

Chapter 317

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Corporation Excise Tax

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REVENUE AND TAXATION

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, 1988, 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 and any other laws of the United States relating to the determination of taxable income or loss of corporate taxpayers, 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 or 317.478 and section 45b, chapter 293, Oregon Laws 1987, 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 750.095. [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; 1987 c.293 §31; 1989 c.625 §15]

317.013 Adoption of parts of Internal Revenue Code and application of federal laws and regulations and technical corrections 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, and any other laws of the United States 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 and other laws of the United States 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 or Title within an Act of the United States Congress designated as an Act or Title making technical corrections, then notwithstanding the date that the Act or Title 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 and shall take effect, unless otherwise indicated by the Act or Title (in which case the provisions shall take effect as indicated in the Act or Title) as if originally included in the Act being technically corrected. If, on account of this subsection, any adjustment is required to an Oregon return that would otherwise be prevented by operation of law or rule, the adjustment shall be made, notwithstanding any law or rule to

the contrary, in the manner provided under ORS 314.135. [1983 c.162 §11; 1984 c.1 §6; 1985 c.802 §32, 1987 c.293 §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:

(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, as amended on or before December 31, 1988, 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 in-

come as adjusted in this chapter. [1983 c.162 §2; 1984 c.1 §7; 1985 c.802 §21; 1987 c.293 §33; 1989 c.625 §16]

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 and Simplification of Imputed Interest Rules of 1985. (1)(a) 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.

(b) Notwithstanding ORS 317.010, 317.013 and 317.018 (all 1985 Replacement Part), and subject to all other provisions of this chapter in effect and applicable to transactions occurring on or after January 1, 1985, the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) insofar as it applies to transactions occurring on or after January 1, 1985, shall apply to the same transactions for Oregon tax purposes. The amendments by the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) to section 168 of the Internal Revenue Code apply to property placed in service after May 8, 1985, but do not apply to property to which section 105 (b)(2) and (3) of the Act (P.L. 99-121) apply.

(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 or 99-121 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 or 99-121 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)(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 paragraph (a) 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 paragraph (a) of subsection (1) of this section.

(B) Any changes required on account of paragraph (b) of subsection (1) of this section for a tax year beginning prior to January 1, 1987, shall be made by filing an amended return within the time prescribed by law.

(b) Exercise of the election provided under subparagraph (A) of 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) For purposes of subparagraph (A) of paragraph (a) of this subsection, 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)(A) If a taxpayer fails to make an election under subparagraph (A) of paragraph (a) of this subsection, the department shall make any changes under subparagraph (A) of paragraph (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.

(B) If a taxpayer fails to file an amended return under subparagraph (B) of paragraph (a) of this subsection, the department shall make any changes under subparagraph (B) of paragraph (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 1987 return is filed, whichever period expires later. [1985 c.802 §60; 1987 c.293 §34]

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 tax-

ation 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]

317.045 Application of federal law relating to discriminatory employee benefit plans. Notwithstanding ORS 317.010, 317.013 and 317.018, section 89 of the Internal Revenue Code (relating to discriminatory employee benefit plans and other matters), and the regulations adopted thereunder, shall apply as appropriate to the determination of the taxes imposed under this chapter for a taxable year in the same manner that the section and regulations are applied in determining federal income tax for the same taxable year. [1989 c.625 §19]

Note: Section 82, chapter 625, Oregon Laws 1989, provides:

Sec. 82. (1) Except as provided in subsections (2) to (4) of this section and sections 83 to 92 of this Act, the amendments by this Act apply to transactions or activities occurring on or after January 1, 1989, in tax years beginning on or after January 1, 1989.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law

(3) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Family Support Act of 1988 (P.L. 100-485) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(4) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended by the Tax Reform Act of 1986 (P.L. 99-514) and other Acts, relative to those dates, contained in the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) shall apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the federal Internal Revenue Code and related federal law.

(5)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1989, and the deficiency, or any portion thereof, is attributable to any retroactive treatment under this Act, then any interest or penalty assessed under ORS chapter 305, 314, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 1989, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under this Act, then notwithstanding ORS 314.415 or other law, the refund shall be paid without interest.

(c) Any changes required on account of this Act for a tax year beginning prior to January 1, 1989, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the change or changes relate within the period as specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1989 return is filed, whichever period expires later. [1989 c.625 §82]

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 six and six-tenths percent. [1975 c.368 §2; 1983 c.162 §5; 1987 c.293 §34a]

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; 1981 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) Organizations described in subsection (c) and subsection (j) of section 501 of the Internal Revenue Code unless the exemption is denied under subsection (h), (i) or (m) of section 501 or under section 502, 503 or 505 of the Internal Revenue Code.

(2) Organizations described in section 501(d) of the Internal Revenue Code, unless the exemption is denied under section 502 or 503 of the Internal Revenue Code.

(3) Organizations described in section 501(e) of the Internal Revenue Code.

(4) Organizations described in section 501(f) of the Internal Revenue Code.

(5) Organizations described in section 521 of the Internal Revenue Code.

(6) Foreign or alien insurance companies, domestic insurance companies described under ORS 731.816 (2) 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.

(7) 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 (1987 Replacement Part) 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.

(8) People's utility districts established under ORS chapter 261. [Amended by 1953 c.207 §1; 1953 c.653 §3; 1955 c.592 §5; last sentence of 1959 Replacement Part derived from 1955 c.592 §6; 1957 c.553 §1; 1959 c.215 §1; 1961 c.473 §1; subsection (17) enacted as 1961 c.473 §2; 1963 c.286 §1; 1967 c.359 §689; 1969 c.600 §11; 1971 c.637 §1, 1985 c.802 §28a; 1987 c.293 §36; 1987 c.838 §20; 1989 c.626 §9]

Note: Section 17, chapter 626, Oregon Laws 1989, provides.

Sec. 17. The amendments to ORS 317.080 by section 9 of this Act first apply to taxable years beginning on or after January 1, 1989 [1989 c.626 §17]

317.083 [1981 c.778 §36, renumbered 317.386]

317.084 Oregon Capital Corporation exempted from certain taxes. The Oregon Capital Corporation is exempt from the taxes imposed by this chapter. [1987 c.911 §8e]

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]

CREDITS

317.097 Commercial lending institution loans for housing rehabilitation. (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 finance charge charged during the taxable year including interest on the loan and any loan fee financed at an annual rate less than the market rate for a loan made on or after January 1, 1990, and before January 1, 2000, by the lending institution to a project that is certified by the Housing Agency, and is sponsored by a nonprofit corporation or local government entity, or a loan made after January 1, 1990, and before January 1, 2000, that is made to a household participating in a community rehabilitation program; and

(b) The amount of finance charge that would have been charged during the taxable year by the lending institution for the loan for housing development or rehabilitation measures at the annual rate charged by the commercial lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for housing

development or rehabilitation measures is made.

(2) The maximum difference between the amounts described in paragraphs (a) and (b) of subsection (1) of this section shall not exceed four percent of the average unpaid balance of the loan during the tax year for which the credit is claimed.

(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 in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise until the 15th succeeding tax year. The credit may not be carried forward beyond the 15th succeeding tax year.

(4) The credit allowed in this section shall be allowed for the term of the loan or for 10 years, whichever time period is shorter.

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

(a) Be made to a project sponsored by a nonprofit or governmental entity including, but not limited to, a housing authority. The project shall demonstrate that the reduced interest rate provided by the commercial lender will be passed on to tenants in the form of reduced housing payments to households earning less than 80 percent of the area median income; or

(b) Be made to a household participating in a community rehabilitation program. Participants in such programs shall be certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income.

(6) As used in this section, the following definitions shall apply:

(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(b) "Commercial lending institution" means any bank, mortgage banking company, federal savings bank, savings bank, stock savings bank, savings and loan association, national bank or federal savings and loan association maintaining an office in this state.

(c) "Finance charge" means the total of all interests, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

(7) The commercial lending institution shall file an annual statement with the Housing Agency, specifying that it has conformed with all requirements imposed by law to qualify for this tax credit.

(8) The Housing Agency and the Department of Revenue may adopt rules to carry out the provisions of this section. [1989 c.1045 §2]

317.098 [1979 c.561 §6; 1983 c.162 §8; renumbered 317.392]

317.099 Commercial lending institution loans for underground storage tanks or soil remediation; reimbursement of General Fund. (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 finance charge charged during the taxable year including interest on the loan and interest on any loan fee financed at a rate of seven and one-half percent for a loan made on or after September 1, 1989, and before August 31, 1992, by the lending institution to a person who is upgrading or replacing an underground storage tank facility, or conducting soil remediation at the site of an underground storage tank facility; and

(b) The amount of finance charge that would have been charged during the taxable year, including interest on the loan and interest on any loan fee financed by the lending institution for the loan for underground storage tank upgrading, replacement or soil remediation measures at an annual rate that is the lesser of the following:

(A) The annual rate charged by the commercial lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for underground storage tank upgrading, replacement or soil remediation measures is made; or

(B) An upper limit established by rule of the Environmental Quality Commission.

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

(a) Be made before September 1, 1992; and

(b) Have a term not exceeding 10 years.

(3) The credit allowed under this section shall be allowed to a commercial lending institution for any taxable year during which a loan is outstanding.

(4) Once each quarter the Department of Revenue shall send the Department of Environmental Quality an invoice for an amount equal to the tax credit allowed under subsections (1) to (3) of this section. The De-

partment of Environmental Quality shall reimburse the General Fund for the amount of credit allowed each quarter from moneys in the Underground Storage Tank Compliance and Corrective Action Fund established under ORS 466.790.

(5) As used in this section, "commercial lending institution," "facility," "soil remediation" and "underground storage tank" have the meaning given those terms in ORS 466.705. [1989 c.1071 §§10, 10a]

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. [1985 c.438 §4]

Sec. 7. This Act applies to tax years beginning on or after January 1, 1985, and prior to January 1, 1994. [1985 c.438 §7]

317.100 [1979 c.483 §2; repealed by 1989 c.626 §12]

Note: Section 28, chapter 894, Oregon Laws 1981, as amended by section 1, chapter 749, Oregon Laws 1987, 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 finance charge charged during the taxable year including interest on the loan and interest on any loan fee financed at an annual rate of six and one-half percent for a loan made on or after January 1, 1982, and before January 1, 1992, 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 finance charge that would have been charged during the taxable year, including interest on the loan and interest on any loan fee financed by the lending institution for the loan for energy conservation measures at an annual rate which is the lesser of the following.

(A) The annual 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 of Revenue shall refund the difference to the taxpayer. Payment made by the Department of Revenue under this subsection shall be considered a refund for the purposes of ORS 317.850. 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) Be subject to an annual rate not to exceed six and one-half percent and have a term not exceeding 10 years.

(c) Be made before January 1, 1992.

(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, and any loan fee that is included in the body of the loan. The requirement for cost-effectiveness 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) A commercial lending institution may charge, finance and collect a nonrefundable front-end loan fee, and such a fee shall not affect the eligibility of the loan for a tax credit under this section. The fee, if any, shall not exceed that charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for energy conservation measures is made.

(6) 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.

(7) As used in this section, "annual rate," "commercial lending institution," "cost-effective," "dwelling," "dwelling owner," "energy audit," "energy conservation measures," "finance charge," "fuel oil dealer," "residential fuel oil customer," "space heating" and "wood heating resident" have the meaning given those terms in section 22, chapter 894, Oregon Laws 1981. [1981 c.894 §28, 1987 c.749 §1]

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 30 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, tree planting and other silviculture treatments considered necessary by the State Forester to establish commercial, hardwood or softwood stands on appropriate sites. Subject to subsection (5) of this section:

(a) One-half of the credit shall be taken in the tax year for 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 for 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, ornamental trees, shrubs or plants, or, except as provided in ORS 321.274 and except those costs paid or incurred to grow hardwood timber on land classified under ORS 321.705 to 321.765, those costs paid or incurred to grow hardwood timber described under ORS 321.267 (1)(e).

(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 five 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)(a) 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.

(b) If the taxpayer qualifying for the credit under this section is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, the credit allowed under this section shall be allowed to the corporation's shareholders and shall be computed for each shareholder in the manner provided under ORS 316.094.

(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 for 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.

(11) Any owner affected by a determination regarding the reforestation tax credit made by:

(a) The State Forester, may appeal that determination in the manner provided for in ORS 526.475 (1).

(b) The Department of Revenue, may appeal that determination in the manner provided for in ORS 526.475 (2). [1979 c.578 §9; 1985 c.749 §2; 1987 c.605 §2; 1989 c.887 §2]

Note: See note under 316.094.

Note: Section 3, chapter 887, Oregon Laws 1989, provides:

Sec. 3. The amendments to ORS 316.094 (1), (3) and (4) and 317.102 (1), (3) and (4) by sections 1 and 2 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 for a tax year beginning on or after January 1, 1990. [1989 c 887 §3]

Note: Sections 4 and 5, chapter 605, Oregon Laws 1987, as amended by chapter 887, Oregon Laws 1989, provide:

Sec. 4. (1) The amendments to ORS 316.094 (1)(a) and (b) by section 1 of this Act and to ORS 317.102 (1)(a) and (b) by section 2 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 for a tax year beginning on or after January 1, 1985.

(2) The amendments to ORS 316.094 (1) and 317.102 (1) by sections 1 and 2 of this Act changing "10" to "30" apply to all reforestation project costs paid or incurred in connection with a reforestation project for which a preliminary certificate is issued for a tax year beginning on or after January 1, 1987.

(3) The amendments to ORS 316.094 (6) and 317.102 (6) by sections 1 and 2 of this Act allowing the reforestation tax credit to the shareholders of an S corporation apply to all reforestation project costs paid or incurred in connection with a reforestation project for which a preliminary certificate is issued for a tax year beginning on or after January 1, 1987. [1987 c.605 §4]

Sec. 5. No tax credit shall be allowed under ORS 316.094 or 317.102 based upon reforestation project costs if the preliminary certificate is not issued prior to July 1, 1996. [1987 c.605 §5; 1989 c.887 §4]

Note: Sections 2 and 5, chapter 695, Oregon Laws 1985, as amended by chapter 989, Oregon Laws 1989, 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. [1985 c.695 §2]

Sec. 5. (1) Except as provided in subsection (2) of this section, sections 2 and 4, chapter 695, Oregon Laws 1985, apply to contributions made in tax years beginning on or after January 1, 1986, and prior to January 1, 1998.

(2) With respect to the credit allowed for a contribution as described in paragraph (c) of subsection (2) of section 2, chapter 695, Oregon Laws 1985, if a written contract or other written agreement to make the contribution is entered into prior to January 1, 1998, 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, chapter 695, Oregon Laws 1985, shall be allowed for those contributions made pursuant to the

written contract or other written agreement entered into prior to January 1, 1998. [1985 c.695 §5, 1989 c.989 §1]

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 1986 as it reads on October 3, 1989, or a low income housing tax credit granted under section 42 of the Internal Revenue Code as it reads on October 3, 1989, 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, 1989 c.765 §4]

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:

(a) Owned during the tax year by the taxpayer claiming the credit; or

(b) Financed by a public utility described in ORS 469.205 (1)(c)(B), that has been issued a certificate under ORS 469.215.

(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) Except as provided in paragraph (b) of subsection (2) of this section, 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.

(10) No credit shall be allowed under this section if the taxpayer has received a tax credit on the same facility or device under ORS 317.106. [1979 c.512 §14; 1981 c.894 §13; 1989 c.765 §5]

Note: Section 10, chapter 765, Oregon Laws 1989, provides:

Sec. 10. The amendments to ORS 317.104 by section 5 of this Act first apply to taxable years beginning on or after January 1, 1986. [1989 c.765 §10]

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 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 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 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 collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product;

(B) A person who, as a lessee or pursuant to an agreement, conducts the business that collects, transports or processes reclaimed plastic or 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 collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that collects, transports or processes reclaimed plastic or 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 invest-

ment 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 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 collecting, transporting or processing reclaimed plastic or manufacturing a reclaimed plastic product during the tax year for which the credit is claimed; and

(c) The reclaimed plastic collected, transported, processed or 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 business receiving final certification of an investment under ORS 468.940, only if the investment is made on or after January 1, 1986, but before July 1, 1995.

(6) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the 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 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 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.

(10) No credit shall be allowed under this section and under ORS 468.925 to 468.965 for any portion of a facility for which the taxpayer claims a tax credit or ad valorem tax relief under ORS 307.405, 317.104 and 469.185 to 469.225 or 317.116. [1985 c.684 §14; 1989 c.765 §6; 1989 c.958 §11]

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]

317.113 Employer payments to Insurance Pool Governing Board. (1) A credit against the taxes otherwise due under this chapter shall be allowed to an employer for amounts paid during the taxable year for purposes of ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785 on behalf of an eligible employee as defined in ORS 653.705 to provide care for a qualified individual.

(2) The amount of the credit allowed by subsection (1) of this section shall end on December 31, 1993, and shall be equal to the dollar amount specified in the following table or 50 percent of the total amount paid by the employer during the taxable year, whichever is the lesser:

Year of Participation	Dollar Amount Per Covered Employee Per Month
1989	\$25
1990	\$25
1991	\$18.75
1992	\$12.50
1993	\$ 6.25

(3) As used in this section, "employer" means a taxpayer subject to the tax imposed by this chapter paying compensation in this state.

(4) If the credit allowed by this section is claimed, the amount of any deduction allowable under this chapter for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with rules adopted by the department.

(5) Any amount of expenses paid by an employer under ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785 shall not be included as income to the employee for purposes of the Personal Income Tax Act of 1969. If such expenses have been included in arriving at federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Personal Income Tax Act of 1969. As used in ORS 316.162, with respect to the employee, "wages" does not include expenses paid under ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785.

(6) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may not be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year.

(7) If the taxpayer is an electing small business 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 316.096, based on that shareholder's pro rata share of the expenses described in this section. [1987 c.591 §15; 1989 c.381 §9]

Note: Section 12, chapter 381, Oregon Laws 1989, makes further amendment to ORS 317.113, effective January 1, 1992, if certain conditions regarding health care coverage are satisfied. See section 10, chapter 381, Oregon Laws 1989. The text of the further amendment is set forth below for the user's convenience.

317.113. (1) A credit against the taxes otherwise due under this chapter shall be allowed to an employer for amounts paid during the taxable year for purposes of ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785 on behalf of an eligible employee as defined in ORS 653.705 to provide care for a qualified individual.

(2) The amount of the credit allowed by subsection (1) of this section shall end on December 31, 1993, and shall be equal to the dollar amount specified in the following table or 50 percent of the total amount paid by the employer during the taxable year, whichever is the lesser:

Year of Participation	Dollar Amount Per Covered Employee Per Month
1989	\$25
1990	\$25
1991	\$25
1992	\$18.75
1993	\$12.50

(3) As used in this section, "employer" means a taxpayer subject to the tax imposed by this chapter paying compensation in this state.

(4) If the credit allowed by this section is claimed, the amount of any deduction allowable under this chapter for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with rules adopted by the department.

(5) Any amount of expenses paid by an employer under ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785 shall not be included as income to the employee for purposes of the Personal Income Tax Act of 1969. If such expenses have been included in arriving at federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Personal Income Tax Act of 1969. As used in ORS 316.162, with respect to the employee, "wages" does not include expenses paid under ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785.

(6) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may not be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year.

(7) If the taxpayer is an electing small business 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

316.096, based on that shareholder's pro rata share of the expenses described in this section.

Note: Section 15, chapter 381, Oregon Laws 1989, makes further amendment to ORS 317.113, effective January 1, 1993, if certain conditions regarding health care coverage are satisfied. The text of the further amendment is set forth below for the user's convenience.

317.113. (1) A credit against the taxes otherwise due under this chapter shall be allowed to an employer for amounts paid during the taxable year for purposes of ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785 on behalf of an eligible employee as defined in ORS 653.705 to provide care for a qualified individual.

(2) The amount of the credit allowed by subsection (1) of this section shall end on December 31, 1993, and shall be equal to the dollar amount specified in the following table or 50 percent of the total amount paid by the employer during the taxable year, whichever is the lesser:

Year of Participation	Dollar Amount Per Covered Employee Per Month
1989	\$25
1990	\$25
1991	\$25
1992	\$18.75
1993	\$18.75

(3) As used in this section, "employer" means a taxpayer subject to the tax imposed by this chapter paying compensation in this state.

(4) If the credit allowed by this section is claimed, the amount of any deduction allowable under this chapter for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with rules adopted by the department.

(5) Any amount of expenses paid by an employer under ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785 shall not be included as income to the employee for purposes of the Personal Income Tax Act of 1969. If such expenses have been included in arriving at federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Personal Income Tax Act of 1969. As used in ORS 316.162, with respect to the employee, "wages" does not include expenses paid under ORS 316.096, 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785.

(6) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may not be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year.

(7) If the taxpayer is an electing small business 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 316.096, based on that shareholder's pro rata share of the expenses described in this section.

317.114 Employer costs in acquiring or constructing dependent care facility.

(1) A credit against the taxes otherwise due under this chapter is allowed to an employer, based upon costs actually paid or incurred by the employer, to acquire, construct, re-

construct, renovate or otherwise improve real property so that the property may be used primarily as a dependent care facility.

(2) The credit allowed under this section shall be the lesser of:

(a) \$2,500, times the number of full-time equivalent employees employed by the employer (on the property or within such proximity to the property that any dependents of the employees may be cared for in the facility) on any date within the two years immediately preceding the end of the first tax year for which credit is first claimed; or

(b) Fifty percent of the cost of the acquisition, construction, reconstruction, renovation or other improvement; or

(c) \$100,000.

(3) To qualify for the credit allowed under subsection (1) of this section:

(a) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction, renovation or other improvement to real property may be paid or incurred either:

(A) To another to be used to acquire, construct, reconstruct, renovate or otherwise improve real property to the end that it may be used as a dependent care facility with which the employer contracts to make dependent care assistance payments which payments are wholly or partially entitled to exclusion from the income of the employee for federal tax purposes under section 129 of the Internal Revenue Code.

(B) To acquire, construct, reconstruct, renovate or otherwise improve real property to the end that it may be operated by the employer, or a combination of employers, to provide dependent care assistance to the employees of the employer under a program or programs under which the assistance is, under section 129 of the Internal Revenue Code, wholly or partially excluded from the income of the employee.

(b) The property must be in actual use as a dependent care facility on the last day of the tax year for which credit is claimed and dependent care services assisted by the employer must take place on the acquired, constructed, reconstructed, renovated or improved property and must be entitled to an exclusion (whole or partial) from the income of the employee for federal tax purposes under section 129 of the Internal Revenue Code on the last day of the tax year for which credit is claimed.

(c) The person or persons operating the dependent care facility on the property acquired, constructed, reconstructed, renovated or improved must hold a certificate of approval (temporary or not) issued under ORS

418.805 to 418.885 by the Children's Services Division to operate the facility on the property on the last day of the tax year of any tax year in which credit under this section is claimed.

(d) The dependent care facility acquired, constructed, reconstructed, renovated or otherwise improved must be located in Oregon. No credit shall be allowed under this section if the dependent care facility is not acquired, constructed, reconstructed, renovated or improved to accommodate six or more children.

(e) The employer must meet any other requirements or furnish any information, including information furnished by the employees or person operating the dependent care facility, to the department that the department requires under its rules to carry out the purposes of this section.

(f) The dependent care facility, the costs of the acquisition, construction, reconstruction, renovation or improvement of which the credit granted under this section is based, must be placed in operation before January 1, 1992.

(4) The total amount of the costs upon which the credit allowable under this section is based, and the total amount of the credit, shall be determined by the employer, subject to any rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated or otherwise improved is first placed in operation as a dependent care facility certified by the Children's Services Division under ORS 418.805 to 418.885. One-tenth of the total credit is allowable in that tax year and one-tenth of the total credit is allowable in each succeeding tax year, not to exceed nine tax years, thereafter. No credit shall be allowed under this section for any tax year at the end of which the dependent care facility is not in actual operation under a current certificate of approval (temporary or not) issued by the Children's Services Division nor shall any credit be allowed for any tax year at the end of which the employer is not providing dependent care assistance entitled to exclusion (whole or partial) from employee income for federal tax purposes under section 129 of the Internal Revenue Code for dependent care on the property. Any credit allowable for a tax year under this section may be carried forward in the same manner and to the same tax years as if it were a tax credit described in section 5, chapter 682, Oregon Laws 1987.

(5) Nothing in this section shall affect the computation of depreciation or basis of a dependent care facility. If a deduction is allowed for purposes of this chapter for the amounts paid or incurred upon which the credit under this section is based, the de-

duction shall be reduced by the dollar amount of the credit granted under this section.

(6) If the taxpayer 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 316.096, based upon that shareholder's pro rata share of the costs upon which the credit is based.

(7) For purposes of the credit allowed under this section:

(a) The definitions and special rules contained in section 129 (e) of the Internal Revenue Code shall apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation or profession in this state.

(c) "Internal Revenue Code" has the meaning given the term in section 5, chapter 682, Oregon Laws 1987.

(8) The department shall require that evidence that the person operating the dependent care facility on the date that the taxpayer's tax year ends holds a current certificate of approval (temporary or otherwise) to operate the facility accompany the tax return on which any amount of tax credit granted under this section is claimed, or that such evidence be separately furnished. If the evidence is not so furnished, no credit shall be allowed for the tax year for which the evidence is not furnished. The Children's Services Division shall cooperate by making such evidence, in an appropriate form, available to the person operating the facility, if the person is currently entitled to a certificate of approval (temporary or not) so that, if necessary, it may be made available to the taxpayer. [1987 c.682 §6]

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) and must be issued certification under ORS 468.170 prior to December 31, 1995.

(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 or lessee owns or leases 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, only one may claim the credit allowed under this section. The person claiming the credit as between an owner and lessee under this subparagraph shall be designated in a written statement signed by both the lessor and lessee of the facility; 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. As used in this paragraph, "owner" includes a contract purchaser; and

(b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit and must have been in use and operation during 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, 1987 c.596 §3, 1989 c.802 §3]

Note: Section 9, chapter 802, Oregon Laws 1989, provides:

Sec. 9. (1) The amendments to ORS 307.405 by section 1 of this Act relating to the period of property tax exemption for certain pollution control facilities apply to facilities certified on or after September 27, 1987.

(2) The amendments to ORS 316.097 and 317.116 by sections 2 and 3 of this Act relating to the amount of cost upon which income or excise tax credit for certain pollution control facilities is based apply to facilities certified on or after September 27, 1987. For all prior certifications, the law applicable for those certifications shall remain applicable. [1989 c.802 §9]

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 [Formerly 317.077; repealed by 1987 c.769 §20]

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. [1985 c.521 §2]

Sec. 6. Sections 2 and 5 and the amendments to ORS 316.089 by 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. [1985 c.521 §6]

Note: Sections 5 and 10, chapter 682, Oregon Laws 1987, as amended by chapter 625, Oregon Laws 1989, provide:

Sec. 5. (1) A credit against the taxes otherwise due under this chapter shall be allowed to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to an employee if the assistance is furnished pursuant to a program which meets the requirements of sections 89(k) and 129(d)(2) to (6) of the Internal Revenue Code.

(2) The amount of the credit allowed under subsection (1) of this section shall be 50 percent of the

amount so paid or incurred by the employer during the taxable year but shall not exceed \$2,500 of day care assistance actually provided to the employee.

(3)(a) A credit against the taxes otherwise due under this chapter shall be allowed to an employer based upon amounts paid or incurred by the employer during the taxable year to provide information and referral services to assist employees of the employer employed within this state to obtain dependent care.

(b) The amount of the credit allowed under this subsection shall be 50 percent of the amounts paid or incurred during the taxable year.

(4) No amount paid or incurred during the taxable year of an employer in providing dependent care assistance to any employee shall qualify for the credit allowed under subsection (1) of this section if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(5) No amount paid or incurred by an employer to provide dependent care assistance to an employee shall qualify for the credit allowed under subsection (1) of this section if the amount paid or incurred is paid or incurred pursuant to a salary reduction plan or is not paid or incurred for services performed within this state.

(6) If the credit allowed under subsection (1) of this section is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) shall be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section shall be made at the time of filing the tax return in accordance with any rules adopted by the department.

(7) The amount upon which the credit allowed under subsection (1) of this section is based shall not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section shall not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of ORS 316.162, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection shall not qualify as expenses for which a credit is allowed to the employee under ORS 316.078.

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

(9) If the taxpayer 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 316.134, based upon that shareholder's pro rata share of the costs upon which the credit is based.

(10) For purposes of the credit allowed under subsection (1) or (3) of this section:

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code shall apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 1988.

(11) In the case of an onsite facility, in accordance with any rules adopted by the department, the amount upon which the credit allowed under subsection (1) of this section is based, with respect to any dependent, shall be based upon utilization and the value of the services provided [1987 c 682 §5, 1989 c 625 §20]

Sec. 10. Sections 2 [316.134], 5 and 8 [note following 318.100] of this Act apply to tax years beginning on or after January 1, 1988, and prior to January 1, 1992. For all prior taxable years, the law in effect and applicable for those years shall continue to apply. [1987 c 682 §10]

Note: Section 87, chapter 625, Oregon Laws 1989, provides.

Sec. 87. The amendments to ORS 316.134 and section 5, chapter 682, Oregon Laws 1987, by sections 10 and 20 of this Act (relating to dependent care assistance credit) apply to tax years beginning on or after January 1, 1988, and prior to January 1, 1992. [1989 c.625 §87]

317.140 Cash investment in capitalization of Oregon Capital Corporation. (1) A taxpayer shall be allowed a credit against the taxes otherwise due under this chapter for the taxable year, based upon the taxpayer's direct cash investment in the certified capitalization of the Oregon Capital Corporation. The amount of the credit shall be 20 percent of the amount of the cash investment.

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

(a) The Oregon Capital Corporation must have been certified by the Financial Institutions Division under section 7, chapter 911, Oregon Laws 1987.

(b) Not more than 50 percent of the tax credit provided for in this section may be claimed in the tax year in which the investment is made in the Oregon Capital Corporation.

(c) No taxpayer shall claim more than 50 percent of the tax credit provided for in this section:

(A) Before July 1, 1989; and

(B) Before the Oregon Capital Corporation is certified by the division as having met the investment requirements of ORS 284.775 (1)(a).

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

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that sec-

ond 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 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 316.104 based on the shareholders' pro rata share of the corporation's investment in the Oregon Capital Corporation.

(6) The amount of any credit allowed under this section shall be used to reduce the basis of the taxpayer's investment in the Oregon Capital Corporation. Federal taxable income shall be modified to the extent necessary to carry out the provisions of this subsection. [1987 c.911 §8d]

Note: See note under 316.104.

317.142 Credit for rural medical practice. (1) In addition to any other modification to federal taxable income contained in this chapter, a person certified as eligible under section 7, chapter 893, Oregon Laws 1989, licensed under ORS chapter 677, who is engaged in the practice of medicine, and who has a rural practice that amounts to 60 percent of the person's practice shall be allowed as credit against taxes otherwise due under this chapter in the sum of \$5,000, not to exceed 10 tax years, during which the person retains such practice and membership if:

(a) The person is actively practicing in and is a member of the medical staff of a type B hospital not located within the boundaries of a metropolitan statistical area, or a type A hospital.

(b) The person is actively practicing in and is a member of the medical staff of a type C hospital, if the Office of Rural Health makes the finding required by ORS 316.146.

(2) 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 shareholder's tax liability.

(3) A person certified as eligible under section 7, chapter 893, Oregon Laws 1989, licensed as a physician under ORS chapter 677, registered as a physician assistant or licensed as a nurse practitioner is entitled to the tax credit described in ORS 316.143 even if not a member of the hospital medical staff if the Office of Rural Health certifies that the person:

(a) Can cause a patient to be admitted to the hospital; and

(b) Has a rural practice that amounts to 60 percent of the person's practice.

(4) As used in this section, "type A hospital," "type B hospital" and "type C hospital" have the meaning for those terms provided in ORS 442.470. [1989 c.893 §§5, 6]

317.145 Fish screening devices, by-pass devices or fishways. (1) There shall be allowed a credit against tax due under this chapter for taxpayers that install fish screening devices, by-pass devices or fishways, when required to do so by ORS 498.248 (1), 498.268 (1), 509.605 (1) or 509.615 and the diversion is not part of a hydroelectric project required to be licensed under the Federal Energy Regulatory Commission. Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which the final certification is issued under subsection (10) of this section.

(2) The credit shall be equal to 50 percent of the certified costs of installing a fish screening device, by-pass device or fishway. The total credit allowed shall not exceed \$5,000.

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

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular 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. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

(5) 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 installation of a fish screening device, by-pass device or fishway. The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(6) 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 the 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 316.139, based on that shareholder's pro rata share of the corporation's certified cost of installation of the fish screening device, by-pass device or fishway.

(7) To qualify for the credit the taxpayer must be issued a certificate by the State Department of Fish and Wildlife.

(8) To obtain credit under subsection (1) of this section, any person proposing to apply for certification of a fish screening device, by-pass device or fishway, before installing the fish screening device, by-pass device or fishway, shall file a request for preliminary certification with the State Department of Fish and Wildlife. The request shall be in a form prescribed by the State Department of Fish and Wildlife and shall include a cost estimate for the installation. The following conditions shall apply:

(a) Within 30 days of the receipt of a request for preliminary certification, the State Department of Fish and Wildlife may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications. After examination thereof, the State Department of Fish and Wildlife may request corrections and revisions to the plans and specifications. The State Department of Fish and Wildlife may also require any other information necessary to determine whether the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements.

(b) If the State Department of Fish and Wildlife determines that the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements, it shall issue a preliminary certificate approving the fish screening device, by-pass device or fishway. If the State Department of Fish and Wildlife determines that the fish screening device, by-pass device or fishway does not comply with State Department of Fish and Wildlife requirements, the State Department of Fish and Wildlife shall issue an order denying certification.

(c) If within 90 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the State Department of Fish and Wildlife fails to issue a preliminary certificate of approval and the State Department of Fish and Wildlife fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The capital investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(d) Within 30 days from the date of mailing of the order, any person against whom an order is directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the State Fish and Wildlife Director. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

(9) Any fish screening device, by-pass device or fishway that is installed pursuant to ORS 498.248 (2) or alterations made pursuant to ORS 498.268 (2) to (6) shall not be eligible for the credit provided in subsection (1) of this section.

(10) Upon completion and pursuant to application for final certification, final certification shall be issued by the State Department of Fish and Wildlife if the fish screening device, by-pass device or fishway was constructed and installed in accordance with State Department of Fish and Wildlife requirements. Final certification shall include a statement of the costs of installation as verified by the State Department of Fish and Wildlife. The credit allowed under this section shall be claimed first for the tax year of the taxpayer in which final certification is issued.

(11) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the State Department of Fish and Wildlife may order the revocation of the certificate issued under this section of any taxpayer, if it finds that:

(a) The certificate was obtained by fraud or misrepresentation; or

(b) The holder of the certificate fails to meet State Department of Fish and Wildlife requirements.

(12) As soon as the order of revocation under this section has become final the State Department of Fish and Wildlife shall notify the Department of Revenue of such order.

(13) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this

section, all prior tax relief provided to the holder of the certificate by virtue of the certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder.

(14) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, the certificate holder shall be denied any further relief provided under this section and ORS 316.139 in connection with the fish screening device, by-pass device or fishway, as the case may be, from and after the date that the order of revocation becomes final.

(15) In the event that the fish screening device, by-pass device or fishway is destroyed by flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place.

(16) Fish screening devices, by-pass devices or fishways which are financed by funds obtained from the Water Development Fund, pursuant to ORS 541.700 to 541.855, shall not be eligible for the credit under any circumstances.

(17) The State Department of Fish and Wildlife shall adopt rules for carrying out the provisions of this section and report to the interim committee created under ORS 171.605 to 171.640 to make studies of and inquiries into state revenue matters. [1989 c 924 §4]

Note: Section 5, chapter 924, Oregon Laws 1989, provides:

Sec. 5. Sections 2 and 4 of this Act [316.139 and 317.145] apply to installations that occur in tax years that begin on or after January 1, 1990. [1989 c.924 §5]

(Tax Credit for Certain Research Expenses and Payments)

Note: Sections 2 to 4 and 6, chapter 911, Oregon Laws 1989, provide:

Sec. 2. (1) A credit against taxes otherwise due under this chapter shall be allowed to eligible taxpayers for increases in qualified research expenses and basic research payments. The credit shall be determined in accordance with section 41 of the Internal Revenue Code, except as follows:

(a) The applicable percentage specified in section 41(a) of the Internal Revenue Code shall be five percent

(b) "Qualified research" and "basic research" shall consist of research in the fields of advanced computing, advanced materials, biotechnology, electronic device technology or environmental technology, but only to the extent that such research is conducted in Oregon.

(2) As used in this section:

(a) "Advanced computing" means leading edge technologies used in the design and development of computing hardware and software. This includes innovations in design of the full spectrum of hardware from hand-held calculators to super computers, including all peripheral equipment. It also includes innovations in design and development software executing on all computing hardware for any purpose.

(b) "Advanced materials" means high value metals and new and improved wood-based materials.

(c) "Biotechnology" means biochemistry, molecular biology, genetics and engineering dealing with the transformation of biological systems into useful processes and products.

(d) "Electronic device technology" means the design and development of electronic materials and devices such as advances in integrated circuits and superconductivity.

(e) "Environmental technology" means environmental assessment, cleanup and alternative energy sources.

(3) For purposes of this section

(a) "Eligible taxpayer" means a corporation, other than corporations excluded under Internal Revenue Code section 41(e)(7)(E), that is engaged in research in the fields of advanced computing, advanced materials, biotechnology, electronic device technology or environmental technology.

(b) "Internal Revenue Code" means the Internal Revenue Code as amended and in effect on December 31, 1988.

(4) The Income Tax Regulations as prescribed by the Secretary of the Internal Revenue Service under authority of section 41 of the Internal Revenue Code shall also apply for purposes of this section, except as modified by this section or as provided in rules adopted by the department.

(5) The maximum credit under this section shall not exceed \$50,000 or one-third of the excise tax liability before credits under this chapter, whichever is less.

(6) Any credit otherwise allowable under this section which is not used in the tax year shall not be carried forward to any tax year thereafter. [1989 c.911 §2]

Sec. 3. A taxpayer may elect to claim the credit allowed under section 2 of this 1989 Act or the credit allowed under section 4 of this 1989 Act, but may not claim both credits in the same tax year. The election shall be made in the manner and within the time adopted by the department by rule. [1989 c.911 §3]

Sec. 4. (1) A credit against taxes otherwise due under this chapter shall be allowed for qualified research expenses that exceed 10 percent of Oregon sales.

(2) For purposes of this section:

(a) "Oregon sales" shall be computed using the laws and administrative rules for calculating the numerator of the Oregon sales factor under ORS 314.665.

(b) "Qualified research" shall consist of research in the fields of advanced computing, advanced materials, biotechnology, electronic device technology or environmental technology, all as defined under section 2 of this 1989 Act, but only to the extent that such research is conducted in Oregon.

(3) The credit under this section is equal to five percent of the amount by which the qualified research expenses exceed 10 percent of Oregon sales.

(4) The credit under this section shall not exceed \$10,000 times the number of percentage points by which the qualifying research expenses exceed 10 percent of Oregon sales.

(5) The maximum credit under this section shall not exceed \$50,000 or one-third of the excise tax liability before credits under this chapter, whichever is less.

(6) Any credit otherwise allowable under this section which is not used in the tax year shall not be carried forward to any tax year thereafter. [1989 c.911 §4]

Sec. 6. Sections 2 to 4 of this Act and the amendments to ORS 318.031 by section 5 of this Act

apply to amounts paid or incurred in tax years beginning on or after January 1, 1989, and before January 1, 1996. [1989 c.911 §6]

(Credit for Farm-worker Housing)

Note: Sections 4 to 6, chapter 963, Oregon Laws 1989, provide.

Sec. 4. (1) As used in this section

(a) "Condition of habitability" means a condition that is in compliance with.

(A) The applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder; or

(B) If determined on or before December 31, 1995, sections 12 and 13, chapter 964, Oregon Laws 1989

(b) "Division" means the Accident Prevention Division of the Department of Insurance and Finance

(c) "Rehabilitation" means to restore and reinstate a building to a condition of habitability.

(d) "Seasonal farm worker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another in the production of farm products or in the planting, cultivating or harvesting of seasonal agricultural crops or in the forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(e) "Seasonal farm-worker housing" means housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months of the year.

(f) "Seasonal farm-worker housing project" means construction or rehabilitation of seasonal farm-worker housing.

(g) "Year-round farm-worker housing" means housing limited to occupancy by farm workers and their immediate families.

(h) "Year-round farm-worker housing project" means construction or rehabilitation of farm-worker housing.

(2) There is allowed a credit against the taxes otherwise due under this chapter. The amount of the credit shall be equal to 50 percent of the costs actually paid or incurred by the taxpayer to complete a seasonal or a year-round farm-worker housing project.

(3) The credit allowed under subsection (2) of this section shall be taken in five equal instalments over a period of five consecutive tax years beginning in the tax year of the taxpayer during which the project is completed.

(4) The credit shall apply only to a seasonal or a year-round farm-worker housing project that is physically begun on or after the January 1 immediately following the date that both chapter 964, Oregon Laws 1989, and chapter 962, Oregon Laws 1989, have become both effective and operative.

(5) Except as provided under subsection (6) of this section, the credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(6) 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, 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.

(7) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the project 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 further decreased by any tax credits allowed under this section.

(9) To qualify for the credit allowed under this section, the seasonal or year-round farm-worker housing project must

(a) Be inspected by the division prior to occupancy and must comply with all occupational safety or health laws, regulations, rules and standards;

(b) If registration is required, be registered as a farm-worker camp with the Bureau of Labor and Industries under section 6, chapter 962, Oregon Laws 1989, and

(c) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid indorsement as a farm-worker camp operator under section 4, chapter 962, Oregon Laws 1989.

(10)(a) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the department may order the disallowance of the credit allowed under this section if it finds, by order, that:

(A) The credit was obtained by fraud or misrepresentation;

(B) The taxpayer who claims or claimed the credit has failed substantially to comply with the occupational safety or health laws, rules, regulations or standards;

(C) After occupancy and if registration is required, the seasonal or year-round farm-worker housing is not registered as a farm-worker camp with the Bureau of Labor and Industries under section 6, chapter 962, Oregon Laws 1989; or

(D) After occupancy and if an indorsement is required, the seasonal or year-round farm-worker housing is not operated by a person who holds a valid indorsement as a farm-worker camp operator under section 4, chapter 962, Oregon Laws 1989.

(b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the department shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section and section 2 of this 1989 Act in connection with the seasonal or year-round farm-worker housing project, as the case may be, from and after the date that the order of disallowance becomes final

(11) In the event that the farm-worker housing is destroyed by fire, flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place. In the event of fire, if the fire chief of the fire protection district or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325, by the taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the department. Upon conviction of arson, the department shall disallow the credit in accordance with subsection (10) of this section.

(12) 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 the 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 1989 Act, based on that shareholder's pro rata share of the corporation's certified costs of the seasonal or year-round farm-worker housing project.

(13) The department may adopt rules for carrying out the provisions of this section. [1989 c.963 §4]

Sec. 5. (1) As used in this section:

(a) "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

(b) "Seasonal farm-worker housing" has the meaning given the term under section 4 of this 1989 Act

(c) "Year round farm-worker housing" has the meaning given the term under section 4 of this 1989 Act

(2) A commercial lending institution shall be allowed a credit against the taxes otherwise due under this chapter for the tax year equal to 50 percent of the interest income earned during the tax year on loans to finance only costs directly associated with construction or rehabilitation of seasonal or year-round farm-worker housing that, at the close of the tax year of the taxpayer.

(a) Is not in violation of any occupational safety or health law, rule, regulation or standard;

(b) If required, is registered with the Bureau of Labor and Industries under section 6, chapter 962, Oregon Laws 1989, and

(c) Is operated, if required, by a person who holds a valid indorsement as a farm-worker camp operator under section 4, chapter 962, Oregon Laws 1989.

(3) The credit allowed under this section shall apply only to loans to construct or rehabilitate seasonal or year-round farm-worker housing located within the state.

(4) This credit shall apply only to loans made on or after the January 1 immediately following the date upon which chapter 964, Oregon Laws 1989, and chapter 962, Oregon Laws 1989, have become both effective and operative.

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

(6) If the loan has a term of longer than 10 years, then the credit shall be allowed only for the tax year of the taxpayer during which the loan is made and the nine tax years immediately following.

(7) The credit allowed under this section shall not apply to loans in which the interest rate charged exceeds 13-1/2 percent per annum.

(8) The credit allowed under this section shall apply only to interest income from the loan and shall not apply to any other loan fees or other charges collected by the commercial lending institution with respect to the loan.

(9) The credit allowed under this section shall only apply to interest income actually collected by the commercial lending institution during the tax year.

(10) If the commercial lending institution sells the loan to another commercial lending institution as defined in subsection (1) of this section, then the credit shall pass to the assignee or transferee of the loan, subject to the same conditions and limitations as set forth in this section. [1989 c.963 §5]

Sec. 6. (1) Sections 2 and 4 of this Act shall apply to seasonal or year-round farm-worker housing projects completed in tax years that begin on or after the January 1 immediately following the date that both chapter

964, Oregon Laws 1989, and chapter 962, Oregon Laws 1989, have become both effective and operative and which are completed before January 1, 1996.

(2) Section 5 of this Act applies to loans made in tax years that begin on or after the January 1 immediately following the date that both chapter 964, Oregon Laws 1989, and chapter 962, Oregon Laws 1989, have become both effective and operative and which are made before January 1, 1996. [1989 c 963 §6]

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 317.329, 317.342, 317.344 to 317.374 and 317.720 and no others. Each modification authorized under law shall be allowed only to the extent that the modifica-

tion is allocated and apportioned to Oregon income. [1983 c.162 §12; 1987 c.293 §37]

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 or telecommunications utility and deducted for federal purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under Treasury Regulations adopted under section 1502 of the Internal Revenue Code 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 70 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:

(a) 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.

(b) No subtraction shall be allowed under this subsection if the dividends received or deemed received are from the Oregon Capital Corporation established pursuant to ORS 284.750 to 284.770.

(c) In the case of any dividend received from a 20 percent owned corporation, as defined in section 243 (c) of the Internal Revenue Code, this subsection shall be applied by substituting "80 percent" for "70 percent."

(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; 1987 c.293 §38; 1987 c.447 §119; 1987 c.911 §8i; 1989 c.625 §21]

Note: See note under 316.104.

Note: Section 88, chapter 625, Oregon Laws 1989, provides:

Sec. 88. The amendments to ORS 317.267 (relating to corporation dividend exclusion) by section 21 of this Act apply to dividends received or accrued after December 31, 1987, in tax years ending after December 31, 1987. [1989 c.625 §88]

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 [1983 c.162 §14a; 1985 c.802 §22a; repealed by 1989 c.625 §81]

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. However, the amount added under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this

subsection, and by any expenses incurred in the production of interest or dividend income described in this subsection.

(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; 1987 c.293 §39]

317.310 Balance in bad debt reserve of financial institution which has changed from reserve method to specific charge-off method of accounting. (1) To derive Oregon taxable income of a financial institution which has changed from the reserve method of accounting to the specific charge-off method of accounting for federal tax purposes, there shall be subtracted from federal taxable income amounts which the financial institution recognized pursuant to section 585(c)(3) of the Internal Revenue Code.

(2) To derive Oregon taxable income, after the modification prescribed in subsection (1) of this section, the balance in the reserve for bad debts, as determined under ORS 317.333 (2) (1985 Replacement Part), shall be taken into income using the same method as the financial institution used for federal tax purposes pursuant to section 585(c)(3) of the Internal Revenue Code.

(3) Subsections (1) and (2) of this section shall not apply to bad debt reserves for which an election under section 585(c)(4) of the Internal Revenue Code has been made. A financial institution which uses the method described in section 585(c)(4) of the Internal Revenue Code shall apply that same method to the balance in the reserve for bad debts, as determined under ORS 317.333 (2) (1985 Replacement Part), and adjust its Oregon taxable income accordingly. [1987 c.293 §44]

317.311 Application of section 243 of Tax Reform Act of 1986. Section 243 of the Tax Reform Act of 1986 (P.L. 99-514) shall not apply for purposes of determining taxable income under this chapter. [1987 c.293 §44a]

317.312 Federal depreciation expenses of certain health care service contractors. To derive Oregon taxable income, for certain health care service contractors for which federal tax exempt status was denied by section 501(m) of the Internal Revenue Code, and for which all assets owned by the health care service contractor prior to the effective date of the denial of exempt status are treated as placed in service on such effective date for federal tax purposes, no adjustment shall be made to federal depreciation expense. [1987 c.293 §44b]

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, or under section 7518 of the Internal Revenue Code.

(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, or under section 7518 of the Internal Revenue Code, and included in income for federal income tax purposes.

(3) No adjustments to basis shall be made for Oregon tax purposes to property on ac-

count of section 607 of the Merchant Marine Act of 1936 - Capital Construction Fund (46 U.S.C. 1177), as amended, or under section 7518 of the Internal Revenue Code. 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; 1987 c.293 §40]

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. 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. [1985 c.802 §21b; 1987 c.293 §41]

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 [1983 c.162 §22; repealed by 1987 c.293 §70]

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]

317.351 ORS 317.349 not applicable to finance leases. Notwithstanding ORS 317.349, finance leases as described in section 168(f)(8) of the Internal Revenue Code shall be accorded the same treatment for Oregon tax purposes as they are for federal tax purposes. [1987 c.293 §45]

Note: 317.351 was added to and made a part of ORS chapter 317 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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;

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

(f) For certain health care service contractors for which federal tax exempt status was denied by section 501(m) of the Internal Revenue Code, any adjustment to the basis of an asset for purposes of calculating federal taxable gain or loss on sale, exchange or other disposition as permitted by the Tax Reform Act of 1986.

(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; 1987 c.293 §45e]

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]

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 with-

out 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)]

317.377 Limitation on use of preacquisition losses to offset built-in gain. (1) Preacquisition losses, as described under section 384 of the Internal Revenue Code, of a gain corporation, to the extent allocated or apportioned to Oregon, with the additions, subtractions, modifications and other adjustments required for purposes of this chapter, shall not be considered in determining the taxable income or loss under ORS 317.010.

(2) If any preacquisition loss, as described in subsection (1) of this section, may not offset a recognized built-in gain by reason of section 384 of the Internal Revenue Code, such gain shall not be taken into account in determining under ORS 317.476 the amount of such loss which may be carried to other taxable years.

(3) In any case in which a preacquisition loss, as described in subsection (1) of this section, for any taxable year is subject to limitation under subsection (1) of this section and a taxable loss from such taxable year is not subject to such limitation, taxable income shall be treated as having been offset first by the loss subject to such limitation.

(4) The definitions contained in section 384(c) of the Internal Revenue Code shall apply for purposes of this section, except that where appropriate, gain, loss and items of income shall be determined as allocated or apportioned to Oregon and with the additions, subtractions, modifications and other adjustments contained in this chapter.

(5) Section 384(b) and (c)(5) and (6) of the Internal Revenue Code shall be applied for purposes of this section in a manner consistent with ORS 317.705 to 317.725. [1989 c.625 §23]

Note: Section 89, chapter 625, Oregon Laws 1989, provides:

Sec. 89. Section 23 of this Act [317.377] (relating to use of preacquisition losses to offset built-in gains) shall apply in cases where the acquisition date is after December 15, 1987. However, section 23 of this Act shall not apply:

(1) In the case of any transaction pursuant to a binding written contract in effect on or before December 15, 1987, or a letter of intent or agreement or merger signed on or before December 15, 1987; or

(2) If the acquisition date, as defined in section 384(c)(2) of the Internal Revenue Code, is before March 31, 1988, and the acquiring corporation makes the election described under section 2004(m)(5) of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647). [1989 c.625 §89]

317.379 Exemption of income from exercise of Indian fishing rights. Income derived from the exercise of rights of any Indian tribe to fish secured by treaty, Executive order or Act of Congress is exempt from the tax imposed by this chapter if section 7873 of the Internal Revenue Code does not permit a like federal tax to be imposed on such income. [1989 c.625 §18]

Note: 317.379 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.

Note: Section 84, chapter 625, Oregon Laws 1989, provides

Sec. 84. Sections 5 and 18 of this Act [316.785 and 317.379] (relating to Indian fishing rights) apply to all periods beginning before, on or after the effective date of this Act [October 3, 1989]. [1989 c.625 §84]

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

317.381 [Formerly 317.328; 1985 c.802 §27; repealed by 1987 c.293 §70]

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]

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 15 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; 1987 c.293 §45d]

Note: Section 45b, chapter 293, Oregon Laws 1987, provides:

Sec. 45b. (1) In the case of a savings association, those net losses that have occurred for tax years beginning on or after January 1, 1982, and prior to January 1, 1987, and have not already been used to reduce net income in a year beginning prior to January 1, 1987, shall be aggregated together into one sum. Thereafter,

the sum so aggregated shall be carried forward and allowed as a deduction under ORS 317.476, as if the sum so aggregated were an Oregon net loss occurring in the tax year of the savings association beginning in 1986, except that in applying ORS 317.476 (4)(a), "eight" shall be substituted for "five"

(2) As used in this section, "savings association" means a savings association, as defined in ORS 722.004 (16), or a federal association, as defined in ORS 722.004 (8). [1987 c.293 §45b]

317.478 Pre-change and built-in losses.

(1) That portion of the pre-change and built-in losses which the taxpayer deducted pursuant to section 382 of the Internal Revenue Code shall be added to federal taxable income under ORS 317.344 or otherwise.

(2) Pre-change losses and recognized built-in losses, subject to the limitation under section 382 of the Internal Revenue Code, shall not be considered in determining the taxable loss and taxable loss carry forward under ORS 317.010 and 317.476.

(3) The losses described in subsection (1) of this section, to the extent apportioned or allocated to Oregon, with the additions, subtractions, modifications and other adjustments required for purposes of this chapter, shall be carried forward and subtracted in computing Oregon taxable income as provided under subsections (4) to (6) of this section.

(4) The amount of loss allowable under subsection (3) of this section in any tax year shall not exceed the lesser of the Oregon source taxable income of the new loss corporation or the Oregon percentage of the section 382 limitation as determined under section 382 (b) of the Internal Revenue Code. The Oregon percentage for purposes of the subtraction under subsection (3) of this section shall be computed with reference to the Oregon apportionment factors of the new loss corporation existing as of the time of change in ownership.

(5) In computing Oregon taxable income, the amount of loss allowed as a subtraction under subsection (3) of this section shall be subtracted in any one of the 15 years succeeding the year of the loss. Subject to the limitation under subsection (4) of this section, the amount of the loss subtracted in any taxable year shall be the loss allowed as a subtraction under subsection (3) of this section reduced by the amount subtracted or subtractible under subsection (3) of this section for any intervening year between the year of loss and the tax year in which the subtraction under this section is claimed. The loss of the earliest tax year shall be exhausted before a loss under this section from a later year may be subtracted.

(6) Oregon net losses deductible under ORS 317.476 shall be determined and carried

forward before the amount subtractible under this section is determined. [1987 c.293 §45c]

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 sec-

tion 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 Department of Insurance and Finance 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 Director of the Department of Insurance and Finance,

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 Director of the Department of Insurance and Finance, 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 employees 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 employees 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 Department of Insurance and Finance) 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 Treasury Regulations adopted under section 1502 of the Internal Revenue Code, and any deductions or additions or items of income, expense, gain or loss for which consolidated treatment is prescribed

under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, 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; 1987 c.293 §46]

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 Treasury Regulations adopted under section 1502 of the Internal Revenue Code to the extent that the excess losses have not offset unitary income. However, in no event shall excess losses be recaptured on account of Treasury Regulations adopted under section 1502 of the Internal Revenue Code 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; 1987 c.293 §47]

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. [1984 c.1 §20]

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 (1) Notwithstanding ORS 317.080, a corporation otherwise exempt from tax under ORS 317.080 (1), (2), (3), (4) or (7) 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.

(2) Subsection (1) of this section shall not apply to an organization described in section

501(c)(1) of the Internal Revenue Code. [1959 c.356 §2; 1975 c.652 §90; 1983 c.162 §42; 1985 c.802 §28b; 1987 c.293 §48]

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)]