §9, 1977 c 795 §12, 1977 c 866 §11, 1981 c 408 §2, 1983 c 637 §7, renumbered 317 116]

317 073 [1959 c 631 §6, repealed by 1969 c 520 §49]

317 074 [1955 c 592 §2, 1957 c 607 §4, subsection (5) derived from 1957 c 607 §11 and 1957 s s c 5 §1, repealed by 1969 c 520 §49]

317 075 [Repealed by 1955 c 592 §4]

317 076 [1969 c 600 §9, renumbered 317 122]

317 077 [1977 c 839 §10, 1979 c 439 §2, renumbered 317 128]

317 078 [1969 c 600 §5, 1983 c 162 §35, renumbered 317 650]

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

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

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

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

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

(5) Business leagues, chambers of commerce, real estate boards or boards of trade, not organized for profit, no part of the net earnings of

which inures to the benefit of any private stockholder or individual

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

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

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

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

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

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

(11) Foreign or alien insurance companies and foreign or alien interinsurance and reciprocal exchanges, upon which a tax on premiums is levied, and with respect to its income as a corporate attorney in fact for a reciprocal or interinsurance exchange, corporations acting as attorneys in compliance with ORS 731 458, 731 462, 731 466 and 731 470

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

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

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

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

(a) Are corporations not for profit, authorized to transact business in this state pursuant to ORS chapter 61 or any statute repealed by chapter 580, Oregon Laws 1959,

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

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

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

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

(17) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which by reason of its purposes or activities is exempt from federal income tax except with respect to its unrelated business taxable income [Amended by 1953 c 207 §1, 1953 c 653 §3, 1955 c 592 §5, last sentence of 1959 Replacement Part derived from 1955 c 592 §6, 1957 c 553 §1, 1959 c 215 §1, 1961 c 473 §1, subsection (17) enacted as 1961 c 473 §2, 1963 c 286 §1, 1967 c 359 §689, 1969 c 600 §11, 1971 c 637 §1, 1985 c 802 §28a]

317 083 [1981 c 778 §36, renumbered 317 386]

317 085 [Repealed by 1957 c 607 §10]

317 087 [1981 c 720 §18, renumbered 317 133]

317.090 Minimum tax. Each taxpayer named in ORS 317 056 or 317 070 shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a minimum tax of \$10. The minimum tax shall not be apportionable (except in the case of a change of accounting periods), but shall be payable in full for any part of the year during which a corporation is subject to tax. [Amended by 1975 c 368 §6]

317 095 [1955 c 592 §§3, 6, repealed by 1965 c 479 §1 (317 096 enacted in lieu of 317 095)]

317 096 [1965 c 479 §2 (enacted in lieu of 317 095), repealed by 1983 c 162 §57]

317.098 [1979 c 561 §6, 1983 c 162 §8, renumbered 317 392]

CREDITS

Note. Sections 4 and 7, chapter 438, Oregon Laws 1985, provide

Sec 4 (1) As used in this section

(a) "Commercial fisherman" means a person licensed to take fish commercially under the laws of this or another state

(b) "Fair market value" means the purchase price actually paid for fish of the same species on the date the weigh-backs are landed

(c) "Fish" means fish or shellfish for use for human consumption

(d) "Weigh-backs" means fish taken by a commercial fisherman that are too small or uneconomical to process or are cosmetically imperfect so as to be unacceptable for purchase by a wholesaler, canner or other fish processor

(2) A credit is allowed against the taxes otherwise due under this chapter to

(a) A commercial fisherman who contributes or aids, assists or causes to be contributed through a person described in paragraph (b) of this subsection, weigh-backs to a gleaning cooperative, as defined in ORS 316 089, or to an officially designated recipient member of Oregon Food Share, a private nonprofit corporation

(b) A wholesaler, canner or other fish processor who accepts weigh-backs from a commercial fisherman or agent of a commercial fisherman and delivers or causes the weigh-backs to be delivered to a gleaning cooperative, as defined in ORS 316 089, or to an officially designated recipient member of Oregon Food Share, a private nonprofit corporation

(3) The amount of the credit allowed to each taxpayer described under subsection (2) of this section is five percent of the fair market value of the weigh-backs contributed during the tax year 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 on 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) If the taxpayer qualifying for the credit under this section is an electing S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. Each shareholder shall be entitled to take tax credit relief as provided in section 2 of this 1985 Act based on the shareholders' pro rata share of the credit

(6) At the time of a contribution made as described under subsection (2) of this section, the director, supervisor or other

appropriate official of the gleaning cooperative or Oregon Food Share to which the contribution is made shall supply to the commercial fisherman or wholesaler, canner or other fish processor, two copies of a form prescribed by the Department of Revenue. The form shall

(a) Contain the name and address of the commercial fisherman, wholesaler, canner or other fish processor

(b) Describe the species of the weigh-backs contributed and specify the amount or quantity contributed

(c) Specify the purchase price actually paid for fish of the same species as the weigh-backs on the date the weigh-backs were landed

(d) Contain any other information required by the Department of Revenue by rule

(e) Be signed by the director, supervisor or other appropriate official of the gleaning cooperative or Oregon Food Share

(7) Tax claim for tax credit under this section shall be substantiated by submission with the tax return, of the form described in subsection (6) of this section, a statement verified by the taxpayer that the contribution was made as described in subsection (2) of this section and a copy of a receipt or other statement identifying the price paid for fish of the same species as the weigh-backs on the date the weigh-backs were landed

Sec. 7 This Act applies to tax years beginning on or after January 1, 1985, and prior to January 1, 1994

317.100 Commercial lending institution loans for alternative energy devices.

(1) A credit against taxes otherwise due under this chapter shall be allowed commercial lending institutions for loans made at an annual interest rate of not more than six and one-half percent to finance the construction, installation and operation of alternative energy devices. A credit shall not be given for loans exceeding \$10,000 per dwelling using the alternative energy device. The amount of the credit shall be equal to the difference between the amount of interest which would have been charged during the taxable year by the lending institution for such loans at an annual interest rate of

(a) Six and one-half percent, and

(b) The lesser of the following:

(A) The average interest rate charged by the commercial lending institution for home improvement loans made during the calendar year immediately preceding the year in which the loans for alternative energy devices are made, or

(B) Twelve percent

(2) As used in this section

(a) "Alternative energy device" means an alternative energy device certified by the Director of the Department of Energy under ORS 469.160 to 469.180

(b) "Commercial lending institution" means a bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state. [1979 c 483 §2]

Note Section 28, chapter 894, Oregon Laws 1981, provides

Sec. 28. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a commercial lending institution in an amount equal to the difference between

(a) The amount of interest charged during the taxable year at an annual interest rate of six and one-half percent for a loan made on or after January 1, 1982, and before January 1, 1988, by the lending institution to a dwelling owner who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident for the purpose of financing energy conservation measures, and

(b) The amount of interest that would have been charged during the taxable year by the lending institution for the loan for energy conservation measures at an annual interest rate which is the lesser of the following:

(A) The interest rate charged by the commercial lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for energy conservation measures is made, or

(B) An upper limit established by rule by the Director of the Department of Energy

(2) If the credit allowed under this section exceeds the tax liability of the commercial lending institution for the taxable year, the department shall refund the difference to the taxpayer. Payment made by the department under this subsection shall be considered a refund for the purposes of ORS 317.590. Moneys are continuously appropriated to the Department of Revenue to make the refunds authorized by this subsection.

(3) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall

(a) Be made only to an owner of an oil-heated or wood-heated dwelling who presents the results of an energy audit pursuant to chapter 887, Oregon Laws 1977, chapter 889, Oregon Laws 1977, or under chapter 778, Oregon Laws 1981, conducted by a fuel oil dealer, investor-owned utility, publicly owned utility or through the Oregon Department of Energy, regardless of whether that fuel oil dealer or utility provides the dwelling's space heating energy

(b) Bear interest at a rate not to exceed six and one-half percent and have a term not exceeding 10 years

(c) Be made before January 1, 1988

(d) Not finance any materials installed in the construction of a new dwelling, additions to existing structures or remodeling that adds living space

(e) Finance only those energy conservation measures that are recommended as cost-effective in the energy audit. However, this requirement shall not apply in the case of a dwelling owner who has obtained assistance and technical

advice under chapter 887, Oregon Laws 1977, or chapter 889, Oregon Laws 1977

(4) The credit allowed under this section shall not be allowed to the extent that the loan exceeds \$5,000 for a single dwelling unit, or, if the dwelling owner is a corporation described in ORS 307.375, to the extent that the loan exceeds \$2,000 for a single dwelling unit

(5) Nothing in this section or in rules adopted under this section shall be construed to cause a loan to violate the usury laws of this state

(6) As used in this section, "commercial lending institution," "cost-effective," "dwelling," "dwelling owner," "energy audit," "energy conservation measures," "fuel oil dealer," "residential fuel oil customer," "space heating" and "wood heating resident" have the meaning given those terms in section 22 of this 1981 Act

317.102 Reforestation of underproductive forest lands. (1) A credit against the taxes otherwise due under this chapter shall be allowed in an amount equal to 10 percent of reforestation project costs actually paid or incurred to reforest underproductive Oregon forest lands. Such costs include, but are not limited to site preparation and tree planting. Subject to subsection (5) of this section

(a) One-half of the credit shall be taken in the tax year in which the State Forester, after physical inspection of the forest land, issues a preliminary certificate certifying that the land qualifies as underproductive Oregon forest land and that the reforestation project undertaken meets the requirements of this section and the specifications established by the State Forester and the costs appear to be reasonable, and

(b) One-half of the credit shall be taken in the tax year in which the State Forester, after further physical inspection of the land and project, certifies that the new forest is established in accordance with the specifications of the State Forester

(2) No credit shall be allowed under either paragraph (a) or (b) of subsection (1) of this section unless written certification containing the following statements accompanies the claim for the credit or is otherwise filed with the department

(a) A statement by the State Forester that the land and project meet the preliminary specifications established by the State Forester, or that the new forest is established, whichever is applicable at the time

(b) A statement by the landowner or person in possession of the land that the land within the project area will be used for the primary purpose of growing and harvesting trees of an acceptable species

(c) A statement that the landowner or person in possession of the land is aware that maintenance

practices, including release, may be needed to insure that a new forest is established and will remain established

(3) For purposes of this section, reforestation project costs shall not include

(a) Costs paid or incurred to reforest any forest land that has been commercially logged to the extent that reforestation is required under the Oregon Forest Practices Act, except costs paid or incurred to reforest forest land following a hardwood harvest, conducted for the purposes of converting underproductive forest lands, as determined by administrative rule

(b) That portion of costs or expenses paid through a federal or state cost share program.

(c) Those costs paid or incurred to grow Christmas trees or ornamental trees, shrubs or plants

(d) Any costs paid or incurred to purchase or otherwise acquire the land

(e) The cost of purchase or other acquisition of tools and equipment with a useful life of more than one year

(4) To qualify for the credit.

(a) The project must be completed to specifications approved by the State Forester

(b) The taxpayer's portion of the project costs must be \$500 or more

(c) The taxpayer must be a legal entity owning, purchasing under recorded contract of sale or leasing at least 10 but not over 2,000 acres of Oregon commercial forest land

(5) 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 corporation that made the investment into the project.

(6) 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

(7) In compliance with ORS 183.310 to 183.550, the Department of Revenue and the

State Forestry Department may adopt rules consistent with law for carrying out the provisions of this section

(8) 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

(9) If, for any reason other than those specified in subsection (10) of this section, a new forest is not established by the last day of the second taxable year following the taxable year in which the preliminary certificate was issued, the State Forester shall so report to the Department of Revenue. The report filed under this subsection shall be the basis for the department to recover any credit granted under paragraph (a) of subsection (1) of this section. If, however, the new forest is not established within the time required by this subsection on account of the reasons specified in subsection (10) of this section, any credit allowed under paragraph (a) of subsection (1) of this section and subsection (5) of this section shall not be recovered but no further credit as provided under paragraph (b) of subsection (1) of this section and subsection (5) of this section shall be allowed

(10) Subject to requalification under this section in the manner applicable for the original claim, a taxpayer may claim an additional credit or credits for reestablishing a new planting in the event that the new forest is destroyed by a natural disaster or is not established for reasons beyond the control of the taxpayer, if the measures taken in completing the original or earlier project would normally have resulted in establishing the minimum number of trees per acre anticipated by the project [1979 c 578 §9, 1985 c 749 §2]

Note Sections 2 and 5, chapter 695, Oregon Laws 1985, provide

Sec 2 (1) A credit is allowed against the taxes otherwise due under this chapter. The amount of the credit shall equal 10 percent of the fair market value of certain qualified charitable contributions, as described in this section

(2) To qualify for the credit allowed under subsection (1) of this section, the charitable contribution must

(a)(A) Be a charitable contribution made during the tax year for which the credit is claimed to an educational organization described in section 170 (b)(1)(A)(ii) of the Internal Revenue Code which is an institution of higher education or a post-secondary school, and which has its place where its educational activities are regularly carried on in this state, and

(B) Be a charitable contribution of tangible personal property described in section 1221(1) of the Internal Revenue Code which has as its original use, use by the donee for education of students in this state, and which is a computer or other scientific equipment or apparatus, or

(b) Be a charitable contribution that would otherwise qualify for the credit under paragraph (a) of this subsection except that the charitable contribution is of a contract or agreement for the maintenance of the computer or other scientific equipment or apparatus, or

(c) Be a contribution of moneys made under a contract or agreement during the taxable year for scientific or engineering research to an educational organization described in section 170 (b)(1)(A)(ii) of the Internal Revenue Code which is an institution of higher education or a post-secondary school, and which has its place where its educational activities are regularly carried on in this state

(3) The credit allowed under this section is in lieu of any deduction otherwise allowable under this chapter. No deduction shall be allowed under this chapter for any amount upon which the credit allowed under this section is based. However, nothing in this section shall affect the basis of the property in the hands of the donee or any other taxpayer. The basis of the property in the hands of the donee or other person shall be determined as if this section did not exist

(4) The credit allowed under this section shall not exceed the tax liability of the taxpayer and shall not be allowed against the tax imposed under ORS 317.090. To qualify for a credit under this section, the charitable contribution must be made after January 1, 1986, be made without consideration and be accepted by the donee institution or school

(5) For purposes of this section, "fair market value" shall be determined at the time the property or services are contributed and shall be substantiated by whatever information the department requires

Sec 5 (1) Except as provided in subsection (2) of this section, sections 2 and 4 of this Act apply to contributions made in tax years beginning on or after January 1, 1986, and prior to January 1, 1990

(2) With respect to the credit allowed for a contribution as described in paragraph (c) of subsection (2) of section 2 of this Act, if a written contract or other written agreement to make the contribution is entered into prior to January 1, 1990, and the moneys contributed after that date are contributed pursuant to the contract or agreement, then notwithstanding subsection (1) of this section, the credit allowed as described in paragraph (c) of subsection (2) of section 2 of this Act shall be allowed for those contributions made pursuant to the written contract or other written agreement entered into prior to January 1, 1990

Note Section 3, chapter 749, Oregon Laws 1985, provides

Sec 3 (1) ORS 316.094 and 317.102 (1983 Replacement Parts) apply to projects completed in tax years beginning on or after January 1, 1980, and prior to January 1, 1985

(2) ORS 316.094 and 317.102, as amended by sections 1 and 2 of this Act, and section 5 of this Act, apply to all reforestation project costs paid or incurred in connection with a reforestation project for which a preliminary certificate is issued in a tax year beginning on or after January 1, 1985, and prior to January 1, 1990. For all prior tax years, the law applicable for those years shall remain in full force for the purposes of assessment, imposition and collection of the personal and corporate income and excise tax laws and for all interest, penalties or forfeitures that have accrued or may accrue with respect to those taxes

317.103 Reduction of certified energy conservation facility costs by grant or credit; eligibility for credit.

(1) 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 November 1, 1981, in connection with a facility, as defined by ORS 469 185, that 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 or excise tax credit to which the taxpayer is entitled under ORS 317.104 after the reduction shall not be reduced by the federal grant or tax credit. A taxpayer applying for a federal grant or credit shall notify the Department of Revenue by certified mail within 30 days of the application and the receipt of the grant.

(2) If a facility eligible for a credit under ORS 317 104 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.

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

(4) 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 or 317 116 is not eligible for a tax credit on the same facility or device under ORS 317 104 and 469 185 to 469 225 [1981 c 894 §§15, 16]

317.104 Energy conservation facility costs.

(1) A credit is allowed against the taxes otherwise due under this chapter, based upon the certified cost of a 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 a 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 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) 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 §14, 1981 c 894 §13]

Note Sections 4 and 7, chapter 700, Oregon Laws 1985, provide

Sec. 4 (1) Any person who is a licensee of the Oregon Liquor Control Commission authorized to serve alcoholic liquor for consumption on the licensed premises shall be

allowed a credit against the taxes otherwise due under this chapter, based upon the cost of providing alternative transportation as defined by section 2 of this 1985 Act. The amount of the credit shall not exceed \$100 annually.

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

(a) The credit must be claimed for the year for which alternative transportation costs are claimed and shall be in lieu of a business deduction for the same expenses.

(b) The taxpayer that is allowed the credit must be the entity that actually expended funds for providing the transportation either directly or by participation in a nonprofit organization.

(3) 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 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.

(4) If the taxpayer qualifying for the credit under this section is an electing small business corporation as defined in section 1371 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. Each shareholder shall be entitled to take tax credit relief as provided in section 2 of this 1985 Act based on that shareholder's pro rata share of the corporation's cost of the transportation.

(5) The Department of Revenue shall adopt rules applicable to substantiation of the credit allowed under this section.

Sec 7 The provisions of sections 2 and 4 of this Act apply to tax years beginning on and after January 1, 1986, and prior to January 1, 1990.

317 105 [Repealed by 1983 c 162 §57]

317.106 Investment in plastics recycling. (1) A credit against taxes imposed by this chapter for the capital investments certified under ORS 468 940 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) A taxpayer shall be allowed a tax credit under this section each year for five years beginning in the year the capital investment receives final certification under ORS 468 940. The maximum credit allowed in any one taxable year shall be the lesser of the tax liability of the taxpayer or 10 percent of the certified cost of the taxpayer's investment.

(3) To qualify for the credit the capital investment must be made in accordance with the provisions of ORS 468 935.

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

(A) The owner of the business that manufactures a reclaimed plastic product,

(B) A person who, as a lessee or pursuant to an agreement, conducts the business that manufactures a reclaimed plastic product, or

(C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a beneficial interest in a business that manufactures a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that manufactures a reclaimed plastic product. If more than one person has an interest under this subparagraph in a qualifying business, and one or more persons receive a certificate, such person or persons may allocate all or any part of the certified investment cost 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 certification and designating the persons to whom the certified investment costs have been allocated and the amount of certified investment 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 investment costs allocated between or among more than one person exceed the amount of the total certified cost of the capital investment. As used in this paragraph, "owner" includes a contract purchaser;

(b) The business must be owned or leased during the tax year by the taxpayer claiming the credit except as provided in subparagraph (C) of paragraph (a) of this subsection, and must have been manufacturing a reclaimed plastic product during the tax year for which the credit is claimed, and

(c) The reclaimed plastic used to manufacture the reclaimed plastic product must not be an industrial waste generated by the person claiming the tax credit, but must be purchased from a plastic recycler other than the person claiming the tax credit.

(5) A credit under this section may be claimed by a taxpayer for a manufacturing business receiving final certification of a capital investment under ORS 468 940, only if the investment is made on or after January 1, 1986, but before January 1, 1989.

(6) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the capital investment to which the taxpayer otherwise may be entitled under this chapter for such year.

(7) Upon any sale, exchange, or other disposition of qualifying business, notice thereof shall be

given to the Environmental Quality Commission who shall revoke the certification covering the capital investment of such business as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.940, 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 a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a business for purposes of this subsection.

(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. Credits may be carried forward to and used in a tax year beyond the years specified in ORS 468.935.

(9) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section. [1985 c 684 §14]

317.110 [Amended by 1953 c 385 §9, 1973 c 233 §1, repealed by 1983 c 162 §57]

317.111 Weatherization loan interest; commercial lending institutions. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed commercial lending institutions in an amount equal to the difference between.

(a) The maximum amount of interest allowed to be charged during the taxable year under section 6b, chapter 887, Oregon Laws 1977, for loans made before November 1, 1981, by the lending institution to space-heating customers for the purpose of financing weatherization services, and

(b) The amount of interest which would have been charged during the taxable year by the lending institution for such loans at an annual interest rate which is the lesser of the following:

(A) The average interest rate charged by the commercial lending institution for home improvement loans made during the calendar

year immediately preceding the year in which the loans for weatherization services are made, or

(B) Twelve percent

(2) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and used in each of the 15 years following the unused tax credit year. However, the entire amount of the unused credit for an unused credit year shall be carried forward to the earliest of the 15 years to which it may be carried.

(3) No credit shall be allowed under this section for loans made on or after November 1, 1981. [Formerly 317.071, 1985 c 712 §1]

Note Section 2, chapter 712, Oregon Laws 1985, provides

Sec 2 The amendments to ORS 317.111 by section 1 of this Act apply to interest charged in tax years beginning on or after January 1, 1977. However, no credit carry forward shall be claimed based upon interest charged in a tax year beginning in 1977 in a tax year beginning in 1985 or 1986, and no credit carry forward shall be claimed based upon interest charged in a tax year beginning in 1978 in a tax year beginning in 1986. Notwithstanding this section, in determining the 15-year limit in credit loss carry forward based upon interest charged in a tax year beginning in 1977 or 1978, the tax years beginning in 1985 and 1986 shall be included.

317.116 Pollution control facility; unused credit. (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 (4) of this section.

(2) For a facility certified under ORS 468.170, the maximum credit allowed in any one taxable year shall be the lesser of the tax liability of the taxpayer or one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control, divided by the number of years of the facility's useful life. The number of years of the facility's useful life used in this calculation shall be the remaining number of years of useful life at the time the facility is certified, but not less than one year or more than 10 years.

(3) 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)

(4)(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 (9), one or more persons receive a certificate, 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 certification 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 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.

(5) 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), only in those tax years which begin on or after January 1, 1973.

(c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after January 1, 1984

(6) For a facility certified under ORS 468 170, the maximum total credit allowable shall not exceed one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control

(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) Upon any sale, exchange, or other disposition of facility, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering such facility as of the date of such disposition The transferee may apply for a new certificate under ORS 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 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.

(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 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

(10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section. [Formerly 317 072]

317 120 [1969 c 681 §5, repealed by 1983 c 162 §57]

317.122 Domestic insurers. A credit against taxes imposed by this chapter shall be allowed domestic insurers for the gross premium tax paid on fire insurance premiums in accordance with ORS 731 820 [Formerly 317 076]

317.128 Economic development investment. (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 [Formerly 317 077]

317.133 Fish habitat improvement. (1)

Any person 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 allowed 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 that is allowed the credit must be the entity that 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) 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 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 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.

(4) If the taxpayer qualifying for the credit under this section is an S corporation as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. Each shareholder shall be entitled to take tax credit relief as provided in ORS 316 084, based on that shareholder's pro rata share of the corporation's cost of the fish habitat improvement project.

(5) 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 [Formerly 317 087, 1985 c 802 §22]

Note Sections 2 and 6, chapter 521, Oregon Laws 1985, provide

Sec 2 (1) Any taxpayer that is a grower of a crop and permits the gleaning of the 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),

(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 ORS 316 089 (1) 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

(4) In the case of an S corporation, any credit authorized under this section shall be allowed against the taxes otherwise imposed under ORS chapter 316 to the shareholder in the proportion of the shareholder's share in the S corporation. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax 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

Sec 6 Sections 2 and 5 and the amendments to ORS 316 089 b section 3 of this Act apply to donations of crops made in tax years beginning on or after January 1, 1986, and prior to January 1, 1993

317 155 [Amended by 1969 c 600 §10, repealed by 1983 c 162 §57]

317 156 [1967 c 274 §4, repealed by 1983 c 162 §57]

317.160 [Repealed by 1983 c 162 §57]

317 165 [Amended by 1981 c 812 §2, repealed by 1983 c 162 §57]

317 170 [Amended by 1955 c 99 §1, subsection (3) derived from 1955 c 99 §2, 1981 c 812 §1, repealed by 1983 c 162 §57]

317 175 [Amended by 1955 c 128 §1, subsection (4) derived from 1955 c 128 §2, repealed by 1983 c 162 §57]

317 180 [Repealed by 1957 c 632 §1 (314 280 enacted in lieu of 316 205 and 317 180)]

317 185 [Repealed by 1957 c 632 §1 (314 285 enacted in lieu of 316 210 and 317 185)]

DISSOLUTION OF TAXPAYER

317.190 Effect on reporting income. In the case of the dissolution of a taxpayer, gains, profits and income are to be returned for the tax year in which they are received by the taxpayer, unless they have been reported at an earlier period in accordance with the approved method of accounting followed by the taxpayer. If a

taxpayer is dissolved, there shall also be included in computing Oregon taxable income of the taxpayer for the taxable period in which it is dissolved amounts accrued up to the date of dissolution if not otherwise properly includable in respect of such period or a prior period, regardless of the fact that the taxpayer may have kept its books and made its returns on the basis of cash receipts and disbursements. This section shall not apply with respect to crops not harvested within said taxable period or to livestock [1955 c 205 §2, 1983 c 162 §9]

317.195 Effect on deductions allowed.

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

317 197 [1969 c 600 §§3, 4, 6, 1973 c 402 §22, 1981 c 705 §4, 1983 c 162 §32, renumbered 317 655]

317 199 [1969 c 600 §7, 1983 c 162 §33, renumbered 317 660]

317 205 [Repealed by 1959 c 389 §1 (317 206 enacted in lieu of 317 205)]

317 206 [1959 c 389 §2 (enacted in lieu of 317 205), subsection (4) derived from 1959 c 389 §11, 1971 c 283 §3, repealed by 1983 c 162 §57]

317 210 [Repealed by 1983 c 162 §57]

317 215 [Amended by 1953 c 385 §9, 1957 c 338 §1, part of subsections (10) and (11) of 1957 Replacement Part derived from 1957 c 338 §3, repealed by 1959 c 389 §3 (317 216 enacted in lieu of 317 215)]

317 216 [1959 c 389 §4 (enacted in lieu of 317 215), last sentence derived from 1959 c 389 §11, 1969 c 103 §2, 1969 c 493 §92, 1971 c 283 §4, 1977 c 866 §5, repealed by 1983 c 162 §57]

317 220 [Amended by 1953 c 385 §9, 1975 c 650 §3, 1977 c 795 §13, repealed by 1983 c 162 §57]

317 225 [Amended by 1981 c 705 §5, repealed by 1983 c 162 §57]

317.228 [1969 c 681 §6, repealed by 1983 c 162 §57]

317 230 [Amended by 1953 c 385 §9, repealed by 1959 c 389 §5 (317 231 enacted in lieu of 317 230)]

317 231 [1959 c 389 §6 (enacted in lieu of 317 230), subsection (9) derived from 1959 c 389 §11, repealed by 1983 c 162 §57]

317 235 [Repealed by 1959 c 389 §7 (317 236 enacted in lieu of 317 235 and 317 240)]

317 236 [1959 c 389 §8 (enacted in lieu of 317 235 and 317 240), subsection (7) derived from 1959 c 389 §11, repealed by 1983 c 162 §57]

317 238 [1965 c 460 §2, 1981 c 812 §3, repealed by 1983 c 162 §57]

317 239 [1965 c 460 §§3, 4, repealed by 1981 c 812 §4]

317 240 [Repealed by 1959 c 389 §7 (317 236 enacted in lieu of 317 235 and 317 240)]

317 241 [1959 c 389 §10 (enacted in lieu of 317 242), subsection (4) derived from 1959 c 389 §11, 1969 c 493 §93, repealed by 1983 c 162 §57]

317 242 [1953 c 385 §9, repealed by 1959 c 389 §9 (317 241 enacted in lieu of 317 242)]

317 245 [Repealed by 1983 c 162 §57]

317 247 [1955 c 354 §2, 1957 c 338 §2, part of subsection (4) derived from 1957 c 338 §3, subsection (5) enacted as 1963 c 180 §2, 1969 c 128 §1, repealed by 1983 c 162 §57]

317 248 [1971 c 283 §2, repealed by 1983 c 162 §57]

317 249 [1953 c 385 §9, 1975 c 705 §5, repealed by 1983 c 162 §57]

317 250 [Amended by 1953 c 385 §9, repealed by 1975 c 705 §12]

317 251 [1965 c 154 §4, 1969 c 493 §94, 1979 c 580 §1, repealed by 1983 c 162 §57]

317 252 [1965 c 178 §4, repealed by 1983 c 162 §57]

317 255 [Amended by 1953 c 385 §9, 1979 c 517 §1, repealed by 1983 c 162 §57]

317 256 [1955 c 609 §2, 1979 c 517 §2, repealed by 1983 c 162 §57]

MODIFICATIONS TO TAXABLE INCOME

317.259 Modifications generally.

Federal taxable income, adopted under ORS 317.013 and 317 018, except as specifically otherwise provided by law, shall be modified only pursuant to the provisions contained in ORS 317 267 to 317 333, 317 344 to 317 381 and 317 720 and no others. Each modification authorized under law shall be allowed only to the extent that the modification is allocated and apportioned to Oregon income [1983 c 162 §12]

317 260 [Repealed by 1983 c 162 §57]

317 262 [1953 c 385 §9, repealed by 1983 c 162 §57]

317 265 [Amended by 1955 c 422 §1, subsection (4) derived from 1955 c 422 §2, 1957 c 607 §5, subsection (5) derived from 1957 c 607 §11 and 1957 s s c 5 §1, repealed by 1983 c 162 §57]

317.267 Dividends from corporation subject to corporate excise tax. (1) To derive Oregon taxable income, there shall be added to federal taxable income amounts received as dividends from corporations deducted for federal purposes pursuant to section 243 or 245, except 245 (c), amounts paid as dividends by a public utility and deducted for federal purposes pursuant to section 247 of the Internal Revenue Code

or dividends eliminated under Treas Reg §1 1502-14 that are paid by members of an affiliated group that are eliminated from a consolidated federal return pursuant to ORS 317 715 (2)

(2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of this section, there shall be subtracted from federal taxable income an amount equal to 85 percent of dividends (determined without regard to section 78 of the Internal Revenue Code) received or deemed received from corporations if such dividends are included in federal taxable income. However, in the case of any dividend on debt-financed portfolio stock as described in section 246A of the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the same conditions and in same amount as the dividends received deduction otherwise allowable for federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

(3) There shall be excluded from the sales factor of any apportionment formula employed to attribute income to this state any amount subtracted from federal taxable income under subsection (2) of this section [1983 c 162 §13, 1984 c 1 §9, 1985 c 802 §33]

317 270 [Amended by 1957 c 88 §1, repealed by 1983 c 162 §57]

317.273 Dividend income received by domestic corporation from certain foreign corporations. To derive Oregon taxable income, there shall be subtracted from federal taxable income dividend income with respect to the "gross-up" provisions of section 78 of the Internal Revenue Code [1983 c 162 §14]

317 275 [Repealed by 1983 c 162 §57]

317 277 [1977 c 506 §2, repealed by 1983 c 162 §57]

317 280 [Amended by 1953 c 385 §9, 1955 c 584 §1, repealed by 1983 c 162 §57]

317.281 Income and losses of S corporation. (1) To derive Oregon taxable income

(a) There shall be subtracted from federal taxable income all income of an S corporation, as defined in section 1361 of the Internal Revenue Code, not subject to federal corporate income tax, and

(b) There shall be added all losses of an S corporation which are not used in the computation of federal corporate income tax

(2) The amounts subtracted or added pursuant to subsection (1) of this section shall be adjusted to reflect the modifications made to federal taxable income or loss under the provisions of this chapter [1983 c 162 §14a, 1985 c 802 §22a]

Note Section 51, chapter 802, Oregon Laws 1985, provides

Sec 51. (1) Upon compliance with subsection (2) of this section, any Subchapter S corporation that paid or is assessed with tax imposed under this chapter for a tax year beginning on or after January 1, 1981, and prior to January 1, 1983, on account of the differences in the depreciation deduction allowed or allowable under state and federal law and the treatment of those differences under ORS 317 285 (1981 Replacement Part), 317 320 (1981 Replacement Part) and the rules adopted thereunder, shall be entitled to, without interest, a refund of or credit for the tax (including tax, interest and penalties attributable to the tax) attributable to the amount resulting from the difference in depreciation treatment, if paid, or if unpaid, the tax (including tax, interest and penalties attributable to the tax) shall be canceled

(2) Any corporation that is entitled to a refund, credit or cancellation of tax under subsection (1) of this section may, if it desires to do so, file a claim for the refund, credit or cancellation. Unless a claim filed under this section is filed on or before April 15, 1986, no refund, credit or cancellation shall be allowed under this section.

(3) Notwithstanding ORS 305 270, 314 415 or other law establishing a period of limitation for claiming a refund, if a taxpayer is eligible for refund, credit or cancellation under subsection (1) of this section and files a claim on or before April 15, 1986, as required by subsection (2) of this section, the department shall cause refund to be made, credit granted or the tax, interest and penalties canceled, whichever is applicable, in the same manner and to the same effect as other refunds, credits and cancellations of taxes under the corporate excise tax laws.

317.283 Nonrecognition of transactions with related domestic international sales corporation. (1) To derive Oregon taxable income, federal taxable income shall be modified to the extent necessary to not recognize for Oregon tax purposes any transaction between the taxpayer and a related domestic international sales corporation. The taxpayer shall be considered to have entered directly into any transactions with third parties that are treated for federal income tax purposes as having been entered into by a related domestic international sales corporation. To satisfy the requirements of this section

(a) No deduction shall be allowed to any taxpayer for any payment to a related domestic international sales corporation,

(b) No income or expense that would be attributed to a taxpayer but for the provisions of sections 991 to 996 of the Internal Revenue Code shall be treated as attributable to a related domestic international sales corporation, and

(c) No deduction shall be allowed to a taxpayer for interest on DISC-related deferred tax liability paid pursuant to section 995 (f) of the Internal Revenue Code

(2) As used in this section, "domestic international sales corporation" means a domestic international sales corporation as defined in section 992 of the Internal Revenue Code [1985 c 802 §22d]

317 285 [Amended by 1957 s s c 15 §9, 1971 c 724 §1, 1977 c 89 §1, 1981 c 613 §4, 1983 c 162 §29, renumbered 317 368]

317.286 Nonrecognition of transactions with related foreign sales corporation. (1) To derive Oregon taxable income, federal taxable income shall be modified to the extent necessary to not recognize for Oregon tax purposes any transaction between the taxpayer and a related foreign sales corporation. The taxpayer shall be considered to have entered directly into any transactions with third parties that are treated for federal income tax purposes as having been entered into by a related foreign sales corporation. To satisfy the requirements of this section

(a) No deduction shall be allowed to a taxpayer for any payment to a related foreign sales corporation, and

(b) No income or expense that would be attributed to a taxpayer but for the provisions of sections 921 to 927 of the Internal Revenue Code shall be treated as attributable to a related foreign sales corporation

(2) As used in this section, "foreign sales corporation" means a foreign sales corporation as defined in section 922 of the Internal Revenue Code [1985 c 802 §22e]

317 287 [1961 c 608 §4, repealed by 1975 c 705 §12]

317 288 [1983 c 162 §15, repealed by 1984 c 1 §18]

317 290 [Amended by 1983 c 162 §30, renumbered 317 374]

317 292 [1957 c 19 §2, repealed by 1983 c 162 §57]

317.295 [Amended by 1953 c 385 §9, 1955 c 722 §1, 1961 c 565 §1, subsection (4) enacted as 1961 c 565 §2, 1971 c 246 §1, repealed by 1983 c 162 §57]

317 296 [1983 c 162 §16, repealed by 1984 c 1 §18]

317 297 [1957 s s c 15 §§11, 12, 1959 c 92 §2, 1983 c 162 §36, renumbered 317 476]

317 298 [1961 c 505 §§2, 3, 1969 c 493 §95, 1979 c 580 §2, repealed by 1983 c 162 §57]

317 299 [1969 c 600 §8, 1983 c 162 §34, renumbered 317 665]

317 300 [Amended by 1953 c 385 §9, repealed by 1983 c 162 §57]

317.303 Deduction or adjustment for certain federal credits. If a taxpayer has taken a federal credit, which requires as a condition of the use of the federal credit the reduction of a corresponding deduction or basis, and the

federal credit is not allowable for Oregon purposes, the taxpayer shall be allowed the deduction or appropriate adjustment to basis to derive Oregon taxable income [1983 c 162 §17]

317 305 [1957 c 74 §2, repealed by 1983 c 162 §57]

317.309 Interest and dividends received from obligations of state or political subdivision. (1) To derive Oregon taxable income, there shall be added to federal taxable income the amount of any interest or dividends received during the taxable year from obligations of a state or any political subdivision of a state (including Oregon), exempt from federal taxation under the Internal Revenue Code

(2) A regulated investment company as defined in section 851 of the Internal Revenue Code which distributes dividends in excess of those deducted in the computation of federal taxable income, shall to the extent of the amount added under subsection (1) of this section, deduct such distributed excess in arriving at Oregon taxable income

(3) To derive Oregon taxable income, and subject to the other provisions of this chapter, discount and gain or loss on retirement or disposition of obligations described under subsection (1) of this section issued on or after January 1, 1985, shall be treated in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a state or a political subdivision of a state, were not tax exempt under the Internal Revenue Code [1983 c 162 §18, 1985 c 802 §23]

317.314 Taxes on net income or profits imposed by any state or foreign country; nondeductible taxes and license fees; taxes paid to foreign country for certain income.

(1) To derive Oregon taxable income, there shall be added to federal taxable income taxes upon or measured by net income or profits imposed by any foreign country (including withholding taxes upon the payment of dividends arising from sources within such foreign country), this state or any state or territory deducted in computing federal taxable income

(2) There shall be subtracted from federal taxable income the taxes and license fees imposed by counties, cities and other political subdivisions of this state and other states, if such taxes and fees are not deductible in arriving at federal taxable income

(3) There shall be subtracted from federal taxable income the taxes paid to a foreign country upon the payment of interest or royalties arising

from sources within such foreign country, if such taxes are not deductible in arriving at federal taxable income and if the interest or royalties are included in arriving at Oregon taxable income [1983 c 162 §19, 1984 c 1 §10]

317.319 Capital Construction Fund; deferred income; nonqualified withdrawals. To derive Oregon taxable income

(1) There shall be added to federal taxable income an amount equal to the amount of income which the taxpayer defers under section 607 of the Merchant Marine Act of 1936 - Capital Construction Fund (46 U S C 1177), as amended

(2) There shall be subtracted from federal taxable income all nonqualified withdrawals considered to be ordinary income or capital gain under section 607 of the Merchant Marine Act of 1936 - Capital Construction Fund (46 U S C 1177), as amended, and included in income for federal income tax purposes

(3) No adjustments to basis shall be made for Oregon tax purposes to property on account of section 607 of the Merchant Marine Act of 1936 - Capital Construction Fund (46 U S C 1177), as amended. There shall be added to or subtracted from federal taxable income those amounts necessary to carry out the purposes of this subsection [1983 c 162 §20]

317 320 [1969 c 493 §73, 1973 c 402 §23, repealed by 1983 c 162 §57]

317 325 [1973 c 115 §5, repealed by 1983 c 162 §57]

317.326 Gain on conversion or exchange of property. (1) To derive Oregon taxable income, there shall be added to federal taxable income any gain recognized pursuant to ORS 314 290

(2) To the extent gain is recognized pursuant to subsection (1) of this section, an additional basis adjustment shall be made for Oregon tax purposes [1983 c 162 §21]

317 328 [1979 c 414 §4, 1983 c 162 §31, renumbered 317 381]

317.329 Basis for stock acquisition. (1) A corporation which engages in a qualified stock purchase on or after August 31, 1982, and which elects (or is treated as having elected) section 338 of the Internal Revenue Code shall have the same basis for Oregon as for federal purposes for the assets acquired by reason of the stock acquisition

(2) A corporation to which subsection (1) of this section applies shall recognize gain or loss pursuant to the method prescribed by section 338 (c) (1) of the Internal Revenue Code [1985 c 802 §21b]

Note 317 329 was added to and made a part of ORS chapter 317 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation

317 330 [1973 c 753 §5, repealed by 1979 c 414 §7]

317.333 Addition to reserve for bad debt. (1) To the extent that the amount allowed as a deduction to a financial institution for an addition to a reserve for bad debt under section 585 or 593 of the Internal Revenue Code exceeds, or is less than, the amount determined under subsection (2) of this section, the difference shall be added to or subtracted from federal taxable income

(2) For purposes of subsection (1) of this section, the amount determined under this subsection shall be an addition to a bad debt reserve that bears a reasonable relationship to the actual current loss experience of the financial institution. The amount shall not include any amount based upon unknown fluctuations in the economy. The amount may be based upon a 5, 10, 15 or 20-year moving average, if a request is made of the department for use of a moving average and the request is approved

(3) This section shall not apply if the financial institution is a production credit association [1983 c 162 §22]

317 335 [1973 c 753 §6, repealed by 1979 c 414 §7]

317 339 [1983 c 162 §23, repealed by 1984 c 1 §18]

317.342 Effect of change in federal law on pension, profit-sharing, stock bonus or other retirement plans. For tax years beginning after the date specified in ORS 317 010 (7) for the recognition of the Internal Revenue Code for Oregon tax purposes, if part I of subchapter D of chapter 1 of Subtitle A of the Internal Revenue Code is amended to allow greater contributions to or to require or permit any other provisions in any of the pension, profit-sharing, stock bonus or other retirement plans, mentioned in part I of subchapter D of chapter 1 of Subtitle A of the Internal Revenue Code, amendments to those plans and contributions to those plans in conformity with those new federal amendments shall not disqualify those plans for Oregon tax purposes and shall not increase or diminish the deductions otherwise allowable on the Oregon return based on the Internal Revenue Code as amended on the date specified in ORS 317 010 (7) [1985 c 802 §49]

Note. 317 342 was added to and made a part of ORS 317 314 to 317 635 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation

317.344 Net operating loss carryback and carryover. There shall be added to federal taxable income the amount of any net operating loss carryback or carryover allowed in arriving at federal taxable income [1983 c 162 §24, 1984 c 1 §11]

317.349 Transaction treated as lease purchase under federal law. To derive Oregon taxable income, federal taxable income shall be modified to the extent necessary to not treat as a lease purchase or in any other way recognize for Oregon tax purposes a transaction entered into pursuant to section 168(f) (8) of the Internal Revenue Code [1983 c 162 §25]

317 350 [1959 c 631 §§4, 5, repealed by 1983 c 162 §57]

317 355 [Repealed by 1957 c 632 §1 (314 385 enacted in lieu of 316 545 and 317 355)]

317.356 Difference in cost recovery or claimed expense allowed on Oregon and federal returns. (1) Upon the taxable sale, exchange or disposition of any asset in a tax year beginning on or after January 1, 1983, federal taxable income shall be increased or decreased by an amount which will reflect one or more of the following

(a) The difference in basis which results from the difference in depreciation, depletion or other cost recovery, or expense claimed under section 179 of the Internal Revenue Code, allowed or allowable on the Oregon return and that allowed or allowable on the federal return for that asset,

(b) The difference in basis which results when a taxpayer has taken a federal credit, which requires as a condition of the use of the federal credit the reduction of the basis of an asset, and the federal credit is not allowable for Oregon purposes,

(c) The difference in basis as a result of any deferral of gain which has been granted under federal tax law but not under Oregon law or granted under Oregon law but not granted under federal law,

(d) The difference in basis under federal and Oregon tax law at the time the asset was acquired, or

(e) Any other differences in the basis of the asset which are due to differences between federal and Oregon tax law

(2) There shall be added to or subtracted from federal taxable income any amount necessary to carry out the purposes of subsection (1) of this section [1983 c 162 §26, 1985 c 802 §24]

317 360 [Repealed by 1975 c 760 §3]

317.362 Reversal of effect of gain or loss in case of timber, coal, domestic iron

ore. To derive Oregon taxable income, federal taxable income shall be modified to reverse the effect of section 631 of the Internal Revenue Code [1983 c 162 §27]

317.365 [Repealed by 1957 c 632 §1 (314 365 enacted in lieu of 316 550 and 317 365)]

317.368 Depreciation; date of repeal.

(1) To the extent that the amount allowed as a deduction under section 167, 168 or 179 of the Internal Revenue Code for depreciation or cost recovery for any property exceeds, or is less than, the amount that would be allowed as a deduction for depreciation under the method of depreciation available under the Oregon tax law in effect for the tax year in which the property for which depreciation or cost recovery is claimed was placed in service, to derive Oregon taxable income, the difference shall be added to or subtracted from federal taxable income

(2) In computing Oregon taxable income there shall be allowed as a deduction a reasonable allowance for the depreciation, exhaustion, wear and tear and obsolescence of property used in the business. In no case shall the total amount recoverable through the depreciation allowance over the life of the property be in excess of the basis of the property as computed under subsection (6) of this section

(3) "Reasonable allowance," as used in subsection (2) of this section, includes an allowance computed in accordance with subsection (7) of this section and with rules adopted by the department under any of the following methods

(a) The straight-line method,

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

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

(d) Any other consistent method approved by the department

(4) The rules adopted by the department pursuant to this section shall be designed to permit the adoption and use by the taxpayer of a uniform method of computing its allowance for depreciation for the purposes of this chapter and for federal income tax purposes, except that, for those taxable years that begin on or after January 1, 1981, any federal law changes or changes in federal regulations regarding the deduction for depreciation which become operative after December 31, 1980, shall not be given consideration by the department

(5) Paragraphs (b), (c) and (d) of subsection (3) of this section shall apply only in the case of

property (other than intangible property) described in subsection (2) of this section with a useful life of three years or more

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

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

(6) The basis recoverable through depreciation allowance in respect of any property shall be.

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

(b) In the case of property acquired after December 31, 1928, the same basis as for gain or loss upon the disposition of such property as provided in ORS 317 210 to 317 220 (1981 Replacement Part)

(7) For tax years beginning on and after January 1, 1977, the first year depreciation allowance provided by section 179 of the Internal Revenue Code, as amended and in effect on December 30, 1980, shall be allowed for that property described in subsection (d) of section 179, under the restrictions and limitations described in section 179, including the initial deduction of such first year allowance from basis before the computation of any other depreciation deduction

(8) For taxable years beginning on or after January 1, 1983, to the extent that the amount allowed as a deduction under section 168 of the Internal Revenue Code (Accelerated Cost Recovery System) exceeds, or is less than, the amount that would be allowed as a deduction for depreciation for the property under subsections (2) to (7) of this section, to derive Oregon taxable income, the difference shall be added to or subtracted from federal taxable income

(9) The modifications required by subsection (8) of this section apply only to the differences in the computation of depreciation (reasonable allowance for exhaustion, wear, tear and obsolescence) under the Accelerated Cost Recovery System and the other methods of depreciation. Nothing in this section shall be construed to govern the eligibility of property for depreciation,

the expensing of costs or other provisions of the Internal Revenue Code which do not directly govern the computation of the deduction amount for recovery property

(10) Subsections (2) to (9) of this section shall not apply to property placed in service in taxable years beginning on or after January 1, 1985 [Formerly 317 285, 1984 c 1 §12, 1985 c 802 §26]

Note Section 26a, chapter 802, Oregon Laws 1985, provides

Sec 26a (1) To derive Oregon taxable income, there shall be added to federal taxable income any amount deducted under section 179 of the Internal Revenue Code (election to expense certain depreciable business assets). However, any asset with respect to which this section applies may be depreciated as otherwise provided under this chapter

(2) This section shall not apply to property placed in service in taxable years beginning on or after January 1, 1985 [1983 c 162 §28, 1985 c 802 §26a]

317.370 [Repealed by 1957 c 632 §1 (314 420 enacted in lieu of 316 620, 317 370 and 317 420)]

317.374 Depletion. (1) To the extent that the amount allowed as a deduction for depletion under section 611 of the Internal Revenue Code exceeds, or is less than, the amount determined as the Oregon depletion allowance under subsection (2) or (3) of this section, to derive Oregon taxable income, the difference shall be added to or subtracted from federal taxable income.

(2) For purposes of subsection (1) of this section, in the case of timber, mines, oil and gas wells, and other natural deposits, except in the case of metal mines as provided in subsection (3) of this section, the Oregon depletion allowance shall be a reasonable allowance according to the peculiar conditions in each case. The reasonable allowance in all cases shall be computed on the cost of the property

(3) In the case of metal mines, the Oregon depletion allowance may be the amount allowed under subsection (2) of this section or an amount equal to 15 percent of the gross income from the property during the taxable year, not to exceed 50 percent of the net income of the taxpayer (computed without allowance for depletion) from the property. In its first return made under this chapter, the taxpayer must state as to each property with respect to which the taxpayer has any item of income or deduction (in case of metal mines), whether it elects to have depletion allowance for each such property for the taxable year computed with or without reference to percentage depletion. An election once exercised under this section cannot thereafter be changed by the taxpayer, and the depletion allowance in respect to each such property will for all succeeding taxable

years be computed in accordance with the election so made [Formerly 317 290]

317 375 [Repealed by 1957 c 632 §1 (314 295 enacted in lieu of 316 560 and 317 375)]

317 380 [Repealed by 1957 c 632 §1 (314 380 enacted in lieu of 316 565 and 317 380)]

317.381 Renovation project facilitating access by 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 or the general public in the trade or business of the taxpayer

(b) "Elderly individual" means an individual who is 65 years of age or older

(c) "Handicapped individual" means any individual who has a physical or mental disability 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) To derive Oregon taxable income, there shall be allowed as a subtraction the cost of a renovation project. The subtraction shall be allowed 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 federal standards shall be used

(5) If, on or after January 1, 1983, 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. If the deduction permitted by federal law is greater than the subtraction provided by this section, then no modification shall be made under this section [Formerly 317 328, 1985 c 802 §27]

317.386 Energy conservation payments exempt. Any amount received as a cash payment for energy conservation measures under ORS 469 631 to 469 687 is exempt from the tax imposed under this chapter [Formerly 317 083, 1985 c 802 §28]

317 390 [Amended by 1957 c 607 §6, 1959 c 156 §2, subsection (3) derived from 1959 c 156 §3, repealed by 1969 c 166 §8]

317.392 Exemption for income attributable to substitute fuel production.

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 Oregon taxable 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 [Formerly 317 098]

Note: Section 10, chapter 561, Oregon Laws 1979, as amended by section 47, chapter 62, Oregon Laws 1983, provides

Sec 10 The exemption from ad valorem taxation authorized by ORS 307 705 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 or taxable income provided in ORS 316 145 and 317 098 [renumbered 317 392] shall apply to tax years beginning on or after January 1, 1980, but prior to January 1, 1985

317 395 [Amended by 1957 c 607 §7, renumbered 317 504]

317.405 [Amended by 1955 c 587 §1, repealed by 1957 c 632 §1 (314 405 enacted in lieu of 316 605 and 317 405)]

317.410 [Amended by 1953 c 385 §9, 1955 c 581 §2, 1957 c 20 §1, repealed by 1957 c 632 §1 (314 410 enacted in lieu of 316 610 and 317 410)]

317.415 [Amended by 1953 c 385 §9, 1955 c 581 §1, repealed by 1957 c 632 §1 (314 415 enacted in lieu of 316 615 and 317 415)]

317.420 [Amended by 1955 c 356 §1, repealed by 1957 c 632 §1 (314 420 enacted in lieu of 316 620, 317 370 and 317 420)]

317.425 [Repealed by 1957 c 632 §1 (314 425 enacted in lieu of 316 625 and 317 425)]

317.430 [Repealed by 1957 c 632 §1 (314 430 enacted in lieu of 316 630 and 317 430)]

317.435 [Repealed by 1957 c 632 §1 (314 435 enacted in lieu of 316 635 and 317 435)]

317.440 [Repealed by 1957 c 632 §1 (314 440 enacted in lieu of 316 640, 317 440 and 317 445)]

317.445 [Repealed by 1957 c 632 §1 (314 440 enacted in lieu of 316 640, 317 440 and 317 445)]

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

317.455 [Repealed by 1957 c 632 §1 (314 445 enacted in lieu of 316 650 and 317 455)]

317.460 [Repealed by 1957 c 632 §1 (subsections (1) and (2) of 314 450 enacted in lieu of 316 655 and 317 460)]

317.465 [Repealed by 1957 c 632 §1 (314 455 enacted in lieu of 316 660 and 317 465)]

317.470 [Amended by 1953 c 385 §9, 1955 c 585 §1, repealed by 1957 c 632 §1 (314 460 enacted in lieu of 316 665 and 317 470)]

317.475 [Repealed by 1957 c 632 §1 (314 465 enacted in lieu of 316 670 and 317 475)]

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

(2) As used in this section, "Oregon net loss" means Oregon net loss as defined in ORS 317 010 (9)

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

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

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

taxable year in which the Oregon net loss deduction is claimed

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

(5) No deduction shall be allowed under this section to a business trust which qualifies as a "real estate investment trust" under sections 856, 857 and 858 of the Internal Revenue Code [Formerly 317 297]

317.480 [Repealed by 1957 c 632 §1 (314 470 enacted in lieu of 316 675 and 317 480)]

RETURNS AND PAYMENT OF TAX

317.504 Date return considered filed or advance payment considered made. A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed shall be considered as made on the last day prescribed by law for the payment of the tax. The last day prescribed by law for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer by the department. [Formerly 317 395]

317.505 [Repealed by 1957 c 632 §1 (314 805 enacted in lieu of 316 705 and 317 505, and 314 815 enacted in lieu of 316 720 and 317 505)]

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

317.514 [1983 c 162 §37, repealed by 1984 c 1 §18]

317.515 [Renumbered 317 845]

317.520 [Repealed by 1957 c 632 §1 (314 820 enacted in lieu of 316 725 and 317 520)]

317.525 [Repealed by 1957 c 632 §1 (314 825 enacted in lieu of 316 730 and 317 525)]

317.530 [Repealed by 1957 c 632 §1 (314 830 enacted in lieu of 316 735 and 317 530)]

317.535 [Amended by 1957 c 76 §1, repealed by 1957 c 632 §1 (314 835 enacted in lieu of 316 740 and 317 535)]

317.540 [Repealed by 1957 c 632 §1 (314 840 enacted in lieu of 316 745 and 317 540)]

317.545 [Repealed by 1957 c 632 §1 (314 845 enacted in lieu of 316 750 and 317 545)]

317 550 [Repealed by 1957 c 632 §1 (314 855 enacted in lieu of 316 760 and 317 550)]

317 590 [Amended by 1953 c 309 §2, 1955 c 35 §1, 1957 c 528 §4, renumbered 317 850]

317 605 [Amended by 1953 c 331 §2, renumbered 314 210]

317.610 [Renumbered 314 220]

317 615 [Renumbered 314 230]

**FOREIGN INCOME;
DOMESTIC INTERNATIONAL
SALES CORPORATIONS;
DOMESTIC INSURERS**

317.625 Income from sources without the United States. Income from sources without the United States, as defined in section 862 of the Internal Revenue Code, shall be accounted for in the computation of Oregon taxable income as required by ORS chapters 305, 314 and this chapter without regard to sections 861 to 864 of the Internal Revenue Code [1983 c 162 §38]

317.635 Domestic international sales corporation. Except as provided in ORS 317 283, a domestic international sales corporation, commonly referred to as "DISC," as defined in section 992 of the Internal Revenue Code, shall be taxed in the manner provided for other corporations under this chapter and without regard to sections 991 to 996 of the Internal Revenue Code [1983 c 162 §39, 1985 c 802 §22b]

317.650 Application of certain provisions of this chapter to domestic insurers.

ORS 317 356 and 317 368, relating to depreciation and basis, shall be applicable to every domestic insurer. [Formerly 317 078]

317.655 Taxable income of domestic insurer; items excluded. (1) For purposes of the tax imposed under ORS 317 070, the Oregon taxable income of a domestic insurer shall be the insurer's "net gain from operations" or "net income" determined in the manner prescribed by the Insurance Division of the Department of Commerce on its Annual Statement Form for the taxable year, as adjusted pursuant to ORS 317 010 (11), 317 122 and 317 650 to 317 665

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

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

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

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

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

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

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

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

(3) Income, expenses, gains, losses, exclusions, deductions, assets, reserves, liabilities and other items properly attributable to one or more separate accounts authorized under ORS 733 220 shall not be taken into account in determining taxable income of a domestic insurer under ORS 317.010 (11), 317 122 and 317 650 to 317 665 until such amounts or items are returned to and reflected on the general accounts of such insurer so as to be available generally to or for the benefit of contract and policyholders of the insurer [Formerly 317 197]

317.660 Allocation of net income where domestic insurer does business in other states. In lieu of the provisions of ORS 314 280, if the income of a domestic insurer is derived from business done both within and without this state, the determination of Oregon taxable income shall be arrived at by apportionment based upon an averaging of the following three factors.

(1) Insurance sales factor: The percentage obtained by dividing (a) the direct premiums

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

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

(3) Real estate income and interest factor. The percentage obtained by dividing (a) the total net income (after deducting from gross rental income real estate expenses, property taxes and depreciation attributable thereto, which are included in appropriate schedules of the annual statement filed by the insurer with the Insurance Division) received from real property within this state plus gross interest received on loans secured by real property within this state during the taxable year, by (b) the total net income received from real property within and without this state plus gross interest received on loans secured by real property within and without this state during the taxable year [Formerly 317 199]

317.665 Oregon net losses of domestic insurer in prior years. In computing Oregon taxable income, a domestic insurer shall be allowed as a deduction an amount equal to the aggregate Oregon net losses of prior years as defined in ORS 317 476 [Formerly 317 299]

UNITARY TAX

317.705 Definitions for ORS 317.705 to 317.715. As used in this section and ORS 317 710 and 317 715

(1) "Affiliated group" means an affiliated group of corporations as defined in section 1504 of the Internal Revenue Code.

(2) "Unitary group" means a corporation or group of corporations engaged in business activities that constitute a single trade or business

(3)(a) "Single trade or business" means a business enterprise in which there exists directly or indirectly between the members or parts of the enterprise a sharing or exchange of value as demonstrated by.

(A) Centralized management or a common executive force,

(B) Centralized administrative services or functions resulting in economies of scale; and

(C) Flow of goods, capital resources or services demonstrating functional integration

(b) "Single trade or business" may include, but is not limited to, a business enterprise the activities of which

(A) Are in the same general line of business (such as manufacturing, wholesaling or retailing); or

(B) Constitute steps in a vertically integrated process (such as the steps involved in the production of natural resources, which might include exploration, mining, refining and marketing).

(c) Whether two or more corporations that are included in the same federal consolidated return are engaged in a single trade or business may be determined by making reference to corporations that are doing business in the United States and are subject to federal income taxation, whether or not those corporations are includable in the consolidated return. No other corporations may be taken into consideration in making such a determination, except in a case in which the transactions or relationships between such corporations are made in an attempt to evade or avoid taxation [1984 c 1 §4, 1985 c 802 §30a]

317.710 Corporation tax return requirements. (1) A corporation shall make a return with respect to the tax imposed by this chapter as provided in this section

(2) If the corporation is a member of an affiliated group of corporations making a consolidated federal return, it shall file a return and determine its Oregon taxable income as provided in ORS 317.715. The corporation's tax liability shall be joint and several with any other corporation that is included in a consolidated state return with the corporation under subsection (5) of this section

(3) If the corporation makes a separate return for federal income tax purposes, it shall file a separate return under this chapter. The corporation shall determine its Oregon taxable income

and tax liability separately from any other corporation

(4) For purposes of subsection (3) of this section, if the corporation is not subject to taxation under the Internal Revenue Code a return for federal income tax purposes includes any form of return required to be made in lieu of an income tax return under the Internal Revenue Code or regulations thereunder

(5)(a) If two or more corporations subject to taxation under this chapter are members of the same affiliated group making a consolidated federal return and are members of the same unitary group, they shall file a consolidated state return. The department shall prescribe by rule the method by which a consolidated state return shall be filed.

(b) If any corporation that is a member of an affiliated group is permitted or required to determine its Oregon taxable income on a separate basis under ORS 314.670, or if any corporation is permitted or required by statute or rule to use different apportionment factors than a corporation with which it is affiliated, the corporation shall not be included in a consolidated state return under paragraph (a) of this subsection

(c) Whenever two or more corporations are required to file a consolidated state return under paragraph (a) of this subsection, any reference in this chapter to a corporation for purposes of deriving Oregon taxable income shall be treated as a reference to all corporations that are included in the consolidated state return

(6) If so directed by the department, by rule or instructions on the state tax return form, every corporation required to make a return under this chapter shall also file with the return a true copy of the corporation's federal income tax return for the same taxable year. For purposes of this subsection, the corporation's federal income tax return includes a consolidated federal return for an affiliated group of which the corporation is a member. The department may, by rule or instructions, permit a corporation to submit specified excerpts from its federal return in lieu of submitting a copy of the entire federal return. The federal return or any part thereof required to be filed with the state return is incorporated in and shall be a part of the state return [1984 c 1 § 2, 1985 c 802 § 29]

317.715 Tax return of corporation in affiliated group making consolidated federal return. (1) If a corporation required to make a return under this chapter is a member of an affiliated group of corporations making a consolidated federal return under sections 1501 to

1505 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined beginning with federal consolidated taxable income of the affiliated group as provided in this section

(2) If the affiliated group, of which the corporation subject to taxation under this chapter is a member, consists of more than one unitary group, before the additions, subtractions, adjustments and modifications to federal taxable income provided for in this chapter are made, and before allocation and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated taxable income shall be computed. Modified federal consolidated taxable income shall be determined by eliminating from the federal consolidated taxable income of the affiliated group the separate taxable income, as determined under Treas Reg § 1.1502-12, and any deductions or additions or items of income, expense, gain or loss for which consolidated treatment is prescribed under Treas Reg § 1.1502-11(a), attributable to the member or members of any unitary group of which the corporation is not a member.

(3)(a) After modified federal consolidated taxable income is determined under subsection (2) of this section, the additions, subtractions, adjustments and modifications prescribed by this chapter shall be made to the modified federal consolidated taxable income of the remaining members of the affiliated group, where applicable, as if all such members were subject to taxation under this chapter. After those modifications are made, Oregon taxable income or loss shall be determined as provided in ORS 317.010 (10) (a) to (c), if necessary

(b) In the computation of the Oregon apportionment percentage for a corporation that is a member of an affiliated group filing a consolidated federal return, there shall be taken into consideration only the property, payroll, sales or other factors of those members of the affiliated group whose items of income, expense, gain or loss remain in modified federal consolidated taxable income after the eliminations required under subsection (2) of this section. Those members of an affiliated group making a consolidated federal return or a consolidated state return shall not be treated as one taxpayer for purposes of determining whether any member of the group is taxable in this state or any other state with respect to questions of jurisdiction to tax or the composition of the apportionment factors used to attribute income to this state under ORS 314.280 or 314.605 to 314.670 [1984 c 1 § 3, 1985 c 802 § 30]

317.720 Computation of taxable income; excess loss accounts. (1) To derive

Oregon taxable income, there shall be subtracted from federal taxable income the amount of the excess loss account included under Treas Reg §1 1502-19 to the extent that the excess losses have offset unitary income. However, in no event shall excess losses be recaptured on account of Treas Reg. §1 1502-19 for purposes of this chapter if the losses were deducted for a taxable year beginning before January 1, 1986.

(2) As used in this section, "unitary income" means income of a unitary group, as that term is defined in ORS 317.705, that includes the subsidiary to which excess losses are attributable, and a member of which is subject to taxation under this chapter [1984 c 1 §11b]

317.725 Adjustments to prevent double taxation or deduction. (1)(a) If any provision of the Internal Revenue Code or of ORS 317.705 to 317.715, relating to the use of consolidated federal returns, requires that any amount be added to or deducted from federal consolidated taxable income or the Oregon taxable income subject to taxation under this chapter or ORS chapter 318 that previously had been added to or deducted from income upon or with respect to which tax liability was measured under the Oregon law in effect prior to the taxpayer's taxable year as to which ORS 317.705 to 317.715, are first effective, an appropriate adjustment shall be made to the income for the year or years subject to ORS 317.705 to 317.715, so as to prevent the double taxation or double deduction of any such amount that previously had entered into the computation of income upon or with respect to which tax liability was measured.

(b) If it appears to the department that a corporation making a return under this chapter or ORS chapter 318 is required to make any adjustment to federal consolidated taxable income pursuant to ORS 317.715, that is unduly burdensome or that produces an inequitable or unreasonable result, the department, upon application by the corporation, may relieve the corporation of the requirement and may permit or require any other adjustment to be made to fairly reflect income and produce an equitable result. The department shall adopt rules prescribing the method by which a corporation may apply for relief under this paragraph.

(2) Notwithstanding the provisions of ORS 317.013, any regulation promulgated pursuant to sections 1501 to 1505 of the Internal Revenue Code which makes reference to provisions of the Internal Revenue Code with respect to which modifications to federal taxable income are prescribed under this chapter shall not be applied to

the extent the regulation conflicts with the provisions of this chapter.

(3) The Department of Revenue shall not make any adjustment under this section if the resulting increase or decrease in tax liability would be less than \$250 [1984 c 1 §19, 1985 c 802 §31]

Note: Section 20, chapter 1, Oregon Laws 1984, provides

Sec 20 (1) Except as specifically provided otherwise, the amendments, repeals and new matter contained in sections 2 to 19 of this Act apply to taxable years beginning on or after January 1, 1986. For all prior taxable years, the law applicable for those years shall remain in full force for the purposes of assessment, imposition and collection of corporation excise and income taxes and for all interest, penalties or forfeitures that have accrued or may accrue with respect to those taxes.

(2) The repeal of ORS 317.339 by section 18 of this Act and the amendments to ORS 317.344 by section 11 of this Act apply to charitable contributions made and capital losses occurring in taxable years beginning on or after January 1, 1986.

NOTE Section 56, chapter 802, Oregon Laws 1985, provides

Sec 56 (1) Except as specifically provided otherwise in this section, sections 3a and 18, and the amendments to ORS 314.415, 316.012, 316.078, 316.087, 316.102, 316.122, 316.367, 316.695, 316.707, 316.716, 317.010 (7), 317.013 (2) and (3), 317.018, 317.080, 317.133, 317.267 (as the amendments relate to a foreign sales corporation), 317.281, 317.309, 317.356, 317.368, 317.381, 317.635, 317.920 and section 2, chapter 1, Oregon Laws 1984, by sections 1, 4 to 6, 8, 9, 12 to 14, 19 to 24, 26 to 29, 32 and 33 of this Act apply to tax years beginning on or after January 1, 1985.

(2) The amendments to ORS 316.695 (3) (relating to retirement plans) by section 12 of this Act apply to tax years beginning on or after January 1, 1982.

(3) The amendments to ORS 317.010 (except ORS 317.010 (7)), 317.013 (1), 317.267 (except as the amendments relate to a foreign sales corporation), 318.040 and sections 2, 3, 4 and 19 of chapter 1, Oregon Laws 1984, by sections 20 and 29 to 34 of this Act apply to tax years beginning on or after January 1, 1986.

(4) The amendments to ORS 310.630 by section 37 of this Act apply to property taxes billed and rent constituting property taxes paid in calendar years beginning on or after January 1, 1985.

(5) Sections 22d and 22e apply to transactions occurring on or after January 1, 1985.

(6) Subsection (4) of ORS 316.032 and subsection (4) of ORS 317.013, as created by the amendments to those ORS sections by sections 1a and 32 of this Act apply to technical corrections that affect Oregon tax years beginning on or after January 1, 1983.

(7) The amendments to ORS 316.369 by section 9a of this Act apply to those determinations made or which would be made for federal income tax purposes under section 6013 (e) of the Internal Revenue Code, as amended by section 424

(a) of Public Law 98-369, and for tax years beginning on or after January 1, 1969

(8) For all taxable years prior to the years specified in this section, the law applicable for those years shall remain in full force for the purposes of assessment, imposition and collection of excise and income taxes and for all interest, penalties or forfeitures that have accrued or may accrue with respect to those taxes

DISPOSITION OF REVENUE

317 845 [Formerly 317 515, repealed by 1985 c 761 §27]

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

(2) The amendment of this section by the Forty-seventh Legislative Assembly shall first apply to the state levy of taxes for the fiscal year 1953-54 [Formerly 317 590]

UNRELATED BUSINESS INCOME OF CERTAIN EXEMPT CORPORATIONS

317.910 [1959 c 356 §3, repealed by 1983 c 162 §57]

317.920 Tax imposed on unrelated business income of certain exempt corporations. Notwithstanding ORS 317 080, a corporation otherwise exempt from tax under ORS 317 080 (1), (4), (5), (6), (12) or (17) shall be

subject to the tax imposed by and in accordance with the provisions of this chapter, but only as to its unrelated business taxable income, as defined under the Internal Revenue Code [1959 c 356 §2, 1975 c 652 §90, 1983 c 162 §42, 1985 c 802 §28b]

317.930 Exceptions and limitations. In addition to the exclusions and modifications contained in section 512(b) of the Internal Revenue Code, in determining unrelated business taxable income, there shall be excluded, in the case of any school, college or university, which rents real property to its students or faculty, all rents derived therefrom, providing that such property is actually a part of the school and that the continued presence of the students and faculty thereon is necessary to the educative function of the institution [1959 c 356 §4, 1979 c 580 §3, 1983 c 162 §43]

317 940 [1959 c 356 §5, repealed by 1983 c 162 §57]

317.950 Assessment of deficiency. If the department finds that unrelated business taxable income, or any portion thereof, has not been assessed, it may, at any time within three years after the return was filed, or in case no return was filed within five years from the time the return should have been filed, compute the tax and give notice to the corporation of the amount due, including penalty and interest thereon. These limitations to the assessment of such tax or additional tax, including penalty and interest thereon, do not apply to the assessment of additional taxes, and penalty and interest thereon, upon false or fraudulent returns or in cases where with a fraudulent intent no return has been filed. ORS 314 410 is also applicable to the extent that it is not inconsistent with the provisions of this section [1959 c 356 §6]

317 990 [Repealed by 1957 c 632 §1 (314 991 enacted in lieu of 316 990 and 317 990)]