

Chapter 314

1991 EDITION

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REVENUE AND TAXATION

GENERAL PROVISIONS

314.002 [Repealed by 1953 c.310 §3]

314.004 [Repealed by 1953 c.310 §3]

314.006 [Repealed by 1953 c.310 §3]

314.008 [Repealed by 1953 c.310 §3]

314.010 [Repealed by 1953 c.310 §3]

314.011 Definitions; conformance with federal income tax law. (1) As used in this chapter, unless the context requires otherwise, "department" means the Department of Revenue.

(2)(a) As used in this chapter, any term has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined in this chapter.

(b) With respect to ORS 314.260, 314.300, 314.302, 314.385, 314.712 to 314.722, 314.726 and 314.730 to 314.752, any reference in this chapter to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended on or before December 31, 1990, even where the amendments take effect or become operative after that date.

(c) Except as specifically listed in paragraph (b) of this subsection or as otherwise provided by law, any reference in this chapter to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended and in effect for the taxable year of the taxpayer.

(3) 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.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section refer to rules or regulations prescribed by the Secretary of the Treasury, then such rules or regulations shall be regarded as rules adopted by the department under and in accordance with the provisions of this chapter, whenever they are prescribed or amended.

(5) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section are later corrected by an Act or a 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 subsection (2) of this section 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 provisions of 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. [1957 c.632 §40; 1965 c.152 §24; 1971 c.215 §8; 1977 c.870 §39; 1987 c.293 §50; 1989 c.625 §25; 1991 c.457 §16]

314.012 [Repealed by 1953 c.310 §3]

314.014 [Repealed by 1953 c.310 §3]

314.016 [Repealed by 1953 c.310 §3]

314.018 [Repealed by 1953 c.310 §3]

314.020 [Repealed by 1953 c.310 §3]

314.021 Application of chapter. ORS 314.021 to 314.080, 314.085, 314.260, 314.276, 314.280, 314.287, 314.290, 314.295, 314.300, 314.302, 314.355, 314.360, 314.370 to 314.400, 314.407, 314.410, 314.412, 314.415, 314.417 to 314.423, 314.425 to 314.440, 314.466, 314.605 to 314.675, 314.712 to 314.722, 314.726, 314.730 to 314.752, 314.805 to 314.855 and 314.991 are applicable to all laws of this state imposing taxes upon or measured by net income. [1957 c.632 §2; 1961 c.176 §3; 1965 c.152 §25; 1971 c.215 §9; 1977 c.870 §40; 1987 c.293 §51; 1989 c.625 §26]

Note: See note under 314.085.

314.022 [Repealed by 1953 c.310 §3]

314.024 [Repealed by 1953 c.310 §3]

314.026 [Repealed by 1953 c.310 §3]

314.028 [Repealed by 1953 c.310 §3]

314.030 [Repealed by 1953 c.310 §3]

314.032 [Repealed by 1953 c.310 §3]

314.034 [Repealed by 1953 c.310 §3]

314.035 Application of Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), Family Support Act of 1988 (P.L. 100-485) and Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647). (1) Except as provided in subsections (2) to (4) of this section and sections 83 to 92, chapter 625, Oregon Laws 1989, the amendments by chapter 625, Oregon Laws 1989, apply to transactions or activities occurring on or af-

ter 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]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in ORS 314.035. Chapter 625, Oregon Laws 1989, enacted into law and amended the ORS sections which may be found by referring to the 1989 Comparative Section Table located in volume 15 of Oregon Revised Statutes.

Note: 314.035 and 314.037 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.036 [Repealed by 1953 c.310 §3]

314.037 Application of P.L. 101-140, Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) and Omnibus Budget Reconciliation Act of 1991 (P.L. 101-508).

(1) Except as provided in subsection (2) of this section and sections 25a to 32, chapter 457, Oregon Laws 1991, the new material and amendments by chapter 457, Oregon Laws 1991, apply to transactions or activities occurring on or after January 1, 1991, in tax years beginning on or after January 1, 1991.

(2) The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in P.L. 101-140, the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) and the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) 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)(a) If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1991, 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, 1991, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under chapter 457, Oregon Laws 1991, then notwithstanding ORS 314.415 or

other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required on account of chapter 457, Oregon Laws, 1991, for a tax year beginning prior to January 1, 1991, 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 1991 return is filed, whichever period expires later. [1991 c.457 §25]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "chapter 457, Oregon Laws 1991," in ORS 314.037. Chapter 457, Oregon Laws 1991, enacted into law and amended the ORS sections which may be found by referring to the 1991 Comparative Section Table located in volume 15 of Oregon Revised Statutes.

Note: See note under 314.035.

314.038 [Repealed by 1953 c.310 §3]

314.040 [Repealed by 1953 c.310 §3]

314.042 [Repealed by 1953 c.310 §3]

314.044 [Repealed by 1953 c.310 §3]

314.046 [Repealed by 1953 c.310 §3]

314.048 [Repealed by 1953 c.310 §3]

314.050 [Repealed by 1953 c.310 §3]

314.052 [Repealed by 1953 c.310 §3]

314.054 [Repealed by 1953 c.310 §3]

314.056 [Repealed by 1953 c.310 §3]

314.058 [Repealed by 1953 c.310 §3]

314.060 [Repealed by 1953 c.310 §3]

314.062 [Repealed by 1953 c.310 §3]

314.064 [Repealed by 1953 c.310 §3]

314.066 [Repealed by 1953 c.310 §3]

314.068 [Repealed by 1953 c.310 §3]

314.070 [Repealed by 1953 c.310 §3]

314.072 [Repealed by 1953 c.310 §3]

314.074 [Repealed by 1953 c.310 §3]

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

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

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

(3) Supply any false or fraudulent information. [1957 c.632 §3 (enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

314.080 Venue on failure to comply with law. The failure to do any act required by or under any law imposing taxes upon or measured by net income shall be deemed an act committed in part at the office of the department in Oregon. [1957 c.632 §3 (enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

314.085 Taxable year. (1) The taxable year of a partnership, REMIC (real estate mortgage investment conduit) or taxpayer shall be the same as its taxable year for federal income tax purposes.

(2) If the taxable year of a partnership, REMIC or taxpayer is changed for federal income tax purposes, that change in taxable year shall also apply for purposes of state taxation. If a change in taxable year results in a taxable period of less than 12 months, the personal deductions and the personal exemption credits allowed by ORS chapter 316 shall be prorated under rules adopted by the department.

(3) Notwithstanding subsections (1) and (2) of this section, if the department terminates the taxable year of a taxpayer under ORS 314.440, the tax shall be computed for the period determined by such action. [1987 c.293 §55]

ADJUSTMENT OF RETURNS

314.105 Definitions for ORS 314.105 to 314.135. (1) For purposes of ORS 314.105 to 314.135, the term "determination" means:

(a) A decision by the Oregon Tax Court which has become final;

(b) A closing agreement made under ORS 305.150;

(c) A final disposition by the department of a claim for refund. For purposes of this paragraph a claim for refund shall be deemed finally disposed of by the department as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the department in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(d) Under regulations prescribed by the department, an agreement for purposes of ORS 314.105 to 314.135 signed by the department and by any person, relating to the liability of such person (or the person for whom the person acts) in respect of a tax for any taxable period.

(2) For purposes of ORS 314.105 to 314.135, the term "taxpayer" means any person or entity subject to a tax under the applicable revenue law.

(3) For purposes of ORS 314.105 to 314.135, the term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

- (a) Husband and wife;
- (b) Grantor and fiduciary;
- (c) Grantor and beneficiary;
- (d) Fiduciary and beneficiary, legatee, or heir;
- (e) Decedent and decedent's estate;
- (f) Partner;
- (g) Member of an affiliated group of corporations as defined in section 1504 of the Internal Revenue Code; or

(h) Shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code. [1971 c.248 §2; 1984 c.1 §15; 1985 c.602 §1; 1987 c.758 §11]

314.110 [1953 c.702 §1; 1957 c.337 §4; repealed by 1971 c.248 §6]

314.115 Adjustment to correct effect of certain errors; use limited. (1) If a determination (as defined in ORS 314.105) is described in one or more of the paragraphs of ORS 314.125 and, on the date of the determination, correction of the effect of the error referred to in the applicable subsection of ORS 314.125 is prevented by the operation of any law or rule of law, other than ORS 314.105 to 314.135 and other than ORS 305.150, then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in ORS 314.135.

(2) Except in cases described in ORS 314.125 (3)(b) and (4), an adjustment shall be made under this section only if:

(a) In case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under ORS 314.135, there is adopted in the determination a position maintained by the department, or

(b) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under ORS 314.135, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made, and the position maintained by the department in the case described in paragraph (a) of this subsection or maintained by the taxpayer in the case described in this paragraph is inconsis-

ent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(3) In the case of a determination described in ORS 314.125 (3)(b) (relating to certain exclusions from income), adjustment shall be made under this section only if assessment of a deficiency for the taxable year in which the item is includable or against the related taxpayer was not barred, by any law or rule of law, at the time the department first maintained, in a notice of deficiency sent pursuant to ORS 305.265 or before the Oregon Tax Court, that the item described in ORS 314.125 (3)(b) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(4) In the case of a determination described in ORS 314.125 (4) (relating to disallowance of certain deductions and credits), adjustment shall be made under ORS 314.105 to 314.135 only if credit or refund of the overpayment attributable to the deduction or credit described in ORS 314.125 which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the department or before the Oregon Tax Court, in writing, that the taxpayer was entitled to such deduction or credit for the taxable year to which the determination relates.

(5) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in ORS 314.125 (3)(b)), the adjustment shall not be made with respect to a related taxpayer unless the related taxpayer stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or complaint in the Oregon Tax Court for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of determination. [1971 c.248 §3; 1979 c.689 §24]

314.120 [1953 c.702 §2; repealed by 1971 c.248 §6]

314.125 When adjustment may be made. The circumstances under which the adjustment provided in ORS 314.115 is authorized are as follows:

(1) The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3)(a) The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(b) The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includable in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (sections 641 and following, relating to estates, trusts, and beneficiaries) of part I of subchapter J of the Internal Revenue Code, or corresponding provisions of subsequent internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be in respect of the related taxpayer.

(6) The determination allows or disallows a deduction (including a credit) in computing the taxable income (or, as the case may be, net income, normal tax net income, or surtax net income) of a corporation, and a correlative deduction or credit has been erroneously allowed, omitted, or disallowed, as the case may be, in respect of a related taxpayer described in ORS 314.105 (3)(g).

(7)(a) The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in paragraph (b) of this subsection, any of the errors described in paragraph (c) of this subsection.

(b) The taxpayer with respect to whom the erroneous treatment occurred must be the taxpayer with respect to whom the determination is made; a taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the de-

termination is made derived title; or a taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015(a) of the Internal Revenue Code.

(c) With respect to a taxpayer described in paragraph (b) of this subsection there was an erroneous inclusion in, or omission from, gross income, there was an erroneous recognition, or nonrecognition, of gain or loss, or there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible. [1971 c.248 §4; 1983 c.162 §50; 1987 c.293 §52]

314.130 [1953 c.702 §3; repealed by 1971 c.248 §6]

314.135 Computation; method of adjustment; credit or set-off limited; recovery after payment limited. (1)(a) In computing the amount of an adjustment under ORS 314.105 to 314.135 there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of:

(A) The sum of the amount shown as the tax by the taxpayer on the return of the taxpayer, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus the amounts previously assessed (or collected without assessment) as a deficiency, over

(B) The amount of refunds (as defined in ORS 314.415) made.

(b) There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item in the computation of gross income, taxable income, and other matters under ORS 316.317 or ORS chapter 317 or 318. A similar computation shall be made for any other taxable year affected, or treated as affected, by an Oregon net loss for prior years (as provided by ORS 317.476 or 317.478 and section 45b, chapter 293, Oregon Laws 1987), by a net operating loss deduction (as defined in the federal Internal Revenue Code) or by a capital loss carryback or carryover (as defined in the federal Internal Revenue Code) determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

(2) The adjustment authorized in ORS 314.115 (1) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the department with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (1) of this section and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in ORS 314.105 (1)(d), an adjustment has been made by the assessment and collection of a deficiency of the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (1) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

(3) The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under ORS 314.105 to 314.135, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. The amount of the adjustment under ORS 314.105 to 314.135, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment. [1971 c.248 §5; 1983 c.162 §51; 1987 c.293 §52a]

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

law) by the taxpayer paying the same, and said federal tax refund, including interest thereon, shall be returned (to the extent otherwise required by law) by the taxpayer receiving the same.

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

(3) An election under subsection (2) shall be in writing, signed by each related taxpayer or authorized representative, and filed with the department prior to the expiration of the applicable period of limitation with respect to the adjustment of the last open state return of either related taxpayer affected by the federal tax deficiency or refund. Such election shall constitute a waiver of any statute of limitations to permit the adjustment of all returns of the related taxpayers for the purpose only of effecting a reallocation of income or deductions similar to that made by the federal tax authorities and to adjust the federal income tax deductions resulting therefrom. [1953 c.702 §4]

314.155 [1965 c.178 §8; 1969 c.493 §79; repealed by 1983 c.162 §57]

314.160 [1965 c.178 §9; 1969 c.493 §80; repealed by 1983 c.162 §57]

314.165 [1965 c.178 §10; 1969 c.493 §81; repealed by 1983 c.162 §57]

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

314.175 [1965 c.178 §12; 1969 c.493 §82; repealed by 1983 c.162 §57]

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

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

(1) If in a taxable year ending after December 31, 1940, a taxpayer is required to pay or repay to the United States or any

agency thereof the amount of profits so eliminated, or

(2) If the amount of profits so eliminated is applied as an offset against any other amount due the taxpayer,

then the profits so eliminated shall be excluded from gross income for the prior taxable year or years if they were included in gross income for such prior taxable year or years under any law of this state imposing a tax on or measured by net income. [Formerly 317.605]

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

(2) If a taxpayer has paid any tax or interest or penalty because of the provisions of chapter 226, Oregon Laws 1945, then the taxpayer shall, upon the filing of a properly verified claim for refund under regulations prescribed by the department, be refunded such tax or interest or penalty so paid, without interest. No claim for any tax or interest or penalty under chapter 226, Oregon Laws 1945, shall be made or collected after July 16, 1949.

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

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

(5) If a refund allowed under this section had been allowable under chapter 226, Oregon Laws 1945, and the taxpayer could not have received such refund under chapter 226, Oregon Laws 1945, without the imposition of federal excess profits taxes upon such

refund, then the amount of the refund allowed under this section shall be reduced by the amount of excess profits taxes which would have been imposed upon such refund after deducting from such excess profits taxes the amount of federal corporation income taxes which would have been imposed upon such refund if such refund were subject only to such federal corporation income taxes. [Formerly 317.610]

314.230 Time for filing claim for credit or refund. Notwithstanding the provisions of any statute of limitations, claim for any credit or refund provided for in ORS 314.210 to 314.230 shall be made within two years from July 16, 1949, or from the date of final determination of the amount of excessive profits under a contract or subcontract described in ORS 314.210, except that if ORS 314.220 (4) is declared unconstitutional, no refund or credit resulting from such declaration shall be allowed unless a properly verified claim therefor is filed with the department under ORS 314.220 or under chapter 226, Oregon Laws 1945, within two years from the date on which the excessive profits involved were finally determined. [Formerly 317.615]

POLLUTION CONTROL FACILITIES

314.250 [1967 c.592 §18; 1987 c.293 §53; repealed by 1989 c.802 §8 (1)]

Note: Subsection (2), section 8, chapter 802, Oregon Laws 1989, provides:

Sec. 8. The repeal of ORS 314.250 by subsection (1) of this section applies to pollution control facilities or portions thereof certified under ORS 468.170 on or after January 1, 1989. [1989 c.802 §8 (2)]

314.255 Collection of taxes due after revocation of certification of pollution control facility; exceptions to tax relief allowed for pollution control facility. (1) Upon receipt of notice of the revocation of a certification of a pollution control facility pursuant to ORS 468.185 (1), the Department of Revenue immediately shall collect any taxes due by reason of such revocation, and shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(2) No tax relief shall be allowed under ORS 307.405, 316.097 or 317.116 for any pollution control facility constructed or used by or for the benefit of any governmental or quasi-governmental body or public corporation or form thereof, except where such facilities are used for resource recovery. [1967 c.592 §§16, 17; 1969 c.493 §83; 1979 c.531 §5]

REAL ESTATE MORTGAGE INVESTMENT CONDUIT

314.260 Taxation of real estate mortgage investment conduit. (1)(a) An entity described in section 860D of the Internal Revenue Code (a real estate mortgage investment conduit or REMIC) shall not be subject to a tax under ORS chapter 316, 317 or 318 (and shall not be treated as a corporation, partnership or trust for purposes of ORS chapter 316, 317 or 318).

(b) If a REMIC engages in a prohibited transaction as defined in section 860F(a)(2) of the Internal Revenue Code, the REMIC shall be subject to a tax equal to six and six-tenths percent of the net income derived from the prohibited transaction. The tax imposed under this paragraph shall be assessed and collected under the applicable provisions of this chapter and ORS chapter 305 and shall be credited to the General Fund to be made available for general governmental expenses.

(2) The income of any REMIC shall be taxable to the holders of the interests in the REMIC under ORS chapter 316, 317 or 318, whichever is applicable.

(3) Taxable income or loss, with respect to income received as the holder of any interest in a REMIC shall be determined under sections 860A to 860G of the Internal Revenue Code, as defined in ORS 316.012 or 317.010 and 317.018, as otherwise determined and modified under ORS chapter 316, 317 or 318, whichever is applicable, to the REMIC interest holder.

(4) To determine that portion of the income of a REMIC which is taxable to a non-resident holder of an interest in the REMIC, there shall be included only that part derived from or connected with sources in this state, as such part is determined under rules adopted by the department in accordance with the general rules in ORS 316.352 (1987 Replacement Part). [1987 c.293 §63]

METHODS OF ACCOUNTING AND REPORTING INCOME

314.275 [1957 c.544 §2; 1969 c.493 §84; 1983 c.162 §52; repealed by 1987 c.293 §56]

314.276 Method of accounting. (1) The method of accounting of a partnership, REMIC (real estate mortgage investment conduit) or taxpayer shall be the same as the method of accounting which the partnership, REMIC or taxpayer uses for federal income tax purposes for the taxable year.

(2) Notwithstanding subsection (1) of this section, if the method of accounting used by the partnership, REMIC or taxpayer does not clearly reflect income, the computation of

taxable income shall be made under such method as the department may prescribe.

(3) If the method of accounting is changed for federal income tax purposes, the partnership, REMIC or taxpayer shall adopt the same method of accounting for purposes of ORS chapter 316, 317 or 318 and shall use that method beginning with the return filed which corresponds to the first federal return filed which is required to use the new method. Any adjustments required to prevent amounts from being duplicated or omitted shall be taken into account for state tax purposes in the same manner as for federal tax purposes.

(4) Subsections (1) and (3) of this section shall not apply with respect to methods of accounting which are disallowed for purposes of ORS chapter 316, 317 or 318. [1987 c.293 §57]

314.277 [1961 c.176 §§2, 4; 1969 c.493 §85; repealed by 1987 c.293 §56]

314.280 Allocation of income of financial organization or public utility from business within and without state. (1) If a taxpayer has income from business activity as a financial organization or as a public utility (as defined respectively in ORS 314.610 (4) and (6)) which is taxable both within and without this state (as defined in ORS 314.610 (8) and 314.615), the determination of net income shall be based upon the business activity within the state, and the department shall have power to permit or require either the segregated method of reporting or the apportionment method of reporting, under rules and regulations adopted by the department, so as fairly and accurately to reflect the net income of the business done within the state.

(2) The provisions of subsection (1) of this section dealing with the apportionment of income earned from sources both within and without the State of Oregon are designed to allocate to the State of Oregon on a fair and equitable basis a proportion of such income earned from sources both within and without the state. Any taxpayer may submit an alternative basis of apportionment with respect to the income of the taxpayer and explain that basis in full in the return of the taxpayer. If approved by the department that method will be accepted as the basis of allocation. [1957 c.632 §4 (enacted in lieu of 316.205 and 317.180); 1963 c.319 §1; 1965 c.152 §22]

314.285 [1957 c.632 §5 (enacted in lieu of 316.210 and 317.185); repealed by 1987 c.293 §56]

314.287 Costs allocable to inventory. (1) In the computation of state taxable income, costs allocable to inventory shall be the same as those allocable to inventory under section 263A of the Internal Revenue Code as of the close of the tax year for which a return is filed and shall not be ad-

justed for any addition, subtraction, modification or other adjustment contained in this chapter or ORS chapter 316, 317 or 318 or other law governing the imposition of state taxes imposed upon or measured by net income.

(2) If any provision of ORS chapter 316, 317 or 318 appears to require an adjustment to inventory costs contrary to the provisions of this section, that adjustment shall not be made.

(3) The additions, subtractions, modifications or other adjustments to federal taxable income required in determining Oregon taxable income under ORS chapter 316, 317 or 318 shall be made to federal taxable income notwithstanding that such adjustments are properly attributable to costs allocable to inventory. [1987 c.293 §57b]

314.290 Deferral of tax recognition of gain limited to cases where newly acquired property within Oregon's jurisdiction; exceptions. (1) Where laws relating to taxes imposed upon or measured by net income make provision for deferral of tax recognition of gain upon the voluntary or involuntary conversion or exchange of tangible real or personal property, the provisions shall be limited to those conversions or exchanges where or to the extent that:

(a) The property voluntarily or involuntarily converted or exchanged and the property newly acquired by the taxpayer both have a situs within the jurisdiction of the State of Oregon.

(b) The property voluntarily or involuntarily converted or exchanged has a situs outside the jurisdiction of the State of Oregon.

(2) Subsection (1) of this section shall not apply to:

(a) A principal residence.

(b) Upon election of a resident individual, estate or trust made in the manner provided by rule adopted by the department, to any property (without regard to situs) except as follows:

(A) If the newly acquired property is outside the jurisdiction of the State of Oregon, the gain shall be taken into account or the deferral or nonrecognition of gain shall cease upon a change of the taxpayer to nonresident status; or

(B) If, for federal income tax purposes, the gain is later required to be taken into account, or the deferral or nonrecognition ceases for any reason, the gain shall be taken into account or the deferral or nonrecognition shall cease for Oregon personal income tax purposes as well.

(3) In addition to other modifications to federal taxable income required for purposes of this chapter and ORS chapter 316, 317 or 318, there shall be added to federal taxable income any amount required to carry out the purposes of this section.

(4) If gain deferred under the Internal Revenue Code is recognized under this section and for a later tax year is required to be taken into account or for other reason the deferral ceases under circumstances to which ORS 316.716 or 317.356 do not apply (including but not limited to the operation of section 1031(f) and (g) of the Internal Revenue Code), then for the tax year for which the gain is taken into account under the Internal Revenue Code, there shall be subtracted from federal taxable income the amount of the gain previously recognized.

(5)(a) In the case of partnership property or property owned by an S corporation, the partnership or S corporation shall be entitled to the election described in paragraph (b) of subsection (2) of this section.

(b) An election by a partnership or S corporation shall be on behalf of each resident partner or shareholder, respectively, that has consented to be included in the election.

(c) The amount of deferral allowed the partnership or S corporation shall be that portion of the gain that is proportionate to the aggregate distributive shares or pro rata shares of its consenting resident partners or shareholders, respectively, divided by the aggregate distributive shares or pro rata shares of all partners or shareholders, respectively.

(d) The portion of the partnership or S corporation deferral flowing through to a consenting resident partner or shareholder shall be proportionate to that person's distributive share or pro rata share of partnership or corporate income, respectively, divided by the aggregate distributive shares or pro rata shares of all consenting resident partners or shareholders, respectively.

(e) That portion of the gain that the partnership or S corporation does not defer shall flow through and be recognized by each nonresident or nonconsenting partner or shareholder. The gain recognized by each nonresident or nonconsenting partner or shareholder shall be proportionate to that person's distributive share or pro rata share of partnership or corporate income, divided by the aggregate distributive shares or pro rata shares of all nonresident and nonconsenting partners or shareholders.

(f) Upon a change of a partner or shareholder to nonresident status, that person's share of deferral or nonrecognition of gain

shall cease and the gain shall be recognized by that person.

(g) The basis of the partnership or S corporation in the newly acquired property shall be adjusted in a manner consistent with federal income tax laws that provided for deferral of tax recognition of gain upon the voluntary or involuntary conversion or exchange of tangible real or personal property.

(h) The basis of the partnership or S corporation in the newly acquired property shall be increased by that portion of the gain that the partnership or S corporation did not defer. This increase in basis shall constitute an adjustment to the basis of the partnership or S corporation property only with respect to nonresident or nonconsenting partners or shareholders.

(i) The distributive share of any partner shall reflect that partner's share of the deferred, nonrecognized or recognized gain attributable to the property voluntarily or involuntarily converted or exchanged. [1957 c.102 §2; 1979 c.579 §4; 1991 c.457 §16a]

314.295 Apportionment or allocation of net income where two or more organizations, trades or businesses are owned or controlled by the same interests. In any case of two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the department may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if it determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses. [1957 c.632 §10 (enacted in lieu of 316.560 and 317.375); 1991 c.457 §16b]

314.300 Passive activity loss; determination; treatment. For purposes of applying section 469 of the Internal Revenue Code to the laws of this state imposing taxes upon or measured by income:

(1) Passive activity loss shall be determined with respect to the activities of the taxpayer under section 469 of the Internal Revenue Code and then shall be adjusted by the additions, subtractions, modifications and other adjustments as allocated to passive activity loss under subsection (2) of this section.

(2) Those additions, subtractions, modifications and other adjustments required to be made to federal taxable income under this chapter or ORS chapters 316, 317 and 318, or other law governing the imposition of state

taxes imposed upon or measured by income, shall be allocated to passive activity loss as provided by rule of the department.

(3) Passive activity loss, as determined under subsections (1) and (2) of this section, shall not be allowed for the taxable year of the taxpayer. Passive activity loss shall be treated as a deduction allocable to passive activity in the next succeeding year, and except as otherwise adjusted under subsection (1) of this section, shall be treated in the same manner as passive activity loss is treated under section 469 of the Internal Revenue Code, and related sections.

(4) For state personal income tax purposes, in the case of a nonresident, passive activity loss attributable to Oregon sources shall be treated in the same manner as described under subsections (1) to (3) of this section. [1987 c.293 §64]

314.302 Interest on deferred tax liabilities with respect to installment obligations. (1) Subject to subsections (2) to (4) of this section, if interest on deferred tax liability with respect to an installment obligation is required to be paid for federal income tax purposes under section 453A of the Internal Revenue Code, then interest on that same deferred tax liability shall be paid in the same manner (including the pledging rules under section 453A(d) of the Internal Revenue Code) for state tax purposes and shall, in the amount added, increase the tax imposed under ORS chapter 316, 317 or 318, whichever is appropriate.

(2) Interest added to tax pursuant to subsection (1) of this section shall be determined in the same manner as interest is determined under section 453A(c) of the Internal Revenue Code except that in determining the interest to be added using section 453A(c) of the Internal Revenue Code:

(a) The interest rate in effect under ORS 305.220 for deficiencies for the month with or within which the taxable year of the taxpayer ends shall be substituted for the underpayment rate referred to in section 453A(c)(2)(B); and

(b) The maximum rate of tax in effect under ORS chapter 316, 317 or 318, whichever is appropriate, shall be substituted for the federal rates of tax referred to in section 453A(c)(3)(B).

(3) The department shall adopt rules consistent with those adopted under section 453A of the Internal Revenue Code and with laws of this state as may be necessary to carry out the provisions of this section, including rules providing for the application of this subsection in the case of contingent payments, short taxable years, pass-thru entities and derivation, attribution or appor-

tionment of installment obligations or income from installment obligations.

(4) In the case of a nonresident subject to taxation under ORS chapter 316, in determining whether or not interest is to be added to tax under this section, and the amount of interest to be added, only those installment obligations that arise from dispositions of property in this state shall be taken into consideration.

(5) For purposes of determining interest under ORS 314.395 or penalties under ORS 314.400 or other law, and for purposes of refund, estimated and other prepayments of tax, credits and all other purposes, the interest added under this section shall be considered as any other increase in the tax imposed under ORS chapter 316, 317 or 318, whichever is appropriate.

(6) The interest added to tax imposed under this section shall be assessed and collected under the applicable provisions of this chapter and ORS chapters 305, 316, 317 and 318 and 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. [1989 c.625 §57]

Note: Section 90, chapter 625, Oregon Laws 1989, provides:

Sec. 90. Section 57 of this Act [314.302] (pertaining to interest on deferred tax liability with respect to an installment obligation) applies to dispositions occurring on or after January 1, 1990, in tax years beginning on or after January 1, 1990. [1989 c.625 §90]

LIABILITY OF TRANSFEREE OR OWNER OF TRUST

314.310 Liability of transferee of taxpayer for taxes imposed on taxpayer. (1) When a taxpayer ceases to exist or is no longer subject to the jurisdiction of this state (although subject to the courts of a state having comity or reciprocity with the State of Oregon), being indebted for taxes upon or measured by net income, the transferee of the money or property of the taxpayer shall be liable for any such tax or deficiency in tax, including penalties and interest, imposed by law on the taxpayer and accruing or accrued upon the date of transfer, to the extent of the amount of money or value of the property received by the transferee. Property received by the transferee shall be valued at the fair market value of said property at the time of transfer to the initial transferee by the taxpayer. However, no heir, legatee, devisee or distributee of an estate of a deceased person shall be liable as a transferee of the decedent or of the decedent's estate (a) after the Department of Revenue's certificate of release with respect to such decedent's estate has been filed with the clerk of the

probate court pursuant to ORS 316.387, or (b) where no release has been filed but 90 days have elapsed following a request to the department by the decedent's representative for such release, unless within that time the probate court, upon application by the department, finds reasonable grounds for extending the period and allows the department additional time in which to issue a release.

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

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

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

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

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

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

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

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

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

(6) In the absence of notice to the Department of Revenue of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax or deficiency in tax, including penalties and interest thereon, imposed upon or measured by net income, if mailed to the last-known address of the person subject to the liability, shall be sufficient for the purposes of this section even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. [1955 c.367 §2; 1969 c.493 §86]

314.330 Lien if grantor or other person determined to be owner of trust. (1) If a final determination treats the grantor of a trust or any other person as the owner of any portion of a trust pursuant to sections 671 to 678 of the federal Internal Revenue Code or any other law, the lien of the State of Oregon imposed by ORS 314.417 shall attach to all property and rights to property, whether real or personal, of that portion of the trust. The lien may be foreclosed pursuant to ORS 314.419 or collected by warrant pursuant to ORS 314.430.

(2) For the purposes of subsection (1) of this section, "final determination" means:

(a) An assessment which has become final due to failure to exercise or exhaust rights of appeal to the Director of the Department of Revenue.

(b) An order of the Director of the Department of Revenue which has become final.

(c) A decision of the Oregon Tax Court which has become final.

(d) A decision of the Oregon Supreme Court. [1985 c.149 §2, 3]

RETURNS

314.355 Returns when tax year changed. If a taxpayer changes the tax year on the basis of which net income is computed, the taxpayer shall, at the time and in the manner the department prescribes, make a separate return of net income received

during the period intervening between the end of the former income year of the taxpayer and the beginning of the new income year. [1957 c.632 §6 (enacted in lieu of 316.520); 1987 c.293 §58]

314.360 Information returns. (1) Fiduciaries required to make returns under laws imposing tax upon or measured by net income, proprietorships, partnerships, corporations, joint stock companies or associations or insurance companies, having places of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, purchasers of stumpage and all officers and employees of the state or of any political subdivisions of the state, having the control, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, dividends, salaries, fees, wages, the purchase price of stumpage, emoluments or other fixed or determinable annual or periodical gains, profits and income, paid or payable, during any year to any taxpayer, shall make return thereof, under oath, to the department, under such regulations and in such form and manner and to such extent as it may prescribe.

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

(b) Every person who is required to file a return with respect to a real estate transaction under section 6045(e) of the Internal Revenue Code shall file a copy of that return with the department.

(3) The department may prescribe circumstances under which the filing requirements under this section are waived. [1957 c.632 §7 (enacted in lieu of 316.535); 1959 c.305 §1; 1987 c.293 §59; 1987 c.366 §3]

314.362 Filing return on magnetic media or other machine-readable form. (1) The information return and the employer's annual return, described in ORS 314.360 and 316.202 (3) shall be filed on magnetic media or other machine-readable form if the corresponding federal return is required to be filed on magnetic media or other machine-readable form by section 6011 (e) of the Internal Revenue Code and the regulations, revenue rulings and revenue procedures adopted pursuant to that section.

(2) The department may, by administrative rule, adopt the regulations, revenue rulings or revenue procedures which are adopted pursuant to section 6011 (e) of the Internal Revenue Code whenever such regulations, revenue rulings or revenue procedures may be adopted.

(3) The department may require that the magnetic media or other machine-readable forms filed with it meet specifications prescribed by the department. The department may allow an alternative method of filing if the person filing the return is unable to meet the specifications prescribed by the department.

(4) Any reference in this section to the Internal Revenue Code means the Internal Revenue Code as amended on or before December 31, 1990, even where the amendments take effect or become operative after that date. [1987 c.366 §2; 1991 c.457 §17]

314.363 [1975 c.760 §2; repealed by 1984 s.s. c.1 §18]

314.365 [1957 c.632 §8 (enacted in lieu of 316.550 and 317.365); 1961 c.533 §51; repealed by 1985 c.266 §6]

314.370 Department requiring return or supplementary return. If the department is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, it may require from the taxpayer a return or supplementary return, under oath, in such form as it shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of the applicable tax law. If from a supplementary return, or otherwise, the department finds that any items of taxable income have been omitted from the original return it may require the items so omitted to be disclosed under oath of the taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which the taxpayer may be liable under any provisions of law whether or not the department required a return or a supplementary return under this section. [1957 c.632 §9 (enacted in lieu of 316.555)]

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

adjustment of the taxpayer's federal income tax return.

(2) If the amount of a taxpayer's federal taxable income reported on a federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, resulting in a change in the taxpayer's net income which is subject to tax by this state, the taxpayer shall report such change or correction in federal taxable income to the department. The taxpayer may file a report of a federal change or correction, and the report of the federal change or correction shall be treated by the department as a claim for refund pursuant to ORS 314.415 and, notwithstanding the limitations of ORS 314.415, shall be deemed timely if filed with the department within two years after the federal correction was made. The report shall either concede the accuracy of such determination or state wherein the taxpayer believes it to be erroneous. Any taxpayer filing an amended federal income tax return reporting a change in the taxpayer's taxable income which is subject to tax by this state shall also file an amended return with the department within 90 days thereafter.

(3) For purposes of this section, a change or correction of a taxpayer's federal taxable income is deemed to be made on the date of the federal audit report.

(4) The provisions of ORS 305.305 shall constitute the exclusive remedy of a person whose notice of deficiency or assessment is based upon a federal change or correction of the person's taxable income under this section. [1957 c.632 §11 (enacted in lieu of 316.565 and 317.380); 1963 c.509 §1; 1985 c.602 §3; 1989 c.414 §7]

314.385 Form of returns; time for filing. (1)(a) For purposes of ORS chapter 316, returns shall be filed with the department on or before the due date of the corresponding federal return for the tax year as prescribed under the Internal Revenue Code and the regulations adopted pursuant thereto, except that the final return of a decedent shall be filed at any time following the death of the decedent, to and including the 15th day of the fourth month after expiration of the regular tax year of the decedent.

(b) For purposes of ORS chapters 317 and 318, returns shall be filed with the department on or before the 15th day of the month following the due date of the corresponding federal return for the tax year, as prescribed under the Internal Revenue Code and the regulations adopted pursuant thereto.

(c) The department may allow further time for filing returns equal in length to the extension periods allowed under the Internal Revenue Code and its regulations.

(d) If no return is required to be filed for federal income tax purposes, the due date or extension period for a return shall be the same as the due date, or extension period, would have been if the taxpayer had been required to file a return for federal income tax purposes for the tax year. However, the due date for returns filed for purposes of ORS chapter 317 or 318 shall be on or before the 15th day of the month following what would have been the federal return due date for the tax year.

(e) As used in this section, "Internal Revenue Code" means the federal Internal Revenue Code, as amended and in effect on the date specified in ORS 314.011 (2)(b).

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

(3) Returns shall be in such form as the department may, from time to time, prescribe. The department shall prepare blank forms for the returns and distribute them throughout the state. Such forms shall be furnished the taxpayer upon request, but failure to receive or secure a form shall not relieve the taxpayer from the obligation of making any return required by law. [1957 c.632 §12 (enacted in lieu of 316.545 and 317.355); 1959 c.156 §1; last sentence of subsection (1) derived from 1959 c.156 §3; 1963 c.281 §1; 1987 c.293 §59a; 1989 c.625 §55; 1991 c.457 §17a]

314.395 Time for payment of tax; interest on delayed return. (1) The tax shall be paid to the department at the time fixed by ORS 314.385 for filing the return without regard to extensions.

(2) When the time for filing a return of income is extended at the request of the taxpayer, interest at the rate established under ORS 305.220 for each month or fraction of a month from the time the return was originally required to be filed to the time of payment shall be added and paid. [1969 c.166 §2; 1971 c.354 §3; 1973 c.402 §17; 1975 c.593 §13; 1980 s.s. c.20 §24; 1982 s.s.1 c.16 §6; 1987 c.293 §59b]

314.397 Manner of payment. The tax may be paid with uncertified check under any rules as the department shall adopt, but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom the check is tendered remains liable for the payment of the tax and for all legal penalties the same as if the check had not been tendered. [1989 c.625 §61 (enacted in lieu of 316.407)]

314.400 Penalty assessed for failure to file report or return or to pay tax when due; interest. (1) If a taxpayer (a) fails to file a report or return of tax or tax liability or of income at the time prescribed therefor,

or (b) fails to pay a tax at the time the tax becomes due, there shall be added to the amount of tax required to be shown as tax on the report or return a delinquency penalty of five percent of the amount of such tax.

(2) If the failure to file a report or return continues for a period in excess of three months after the due date:

(a) There shall be added to the amount of tax required to be shown on the return a failure to file penalty of 20 percent of the amount of such tax; and

(b) Thereafter the department may send a notice and demand to the person to file a report or return within 30 days of the mailing of the notice. If after such notice and demand no return or report is filed within the 30 days, the department may determine the tax according to the best of its information and belief, assess the tax with appropriate penalty and interest plus an additional penalty of 25 percent of the tax deficiency determined by the department and give written notice of the determination and assessment to the person required to make the filing.

(3) A penalty equal to 100 percent of any deficiency determined by the department shall be assessed and collected if:

(a) There is a failure to file a report or return with intent to evade the tax;

(b) A report or return was falsely prepared and filed with intent to evade the tax; or

(c) A false claim was intentionally filed under ORS 310.630 to 310.690.

(4) Interest shall be collected on the unpaid tax at the rate established under ORS 305.220 for each month or fraction of a month, computed from the time the tax became due, during which the tax remains unpaid.

(5) Each penalty imposed under this section is in addition to any other penalty imposed under this section. However, the total amount of penalty imposed under this section and ORS 305.265 (13) with respect to any deficiency shall not exceed 100 percent of the deficiency. [1971 c.354 §2; 1975 c.593 §14; 1977 c.870 §41; 1980 s.s. c.7 §25; 1981 c.724 §4; 1982 s.s.1 c.16 §7; 1985 c.602 §4; 1987 c.158 §48a]

314.402 Understatement of taxable income; penalty; waiver of penalty. (1) If the department determines that there is a substantial understatement of taxable income for any taxable year under any law imposing a tax on or measured by net income, there shall be added to the amount of tax required to be shown on the return a penalty equal to 20 percent of the amount of any underpay-

ment of tax attributable to the understatement of taxable income.

(2) A substantial understatement of taxable income exists for any taxable year if the amount of the understatement for the taxable year exceeds:

(a) Except as provided in paragraph (b) of this subsection, \$15,000.

(b) In the case of a corporation other than an S corporation, as defined in section 1361 of the Internal Revenue Code, or a personal holding company, as defined in section 542 of the Internal Revenue Code, \$25,000.

(3) In the case of any item attributable to an abusive tax shelter:

(a) No reduction of the amount of the understatement shall be made with regard to that item regardless of the existence of substantial authority for the treatment of the item by the taxpayer.

(b) No reduction of the amount of the understatement shall be made with regard to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition to the disclosure, the taxpayer reasonably believed that the tax treatment of the item was more likely than not the proper treatment.

(4) As used in this section:

(a) "Abusive tax shelter" means any partnership, corporation or other organization or entity, any investment plan or arrangement or any other plan or arrangement, which has as its principal purpose the evasion or improper avoidance of federal or state income tax. "Abusive tax shelter" includes any investment or activity in connection with which tax benefits derived by investors are not clearly intended under the tax laws or any investment or activity that involves little or no economic reality, making use of unrealistic allocations of income or expenses, inflated appraisals of asset values, losses substantially in excess of investment, mismatching of income and expenses, financing techniques that do not conform to standard commercial business practice or mischaracterization of the substance of the investment or activity.

(b) "Understatement" means the excess of the amount of the taxable income required to be shown on the return for the taxable year over the amount of the taxable income which is shown on the return, reduced by any portion of the understatement that is attributable to:

(A) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or

(B) Any item with respect to which the relevant facts affecting the item's tax treat-

ment are adequately disclosed in the return or in a statement attached to the return.

(5) The penalty imposed under this section is in addition to any other penalty imposed by law. A penalty imposed under this section shall be treated for all purposes as an additional deficiency subject to the provisions of ORS 305.265, but shall not bear interest.

(6) The department may waive all or any part of the penalty imposed under this section on a showing by the taxpayer that there was reasonable cause for the understatement, or any portion thereof, and that the taxpayer acted in good faith. [1987 c.843 §9]

COLLECTING DELINQUENT TAXES; LIENS; INTEREST AND ADDITIONS TO TAX; REFUNDS

314.405 [1957 c.632 §13 (enacted in lieu of 316.605 and 317.405); 1959 c.212 §1; subsection (8) derived from 1959 c.212 §3; 1961 c.504 §1; 1965 c.554 §1; 1969 c.166 §3; 1969 c.493 §87; 1971 c.333 §1; 1971 c.354 §4; 1973 c.402 §29; 1975 c.593 §15; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.405)]

314.407 Assessment of taxes owing but not submitted with return; time of assessment; recording of warrant. For the purposes of ORS 314.011, 314.021, 314.407 and 314.417 to 314.423:

(1) In the case of a return submitted to the department with payment of less than the amount of tax computed to be due, the difference between the tax computed to be owing by the taxpayer and the tax submitted with the return is considered as "assessed" on the due date of the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.

(2) The term "time of assessment" means:

(a) In the case of an assessment made under ORS 305.265 and 314.410, 30 days after the date the notice of assessment is mailed to the taxpayer;

(b) In the case of an assessment made under ORS 314.440, five days after the date the notice of assessment is mailed to the taxpayer; or

(c) In the case of a tax assessed as described in subsection (1) of this section, the due date of the return (determined with regard to any extension of time granted for the filing of the return) or the date the return is filed, whichever is later.

(3) Unless a warrant has been recorded in the County Clerk Lien Record in the county in which property is located, no warrant shall be considered as a lien with respect to that property. [1971 c.215 §2; 1977 c.870 §42; 1987 c.586 §39]

314.410 Time limit for notice of deficiency. (1) At any time within three years after the return was filed, the department may give notice of deficiency as prescribed in ORS 305.265.

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

(3) The limitations to the giving of notice of a deficiency provided in this section shall not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed. If the Commissioner of Internal Revenue or other authorized officer of the Federal Government makes a correction resulting in a change in income tax for state income tax purposes, then notice of a deficiency under any law imposing tax upon or measured by income for the corresponding tax year may be mailed within two years after the department is notified by the taxpayer or the commissioner of such federal correction, or within the applicable three-year or five-year period prescribed in subsections (1) and (2) of this section, respectively, whichever period expires the later.

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

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

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

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

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

(6) If, prior to the expiration of any period of time prescribed in this section for giving of notice of deficiency or of assessment, the department and the taxpayer consent in writing to the notice of deficiency

being mailed or deficiency being assessed after the expiration of such prescribed period, notice of such deficiency may be mailed or the deficiency assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.

(7) In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback, notice of such deficiency may be mailed at any time before the expiration of the period within which notice of a deficiency for the taxable year of the net operating loss which results in such carryback may be mailed.

(8) Notwithstanding the other provisions of this section, if any taxpayer agreed with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for giving notices of deficiencies and assessing deficiencies in federal income tax for any year, the period for mailing notices of deficiencies of tax for such years shall be within the limits expressed in subsections (1) to (7) of this section or six months after the date of the expiration of the agreed period for assessing deficiencies in federal income tax, whichever period expires the later.

(9) Notwithstanding other provisions of this section, the period for giving notice of any deficiency attributable to any partnership or S corporation-related item shown on the taxpayer's return shall not expire prior to the expiration of three years from the date of filing of the partnership or S corporation return to which the item on the taxpayer's return is related. [1957 c.632 §14 (enacted in lieu of 316.610 and 317.410); 1959 c.212 §2; 1959 c.591 §20; subsection (8) derived from 1959 c.212 §3 and 1959 c.591 §21; 1963 c.509 §2; 1963 c.627 §1 (referred and rejected); 1969 c.405 §1; 1969 c.493 §§88, 88a; 1971 c.507 §1; 1977 c.870 §43; 1983 c.162 §53; 1985 c.602 §5]

314.412 Issuing of notice of deficiency attributable to involuntary conversion; time limit. Notwithstanding ORS 314.410, the period for issuing any notice of deficiency attributable to any part of the gain realized upon an involuntary conversion as provided in the federal Internal Revenue Code which applies to the Personal Income Tax Act of 1969 or as provided in the corporate excise tax or corporate income tax laws, shall not expire prior to the expiration of three years from the date the department is notified by the taxpayer of:

(1) The replacement of the converted property which the taxpayer claims results in nonrecognition of any part of such gains; or

(2) The taxpayer's intention not to replace such property; or

(3) A failure of the taxpayer to replace the property within the period prescribed in the federal Internal Revenue Code which applies to the Personal Income Tax Act of 1969, in the corporation excise tax laws or in the corporation income tax laws, whichever is applicable. [1975 c.705 §2; 1989 c.626 §3]

314.415 Refunds; interest; credits. (1)(a) If the department determines pursuant to ORS 305.270 that the amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the department with interest at the rate established under ORS 305.220, for each month or fraction of a month during a period beginning 45 days after the due date of the return or the date the tax was paid, whichever is the later, to the time the refund is made.

(b) No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance with ORS 305.270, nor shall a refund claimed on an original return be allowed or made in any case unless the return is filed within three years of the due date, excluding extensions, of the return in respect of which the tax might have been credited. If a refund is disallowed for the tax year during which excess tax was paid for any reason set forth in this paragraph, the excess shall not be allowed as a credit against any tax occurring on a return filed for a subsequent year. If the tax owed is less than \$1, no refund shall be made.

(c) No interest on a refund to an employee of a tax withheld by an employer shall be paid for any period prior to the time the employee filed a personal income tax return for the tax year involved, nor for any period prior to the day which is 45 days after the date when the employee's annual return for that year was filed or was due, whichever is the later.

(d) No interest on a refund of estimated tax paid under ORS 314.505 to 314.525 or 316.557 to 316.589 shall be paid for any period prior to the time the taxpayer filed a tax return for the tax year involved, nor for any period prior to the day which is 45 days after the date when the tax return for that year was filed or was due, whichever is later.

(e) The amount of the refund, exclusive of interest thereon, shall not exceed the portion of the tax paid during such period preceding the filing of the claim or, if no claim is filed, then during the period preceding the allowance of the refund during which a claim might have been filed. Where there has been an overpayment of any tax imposed, the

amount of the overpayment and interest thereon shall be credited against any tax, penalty or interest then due from the taxpayer, and only the balance shall be refunded.

(f) Except as provided in ORS 305.265 (12), if, pursuant to a notice of deficiency or assessment, the taxpayer pays the amount specified in the notice, or any part thereof, and if, upon appeal, the department, the Oregon Tax Court or the Oregon Supreme Court orders that all or any part of the deficiency amount specified in the notice and paid by the taxpayer be refunded, the amount so ordered to be refunded shall bear interest at the rate established for refunds in ORS 305.220. Interest shall be computed from the date of payment to the department. Nothing in this paragraph shall require that interest be paid upon any amount for any period for which interest upon the same amount for the same period is required to be paid under ORS 305.419.

(2) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270 or subsection (1) of this section, if, prior to the expiration of the period prescribed in paragraph (b) of subsection (1) of this section, the department and the taxpayer consent in writing to the refund of tax after the expiration of the period prescribed, the refund shall be made at any time prior to the expiration of the period agreed upon and no refund shall be made or allowed after the expiration of the period agreed upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed upon in compliance with the manner prescribed by the department. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The department shall have the power to consent to such refund only where the taxpayer has consented to assessment of additional tax, if such be determined upon audit, after the expiration of the applicable three-year or five-year period prescribed in ORS 314.410 (1) and (2).

(3) If the claim for credit or refund relates to an overpayment on account of the deductibility by the taxpayer of the worthlessness of a share of stock in a corporation, of the right to subscribe for or to receive a share of stock in a corporation, or of a debt, in lieu of the three-year period of limitation prescribed in subsection (1) of this section, the period shall be seven years from the date prescribed by law for the filing of the return for the year with respect to which the claim is made; provided, that if the claim is made in reliance upon this subsection after the expiration of the three-year period

prescribed in paragraph (b) of subsection (1) of this section, no interest shall be allowed with respect to any credit or refund determined to be due upon such claim for the period beginning at the close of the three-year period prescribed in subsection (1) of this section and ending at the expiration of six months after the date on which the claim is filed.

(4)(a) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the three-year period of limitation prescribed in subsection (1) of this section, the period shall be that period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss which results in such carryback; except that and with respect to an overpayment attributable to the creation of, or an increase in, net operating loss as a result of the elimination of excessive profits by a renegotiation (as described under sections 1211 to 1233, Title 50, United States Code), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in paragraph (a) or (b) of subsection (1) of this section or subsection (2) of this section, whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback. If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law other than ORS 305.150, relating to closing agreements, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in this subsection. To the extent that the net operating loss carryback was not an issue in any proceeding in which the determination of a court, including the Oregon Tax Court, has become final, the claimed credit or refund applicable to that net operating loss carryback may be allowed or made under this subsection.

(b) For purposes of subsection (1) of this section, if any overpayment of tax results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the later of:

(A) The due date of the return for the taxable year in which such net operating loss or net capital loss arises;

(B) The date the return for the year in which the net operating or net capital loss arises is filed; or

(C) The date of filing of the return for the year to which the net operating loss or net capital loss is carried back.

(5) Notwithstanding any provision to the contrary in ORS 305.265 or 305.270, or other provisions of this section, if the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period within which a claim for credit or refund may be filed or credit or refund allowed or made if no claim is filed shall be the period provided within subsections (1) to (4) of this section or six months after the date of the expiration of the agreed period for assessing deficiency in federal income tax, whichever period expires the later.

(6) The department may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the department.

(7) If a taxpayer entitled to a refund under subsection (1) of this section dies, the department may issue a draft for payment of such refund under the terms and conditions set out in ORS 293.490 to 293.500 exercising the same powers and subject to the same restrictions pursuant to which the State Treasurer is authorized to pay the amounts of warrants, checks or orders under those statutes. [1957 c.632 §15 (enacted in lieu of 316.615 and 317.415); 1969 c.166 §4; 1969 c.405 §2; 1971 c.354 §5; 1971 c.507 §2; 1975 c.593 §16; 1977 c.870 §44; 1982 s.s.1 c.16 §8; 1983 c.162 §54; 1985 c.61 §3; 1985 c.602 §6; 1985 c.603 §1; 1985 c.802 §19; 1987 c.293 §60; 1987 c.647 §1; 1989 c.626 §4; 1991 c.457 §17b]

314.417 Unpaid tax or withholding lien at time of assessment. If any person neglects or refuses to pay an income tax at the time of assessment, or fails to pay to the department any amount required to be withheld under ORS 316.167 and 316.172, the amount of the unpaid tax including interest and penalty thereon shall be a lien in favor of the State of Oregon upon all property and rights to property, whether real or personal, belonging to the person. The lien shall arise at the time of assessment or the time the amount withheld is to be paid to the department and the lien shall continue until the liability for the taxes, with interest and penalty, is satisfied. [1971 c.215 §3; 1981 c.546 §1]

314.419 Foreclosure of lien. In addition to any other remedy provided by law the lien

created by ORS 314.417 may be foreclosed in the following manner:

(1) The Director of the Department of Revenue shall issue an order directed to the sheriff of the county in which the property or interest in property subject to the lien is located, describing the property subject to the lien, and commanding the sheriff to seize the property specified and sell it to pay the amount shown on the order to be due. In the discretion of the director an order of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(2) If the property seized by the sheriff is personal property the sheriff shall utilize the procedures under ORS 311.640 to effect collection of the amount due.

(3) If the property seized by the sheriff is real property the sheriff shall proceed to sell the real property in the same manner that real property is sold under a writ of execution.

(4) Any property which has been sold under this section may be redeemed from the purchaser by the taxpayer or any junior lienor within 120 days from the date of the sale by paying to the purchaser the full purchase price paid plus an additional 20 percent of the purchase price.

(5) In any proceeding under this section to sell property to foreclose a lien, the taxpayer may claim any exemption to which the taxpayer is entitled under the laws of this state relating to property exempt from execution. [1971 c.215 §4]

314.420 [1957 c.632 §16 (enacted in lieu of 316.620, 317.370 and 317.420); 1969 c.166 §5; repealed by 1971 c.354 §7]

314.421 When lien valid. The lien imposed by ORS 314.417 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor or judgment creditor until a warrant is issued and recorded under ORS 314.430. [1971 c.215 §5; 1987 c.586 §40]

314.423 Status of lien. (1) After a warrant has been recorded under ORS 314.430, the lien imposed by ORS 314.417 shall be subordinate to:

(a) Any interest in real property to the same extent that a judgment lien recorded at the same time the warrant was recorded would be subordinate to the interest, and

(b) Any interest in personal property to the same extent that a security agreement filed under the Uniform Commercial Code at

the same time the warrant was filed would be subordinate to the interest.

(2) After a warrant has been recorded under ORS 314.430, the lien imposed by ORS 314.417 shall not be valid as to a purchaser, security interest holder or lienholder in a sale, security agreement or lien arising out of the following types of property or property transactions unless the purchaser, security interest holder or lienholder had actual knowledge of the lien:

- (a) Securities as defined in ORS 78.1020;
- (b) Retail purchases in the ordinary course of business;
- (c) Casual sales of personal property;
- (d) Attorney's liens;
- (e) Insurance contract loans; or
- (f) Passbook loans. [1971 c.215 §§6, 7; 1987 c.586 §41]

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

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

10 days after service of the order (or such further time as the court may grant) or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service shall be required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section shall be in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state. [1957 c.632 §17 (enacted in lieu of 316.625 and 317.425)]

314.430 Warrant for collection of taxes. (1) If any tax imposed under ORS chapter 118, 119, 316, 317 or 318 or any portion of the tax is not paid within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the termination of the tax year by the department under the provisions of ORS 314.440) and no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to regulations promulgated by the department, the department may issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for the payment of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly recorded. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in exe-

cuting the warrant, to be added to and collected as a part of the warrant liability.

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

(4) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax, and shall balance the assessment record of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record. [1957 c.632 §18 (enacted in lieu of 316.630 and 317.430); 1959 c.74 §1; 1959 c.234 §1; 1975 c.593 §17; 1983 c.696 §12; 1985 c.85 §12; 1985 c.761 §15; 1987 c.586 §42; 1989 c.625 §62]

314.432 Filing of warrants for unpaid withholding taxes; release, cancellation and satisfaction. (1) The department may file warrants issued against any taxpayer for unpaid withholding taxes in the Office of the Secretary of State as provided in this section.

(2) Certification of warrants for unpaid withholding taxes by the Director of the Department of Revenue, or the representative of the director, entitles the warrants to be filed and no other certification or acknowledgment is necessary.

(3) If a warrant described in subsection (1) of this section is presented to the Secretary of State for filing, the Secretary of State shall cause the warrant to be marked, held and indexed in accordance with the provisions of ORS 79.4030 (4) as if the warrant were a financing statement within the meaning of ORS 79.1010 to 79.5070.

(4) If a certificate of release, cancellation or satisfaction of any warrant is presented to the Secretary of State for filing, the Secretary of State shall:

(a) Cause a certificate of release to be marked, held and indexed as if the certificate were a termination statement within the meaning of ORS 79.4060.

(b) Cause a certificate of cancellation or satisfaction to be held, marked and indexed as if the certificate were a release of collateral within the meaning of ORS 79.4060. [1989 c.1036 §2]

314.434 Certificate of outstanding warrants; fee. (1) Upon request of any person, the Secretary of State shall issue a certificate showing whether there is on file in the Office of the Secretary of State, on the date and hour stated therein, any warrant

described in ORS 314.432 (1), or certificate or notice affecting any warrant naming a particular person, and if a notice or certificate is on file, giving the date and hour of its filing. All financing statements and statements of assignment, if any, filed pursuant to ORS 79.1010 to 79.5070 for a particular debtor whose name is identical to the particular person named in the warrant shall be shown on this certificate. The uniform fee for such a certificate for a particular person shall be prescribed by the Secretary of State by rule. If the request for the certificate is in writing and not in the standard form prescribed by the Secretary of State, an additional fee shall be prescribed. Upon request, the Secretary of State shall furnish a copy of any warrant or notice or certificate affecting a warrant for a fee per page, the fee to be as prescribed by the Secretary of State by rule. No fee prescribed under this subsection shall exceed \$5.

(2) Notwithstanding the provisions of ORS 79.4030, 79.4060, 79.4070 or subsection (1) of this section, relating to the time and manner of the payment of fees to the Secretary of State, the fee for filing and indexing each warrant described in ORS 314.432 (1) shall be charged and collected in the same manner as provided in ORS 205.395 for payment by a state agency of fees due to the county clerk for recording warrants. [1989 c.1036 §3]

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

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

(2) If the department finds that a taxpayer designs quickly to depart from the state or to remove the property of the taxpayer therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past tax year or the tax year then current unless such proceedings be brought without delay, the department shall declare the current taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer. Simultaneously, the department, on the basis of the best information available to it, shall assess a tax for such terminated period and for the preceding tax year (if no return has been filed therefor, whether or not the time otherwise allowed

by law for filing such return and paying the tax has expired), and shall assess additional tax for any years open to assessment under the provisions of the applicable law. The department shall give notice to the taxpayer of all taxes so assessed. Such taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to the last-known address of the taxpayer. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the findings of the department, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design and the certificate of the department of the mailing or issuing of the notice and findings specified in this section is presumptive evidence that the notice and findings were mailed or issued. [1957 c.632 §20 (enacted in lieu of 316.640, 317.440 and 317.445)]

314.445 [1957 c.632 §21 (enacted in lieu of 316.650 and 317.455); 1959 c.234 §2; repealed by 1973 c.402 §30]

314.450 [Subsections (1) and (2) enacted as 1957 c.632 §22 (enacted in lieu of 316.655 and 317.460); subsection (3) enacted as 1957 c.545 §2; 1959 c.650 §1; 1969 c.520 §40; 1971 c.418 §11; repealed by 1973 c.402 §30]

314.455 [1957 c.632 §23 (enacted in lieu of 316.660 and 317.465); 1971 c.507 §3; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.455)]

314.460 [1957 c.632 §24 (enacted in lieu of 316.665 and 317.470); 1961 c.533 §52; 1967 c.78 §2; 1975 c.381 §4; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.460)]

314.465 [1957 c.632 §25 (enacted in lieu of 316.670 and 317.475); 1961 c.533 §53; repealed by 1977 c.870 §22 (314.466 enacted in lieu of 314.465)]

314.466 Audits, deficiencies, assessments, refunds and appeals governed by ORS chapter 305. The provisions of ORS chapter 305 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals to the director of the department and appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the determination of taxes, penalties and interest imposed under this chapter and ORS chapters 316, 317 and 318, except where the context requires otherwise. [1977 c.870 §23 (enacted in lieu of 314.405, 314.455, 314.460 and 314.465)]

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

ESTIMATED TAX PROCEDURE

314.505 Estimate of tax liability by corporations. (1) For tax years beginning on and after January 1, 1974, every corporation expecting to have a tax liability under either ORS chapter 317 or 318 of \$500 or more shall make an estimate of tax liability for the cor-

poration's tax year and pay the amount of tax determined as provided in ORS 314.515.

(2) The department shall by rule provide for the payment of estimated tax liability by a group of affiliated corporations filing a consolidated return.

(3) For purposes of this section, estimated tax liability means the tax computed under ORS chapter 317 or 318 less the credits allowed therein. [1973 c.292 §1; 1984 s.s. c.1 §16]

314.515 Installment schedule for payment of estimated tax. (1) A corporation required under ORS 314.505 to make payments of estimated tax shall make the payments to the Department of Revenue in installments as follows:

(a) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the fourth month of the taxable year.

(b) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the sixth month of the taxable year.

(c) One-quarter or more of the estimated tax shall be paid on or before the 15th day of the ninth month of the taxable year.

(d) The balance of the estimated tax shall be paid on or before the 15th day of the 12th month of the taxable year.

(2) Any payment of estimated tax received by the department for which the corporation has made no designation of the quarterly installment to which the payment is to be applied, shall first be applied to underpayments of estimated tax due for any prior quarter of the taxable year. Any excess amount shall be applied to the installment that next becomes due after the payment was received. [1973 c.292 §2; 1981 c.678 §4; 1985 c.603 §2]

314.525 Underpayment of estimated tax; interest; nonapplicability of penalties. (1) An underpayment of estimated tax under ORS 314.505 to 314.525 will be considered to have occurred if the estimated tax is not paid as required.

(2) Notwithstanding subsection (1) of this section, there shall be no underpayment of estimated tax if the estimated tax paid equals or exceeds the amount described in any one of the following paragraphs:

(a) The amount which would be required to be paid if the estimated tax liability were equal to 90 percent of the tax shown on the return for the taxable year or, if no return was filed, 90 percent of the tax for such taxable year.

(b) The amount which would be required to be paid if the estimated tax liability were equal to 100 percent of the tax shown on the return for the preceding taxable year, and

the preceding taxable year was a taxable year of 12 months.

(c)(A) An amount equal to 90 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

(ii) For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month;

(iii) For the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month; and

(iv) For the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this paragraph the taxable income shall be placed on an annualized basis by:

(i) Multiplying by 12 the taxable income referred to in subparagraph (A) of this paragraph; and

(ii) Dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9 or 11, as the case may be) referred to in subparagraph (A) of this paragraph.

(d) An amount equal to 90 percent of the amount obtained by applying section 6655(e)(3)(C) of the Internal Revenue Code to Oregon taxable income.

(3) Interest shall accrue on the underpayment of estimated tax under ORS 314.505 to 314.525 at the rate established under ORS 305.220, for each month or fraction thereof during which period the estimated tax or any installment thereof remains unpaid. The penalty provisions contained in this chapter and ORS chapters 317 and 318 for underpayment of tax shall not apply to underpayments of estimated tax under ORS 314.505 to 314.525.

(4) For purposes of subsection (3) of this section, the underpayment of estimated tax shall be the excess of:

(a) The amount of the installment which would be required to be paid if the estimated tax were equal to 90 percent of the tax shown on the return for the taxable year or, if no return was filed, 90 percent of the tax for such year, over

(b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(5) In the case of a large corporation, paragraph (b) of subsection (2) of this section shall apply only to determine the amount of

the first required installment for any taxable year. Any reduction in the first installment by reason of this subsection shall be added to the amount of the next required installment determined without regard to paragraph (b) of subsection (2) of this section. For purposes of this subsection, a "large corporation" is any corporation that had federal taxable income, determined without regard to any amount carried to any of the three taxable years under section 172 or 1212(a) of the Internal Revenue Code, of \$1 million or more in any of the three taxable years immediately preceding the taxable year involved.

(6) The application of this section to taxable years of less than 12 months shall be in accordance with rules adopted by the department. [1973 c.292 §3; 1981 c.678 §5; 1982 s.s.1 c.16 §9; 1983 c.162 §78; 1985 c.603 §3; 1987 c.293 §61a; 1989 c.625 §63]

Note: Section 63a, chapter 625, Oregon Laws 1989, provides:

Sec. 63a. Interest accruing under ORS 314.525 (3) or 316.587 (1) shall not be imposed for any period before April 16, 1990, with respect to any underpayment of estimated tax attributable to income received during the calendar year 1988 or 1989, to the extent the taxpayer can establish that the underpayment was created or increased by any provision of this Act, including but not limited to, the adoption of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), the Family Support Act of 1988 (P.L. 100-485) and the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647). [1989 c.625 §63a]

Note: Section 18, chapter 457, Oregon Laws 1991, provides:

Sec. 18. Interest accruing under ORS 314.525 (3) or 316.587 (1) shall not be imposed for any period before April 16, 1992, with respect to any underpayment of estimated tax attributable to income received during the calendar year 1989, 1990 or 1991, to the extent the taxpayer can establish that the underpayment was created or increased by any provision of this Act, including but not limited to, the adoption of the following federal laws: Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239), P.L. 101-140 or the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508). [1991 c.457 §18]

DIVISION OF INCOME FOR TAX PURPOSES

(General Provisions)

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

(2) ORS 314.610 to 314.670 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1965 c.152 §20, 21]

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

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or

business and includes income from tangible and intangible property if the acquisition, the management, use or rental, and the disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

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

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

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

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

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

(7) "Sales" means all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645.

(8) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. [1965 c.152 §2]

314.615 When allocation of income from business activity required. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion the net income of the taxpayer as provided in ORS 314.605 to 314.675. Taxpayers engaged in activities as a financial organization or public utility shall report their income as provided in ORS 314.280 and 314.675. [1965 c.152 §3]

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

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the

privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not. [1965 c.152 §4]

(Allocation of Nonbusiness Income)

314.625 Certain nonbusiness income to be allocated. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in ORS 314.630 to 314.645. [1965 c.152 §5]

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

(2) Net rents and royalties from tangible personal property are allocable to this state (a) if and to the extent that the property is utilized in this state, or (b) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession. [1965 c.152 §6]

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

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

(3) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Gain or loss from the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than 50 percent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this state in accordance with the sales factor of the partnership for its first full tax year immediately preceding its tax year during which the partnership interest was sold. [1965 c.152 §7; 1989 c.625 §64]

314.640 Allocation to this state of interest and dividends. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state. [1965 c.152 §8]

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

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located. [1965 c.152 §9]

(Apportionment of Business Income)

314.650 Formula for apportionment of business income. (1) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(2) If the denominator of the property factor, payroll factor or sales factor, as determined under ORS 314.655 to 314.665, is

zero, then the denominator specified in subsection (1) of this section shall be reduced by the number of factors with a denominator of zero. [1965 c.152 §10; 1989 c.626 §5; 1989 c.1088 §1]

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

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

(3) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property. [1965 c.152 §§11, 12, 13]

314.660 Determination of "payroll factor." (1) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(2) Compensation is paid in this state if:

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

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

(c) Some of the service is performed in the state and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. [1965 c.152 §§14, 15]

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

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

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

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

(3) Sales, other than sales of tangible personal property, are in this state if (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance. [1965 c.152 §§16, 17, 18]

(Procedure Where Ordinary Determination Not Satisfactory)

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

(1) Separate accounting;

(2) The exclusion of any one or more of the factors;

(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. [1965 c.152 §19; 1984 s.s. c.1 §17]

(Apportionment of Net Loss)

314.675 Apportionment of net loss; net loss deduction; limitations. If the operations of a taxpayer subject to ORS 314.280 or 314.615 result in a net loss, that net loss shall be apportioned in the same manner as the net income so as fairly and accurately to reflect the net loss of the business done within this state. The net loss applicable to Oregon income pursuant to this section shall then become the net loss deduction for subsequent years which may be deducted from

apportioned net income in the same manner as set forth in the Personal Income Tax Act of 1969, and in ORS chapters 317 and 318. The limitations as to the amount deductible and the time limitations in those statutes shall apply to the apportioned net loss deduction computed pursuant to this section. [1965 c.152 §23; 1969 c.493 §89; 1983 c.162 §55]

(Apportionment of Income of Interstate Broadcasters)

314.680 Definitions for ORS 314.680 to 314.688. As used in ORS 314.680 to 314.688, unless the context requires otherwise:

(1) "Broadcasting" means the activity of transmitting any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

(2) "Gross receipts from broadcasting" means all gross receipts of an interstate broadcaster from transactions and activities in the regular course of its trade or business except receipts from sales of real or tangible personal property.

(3) "Interstate broadcaster" means a taxpayer that engages in the for-profit business of broadcasting to subscribers or to an audience located both within and without this state. The audience or subscribers ratio shall be determined by department rule. [1989 c.792 §3]

Note: Section 8, chapter 792, Oregon Laws 1989, provides:

Sec. 8. Sections 2 to 7 of this Act [314.680 to 314.690] shall first apply to tax years beginning after December 31, 1989. [1989 c.792 §8]

314.682 Method of apportionment of interstate broadcaster income. (1) Notwithstanding any provisions of ORS 314.665 and 314.670 to the contrary, ORS 314.680, 314.684 and 314.686 shall apply to the apportionment of the income of an interstate broadcaster.

(2) Except as provided in subsection (1) of this section, all other provisions of ORS 314.610 to 314.670 shall apply to the apportionment of the income of an interstate broadcaster. [1989 c.792 §2]

Note: See note under 314.680.

314.684 Determination of sales factor.

(1) The sales factor for an interstate broadcaster shall be determined as provided in this section.

(2) The denominator of the sales factor shall include the total gross receipts derived by the interstate broadcaster from transactions and activities in the regular course of its trade or business, except receipts excluded under rules of the department.

(3) The numerator of the sales factor shall include all gross receipts attributable to this state, with gross receipts from broadcasting to be included as specified in subsection (4) of this section.

(4) Gross receipts from broadcasting of an interstate broadcaster which engages in income-producing activity in this state shall be included in the numerator of the sales factor in the ratio that the interstate broadcaster's audience or subscribers located in this state bears to its total audience and subscribers located both within and without this state. [1989 c.792 §4]

Note: See note under 314.680.

314.686 Determination of net income attributable to business done in state. If an interstate broadcaster has gross receipts from broadcasting, the determination of net income taxable by this state shall be based upon the business activity within this state, and the department shall require either the segregated method of reporting or the apportionment method of reporting described in ORS 314.680 to 314.684, under the rules adopted by the department, so as fairly and accurately to reflect the net income of the interstate broadcaster's business done within this state. [1989 c.792 §5]

Note: See note under 314.680.

314.688 Rules. The department may adopt such rules as it deems necessary for the administration and enforcement of ORS 314.680 to 314.686. [1989 c.792 §6]

Note: See note under 314.680.

314.690 Scope of provisions. The provisions of ORS 314.680 to 314.688 are not intended to change the meaning of the terms "income-producing activity," "sources within this state," "business activity" taxable in this state or "doing business" in this state contained in this chapter or ORS chapter 317 or 318. [1989 c.792 §7]

Note: See note under 314.680.

(Application)

314.695 Application of ORS 314.280 and 314.605 to 314.675. The provisions of ORS 314.280 and 314.605 to 314.675 apply to the allocation and apportionment of the income of corporations and nonresident individuals, and do not apply to the income of resident individuals, resident estates, and resident trusts taxable as provided in the Personal Income Tax Act of 1969. [1967 c.60 §2; 1969 c.493 §90]

EFFECT OF MULTISTATE TAX COMPACT

314.705 Computation of tax when income reported as percentage of sales

volume. Any taxpayer electing in any year to report and pay an income tax on the basis of a percentage of sales volume, pursuant to Article III, section 2 of the Multistate Tax Compact, shall pay a tax computed at one-fourth of one percent of the dollar volume of gross sales in Oregon, except that if the taxpayer's return on sales for its business is less than five percent, it shall pay a tax computed on the basis of one-eighth of one percent of such volume. [1967 c.242 §2]

314.710 Application to allocation and apportionment of income. The provisions of Articles III and IV of the Multistate Tax Compact apply to the allocation and apportionment of the income of corporations and nonresident individuals and do not apply to income of resident individuals, resident estates and resident trusts, taxable as provided in the Personal Income Tax Act of 1969. [1967 c.242 §7; 1969 c.493 §91]

TAXATION OF PARTNERSHIPS AND S CORPORATIONS

(Partnerships)

314.712 Partnerships not subject to income tax; exception. (1) Except as provided in ORS 314.722, a partnership as such is not subject to the tax imposed by ORS chapter 316, 317 or 318. Partnership income shall be computed pursuant to section 703 of the Internal Revenue Code, with the modifications, additions and subtractions provided in this chapter and ORS chapter 316. Persons carrying on business as partners are liable for the tax imposed by ORS chapter 316, 317 or 318 on their distributive shares of partnership income only in their separate or individual capacities.

(2) If a partner engages in a transaction with a partnership other than in the partner's capacity as a member of the partnership, the transaction shall be treated in the manner described in section 707 of the Internal Revenue Code. [1989 c.625 §28 (enacted in lieu of 316.342)]

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

(2) A partner's distributive share of an item of partnership income, gain, loss or deduction (or item thereof) shall be that partner's distributive share of partnership income, gain, loss or deduction (or item thereof) for federal income tax purposes as

determined under section 704 of the Internal Revenue Code and adjusted for the modifications, additions and subtractions provided in this chapter and ORS chapters 316, 317 and 318. [1989 c.625 §30 (enacted in lieu of 316.347)]

314.716 Basis of partner's interest; gain or loss on sale; election to adjust basis. (1) The adjusted basis of a partner's interest in a partnership shall be determined pursuant to the method described in sections 704(c)(1)(B)(iii), 705 and 733 of the Internal Revenue Code, and shall be increased or decreased as provided in this chapter and ORS chapter 316, 317 or 318, whichever is applicable.

(2) Upon the sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner pursuant to section 741 of the Internal Revenue Code.

(3) If a partnership elects to adjust the basis of its assets under section 754 of the Internal Revenue Code, then upon a transfer of an interest in the partnership by sale or exchange or upon a death of a partner, that election shall also be effective for Oregon income tax purposes. [1989 c.625 §36; 1991 c.457 §19]

314.718 Treatment of contributions to partnership. (1) Amounts paid or incurred to organize a partnership may be deducted in the manner provided in section 709(b) of the Internal Revenue Code.

(2) No gain or loss shall be recognized upon a contribution of property to a partnership in exchange for an interest in a partnership, unless allowed pursuant to section 721(b) of the Internal Revenue Code.

(3) The partnership's basis in property contributed to it by a partner is the adjusted basis of the property to that partner at the time of the contribution, plus the amount (if any) of gain recognized by that partner as a result of the transfer of property to the partnership. The partnership's holding period includes the period during which the property was held by the partner.

(4) Any increase in a partner's share of partnership liabilities shall be considered as a contribution of money by the partner to the partnership, pursuant to section 752 of the Internal Revenue Code.

(5) Section 724 of the Internal Revenue Code shall be applied in determining the character of gain or loss recognized by a partnership upon the disposition of contributed unrealized receivables, inventory items and capital loss property. [1989 c.625 §37]

314.720 Treatment of distributions from partnership. (1) Gain or loss shall not be recognized by a partner upon a distribution by a partnership to that partner, except

to the extent provided in section 731 of the Internal Revenue Code.

(2) The character of gain or loss on the disposition by a distributee partner of unrealized receivables or inventory items shall be determined pursuant to section 735 of the Internal Revenue Code.

(3) The basis of property (other than money) distributed by a partnership to a partner shall be determined pursuant to sections 704(c)(1)(B)(iii) and 732 of the Internal Revenue Code, and shall be increased or decreased as provided in ORS chapter 316.

(4) If a partnership makes the election to adjust the basis of its assets under section 754 of the Internal Revenue Code, then upon a distribution of property to a partner, that section shall also be effective for Oregon income tax purposes.

(5) Payments made by a partnership in liquidation of the interest of a retiring partner or a deceased partner shall be accorded the treatment provided under section 736 of the Internal Revenue Code.

(6) Any decrease in a partner's share of partnership liabilities or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of the partner's individual liabilities, shall be considered to be a distribution of money to the partner by the partnership under section 752 of the Internal Revenue Code. [1989 c.625 §38; 1991 c.457 §20]

314.722 Publicly traded partnerships taxed as corporations. (1) As used in this section, "publicly traded partnership" means a partnership treated as a corporation for federal income tax purposes under section 7704 of the Internal Revenue Code for the tax year.

(2) Persons carrying on business as partners in a publicly traded partnership are not subject to tax under ORS chapter 316, 317 or 318 on their distributive shares of partnership income, but the publicly traded partnership is taxable as a corporation under ORS chapter 317 or 318 as provided under ORS chapter 317 or 318. [1989 c.625 §39]

314.724 Information return; penalty. (1) Every partnership having a resident partner or having any income derived from sources in this state, determined in accordance with the applicable rules as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction, and the names and addresses of the individuals (whether residents or nonresidents) who would be entitled to share in the net income, if distributed, and the amount of the distrib-

utive share of each individual, and such other pertinent information as the department may prescribe by regulations and instructions. Such return shall be filed on or before the 15th day of the fourth month following the close of each taxable year. For purposes of this section, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under ORS chapter 316.

(2) If a partnership transacting business in this state is required to make a return under subsection (1) of this section and fails to file the return or files a return which fails to show the information required under subsection (1) of this section, the department shall assess a penalty against the partnership in the amount specified in subsection (3) of this section for each month or part of a month during which the failure continues.

(3) The amount of the penalty imposed under subsection (2) of this section shall be determined by the department by rule. However, the amount of the penalty imposed for each month shall not exceed the product of \$50 multiplied by the number of persons who were partners in the partnership during any part of the taxable year, and the total amount of the penalty shall not exceed five times the monthly penalty.

(4) The penalty imposed under this section is in addition to any other penalty provided by law. Any partnership against which a penalty is assessed under this section may appeal to the director as provided in ORS 305.275. If the penalty is not paid within 10 days after the department's order becomes final, the department may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected under ORS 314.430.

(5) The department may waive all or any part of the penalty imposed under this section if the failure was due to reasonable cause. [Formerly 316.467]

314.726 Application of ORS 314.724. ORS 314.724 shall apply to both corporate and noncorporate partners. [1989 c.625 §34]

(S Corporations)

314.730 "C corporation" and "S corporation" defined for this chapter and ORS chapters 316, 317 and 318. For purposes of this chapter and ORS chapters 316, 317 and 318:

(1) "C corporation" means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(2) "S corporation" means, with respect to any taxable year, a corporation for which an election under section 1362(a) of the

Internal Revenue Code is in effect for such year. [1989 c.625 §41]

314.732 Taxation of S corporation; application of Internal Revenue Code; carryforward and carryback. (1) Except as otherwise provided in ORS 314.740, 314.742 and 317.090, an S corporation shall not be subject to the taxes imposed by ORS chapter 316, 317 or 318.

(2)(a) Subject to paragraphs (b) to (d) of this subsection, the taxable income of an S corporation shall be computed pursuant to section 1363(b) of the Internal Revenue Code, with the modifications, additions and subtractions provided in this chapter and ORS chapter 316.

(b) Except as otherwise provided under this chapter and ORS chapter 316, 317 or 318, and except as inconsistent with ORS 314.730 to 314.752, subchapter C, chapter 1, Internal Revenue Code, shall apply to an S corporation and its shareholders for Oregon tax purposes. For Oregon tax purposes, the provisions of section 1371 of the Internal Revenue Code shall apply, subject to the modifications, additions and subtractions under this chapter or ORS chapter 316, 317 or 318 and any provisions to the contrary in this chapter or ORS chapter 316, 317 or 318.

(c) Notwithstanding ORS 317.377, 317.476 or 317.478, no carryforward, arising for a taxable year for which a corporation is a C corporation, may be carried to a taxable year for which such corporation is an S corporation.

(d) Notwithstanding ORS 317.476 or other law, no carryforward, and no carryback, shall arise at the corporate level for a taxable year for which a corporation is an S corporation. [1989 c.625 §42; 1991 c.457 §21]

314.734 Taxation of shareholder's income; computation; character of income, gain, loss or deduction. (1) The shareholder's pro rata share of the income of an S corporation is subject to tax under ORS chapter 316. In determining the tax imposed under ORS chapter 316 of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's separately stated items of income, loss or deduction and nonseparately computed income or loss, as determined under or for purposes of section 1366 of the Internal Revenue Code (including but not limited to section 1366(d) and (e) of the Internal Revenue Code), with the modifications, additions and subtractions provided under this chapter and ORS chapter 316.

(2) Each item of shareholder income, gain, loss or deduction has the same character for a shareholder under this chapter and ORS chapter 316 as it has for federal income tax purposes. If an item is not characterized for federal income tax purposes, it has the same character for a shareholder as if realized directly from the source from which realized by the S corporation or incurred in the same manner as incurred by the S corporation.

(3) In any case where it is necessary to determine the gross income of a shareholder for purposes of ORS chapter 316, such gross income shall include the shareholder's pro rata share of the gross income of the S corporation.

(4) If any tax is imposed under ORS 314.740 for any taxable year on an S corporation, for purposes of subsection (1) of this section, the amount of each recognized built-in gain for such taxable year shall be reduced by its proportionate share of such tax.

(5) If any tax is imposed under ORS 314.742 on an S corporation, for purposes of subsection (1) of this section, each item of passive investment income shall be reduced by an amount which bears the same ratio to the amount of such tax as the amount of such item bears to the total passive investment income for the taxable year. [1989 c.625 §43; 1991 c.457 §22]

314.736 Treatment of distributions by S corporation. A distribution of property made by an S corporation with respect to its stock shall be treated in the manner provided under section 1368 of the Internal Revenue Code, subject to modifications, additions and subtractions under ORS chapter 316, 317 or 318. [1989 c.625 §44]

314.738 Employee fringe benefits; foreign income. (1) For purposes of employee fringe benefits, and subject to this chapter and ORS chapters 305, 316, 317 and 318 and ORS 314.712 to 314.722, 314.726 and 316.124, section 1372 of the Internal Revenue Code shall apply to an S corporation and its shareholders.

(2) For purposes of foreign income, and subject to this chapter and ORS chapters 305, 316, 317 and 318 and ORS 314.712 to 314.722, 314.726 and 316.124, section 1373 of the Internal Revenue Code shall apply to an S corporation and its shareholders. [1989 c.625 §45]

314.740 Tax on built-in gain. (1) If, for any taxable year beginning in the recognition period, an S corporation has a net recognized built-in gain, there is hereby imposed a tax on the income of such corporation for such taxable year.

(2) The amount of the tax imposed under subsection (1) of this section shall be computed by applying the rate of tax specified in ORS 317.061 to the net recognized built-in gain of the S corporation for the taxable year.

(3) The tax imposed under subsection (1) shall be considered a tax imposed under ORS chapter 317 or 318, whichever is applicable, and shall be returned, estimated, assessed and collected and otherwise treated in the same manner as the tax imposed under ORS chapter 317 or 318. The allocation and apportionment rules of this chapter and ORS chapter 305 apply to the income subject to the tax imposed under this section. The proceeds from the tax shall be distributed in the same manner as the tax imposed under ORS chapter 317 or 318, whichever is applicable.

(4) ORS 317.377, 317.476 and 317.478 shall not apply to the tax imposed under this section. Notwithstanding ORS 314.732 (2)(c), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of the tax imposed under this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income.

(5)(a) Except for estimated and other advance tax payments and except as provided under paragraph (b) of this subsection, no credits shall be allowed against the tax imposed under this section.

(b) Notwithstanding ORS 314.732 (2)(c), any credit carryforward under ORS chapter 317 or 318 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed under this section in the same manner as if it were the tax imposed under ORS chapter 317 or 318.

(6) To the extent applicable, the definitions, special rules and interpretations and other provisions of section 1374 of the Internal Revenue Code shall apply to the tax imposed under this section. [1989 c.625 §46]

314.742 Tax on excess net passive income. (1) If for the taxable year an S corporation has the following, then there is hereby imposed a tax on the income of such corporation for the taxable year:

(a) Subchapter C, chapter A, Internal Revenue Code, earnings and profits at the close of the taxable year; and

(b) Gross receipts more than 25 percent of which are passive investment income.

(2) The tax imposed under subsection (1) of this section shall be computed by multiplying the excess net passive income by the rate specified under ORS 317.061.

(3) The tax imposed under subsection (1) shall be considered a tax imposed under ORS chapter 317 or 318, whichever is applicable, and shall be returned, estimated, assessed and collected and otherwise treated in the same manner as the tax imposed under ORS chapter 317 or 318. The allocation and apportionment of income rules of this chapter and ORS chapter 305 apply to the income subject to the tax imposed under this section. The proceeds from the tax shall be distributed in the same manner as the tax imposed under ORS chapter 317 or 318, whichever is applicable.

(4) Notwithstanding subsection (6) of this section, the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in ORS 314.738.

(5) Except for estimated and other advance tax payments, no credits shall be allowed against the tax imposed under this section.

(6) To the extent applicable, the definitions, special rules and interpretations and other provisions of section 1375 of the Internal Revenue Code shall apply to the tax imposed under this section.

(7) Section 1375(d) shall apply to the tax imposed under this section, except that "department" shall be substituted for the word "secretary" wherever that word appears. [1989 c.625 §47]

314.744 S corporation or shareholder elections. (1) Subject to subsection (2) of this section, if the Internal Revenue Code requires or permits an election or revocation to be made by an S corporation, then that election or revocation shall apply for Oregon tax purposes. If the Internal Revenue Code requires or permits an election or revocation to be made by a shareholder or shareholders of an S corporation, then that election or revocation shall apply for Oregon tax purposes.

(2) The department may adopt rules that contravene subsection (1) of this section if the election or revocation does not carry out the purposes of this chapter and ORS chapter 305, 316, 317 or 318. [1989 c.625 §48]

314.746 Application of sections 1377 and 1379 of Internal Revenue Code. The definitions and special and transitional rules

of sections 1377 and 1379 of the Internal Revenue Code apply for Oregon tax purposes. [1989 c.625 §49]

314.748 Tax treatment of item determined at corporate level. (1) Except as otherwise provided in rules adopted by the department, the tax treatment of any S corporation item shall be determined at the corporate level.

(2) A shareholder of an S corporation shall, on the shareholder's return, treat an S corporation item in a manner that is consistent with the treatment of the item on the S corporation return, unless the shareholder notifies the department, under rules adopted by the department, of the inconsistency.

(3) In the manner and at the time adopted by rule, each shareholder in a corporation shall be given notice of, and the right to participate in, any administrative or judicial proceeding for the determination at the corporate level of any S corporation item. A shareholder of an S corporation may represent the corporation in any proceeding before the department as described under ORS 305.230. [1989 c.625 §50]

314.750 Recapture of LIFO benefits. (1) Any increase in tax by reason of section 1363(d) of the Internal Revenue Code (recapture of LIFO benefits) shall be payable in four equal installments.

(2) The first installment shall be paid on or before the due date (determined without regard to extensions) for the return of the tax for the last taxable year for which the corporation was a C corporation and the three succeeding installments shall be paid on or before the due date (as so determined) for the corporation's return for the three succeeding taxable years.

(3) Notwithstanding ORS 314.400 (4), for purposes of ORS 314.400 (4), interest on each installment that is not paid on or before the date prescribed under subsection (2) of this section for payment of that installment shall accrue only from the due date for that installment.

(4) This section applies in the case of S corporation elections made after December 17, 1987. No refund or interest shall accrue to any taxpayer on account of the retroactive application under this subsection. [1989 c.625 §58]

314.752 Business tax credits; allowance to shareholders. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are

allowable to the shareholders of the S corporation.

(2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on income of the shareholder of an S corporation, there shall be taken into account the shareholder's pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), recapture or recovery shall be passed through to shareholders in pro rata shares as determined in the manner prescribed under section 1377(a) of the Internal Revenue Code.

(3) The character of any item included in a shareholder's pro rata share under subsection (2) of this section shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(4) If the shareholder is a nonresident and there is a requirement applicable for the business tax credit that in the case of a nonresident that the credit be allowed in the proportion provided in ORS 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, "business tax credit" means a tax credit granted to personal income taxpayers to encourage certain investment, to create employment, economic opportunity or incentive or for charitable, educational, scientific, literary or public purposes that is listed under this subsection as a business tax credit or is designated as a business tax credit by law or by the department by rule and includes but is not limited to the following credits: ORS 316.084 (fish habitat improvement), 316.091 (crop gleaning), 316.094 (forestation and reforestation), 316.096 (health insurance pool), 316.097 (pollution control), 316.103 (plastic recycling), 316.104 (Oregon Capital Corporation), 316.098 (fish gleaning), 316.154 (farm-worker housing), 316.132 (dependent care facilities), 316.134 (dependent care assistance), 316.139 (fish screening, by-pass devices, fishways), 316.140 and 469.207 (renewable energy resource facilities). [1991 c.877 §36]

(Nonresident Return by Shareholder or Partner)

314.760 Shareholder or partner may join in filing nonresident return. A nonresident shareholder of an S corporation or a nonresident partner may join in the filing of an Oregon multiple nonresident S corporation or partnership return, subject to rules adopted by the department. If a multiple

nonresident return is filed, the S corporation or partnership as agent for the electing shareholders or partners shall make the payments of tax, including estimated tax, additions to tax, interest and penalties otherwise required to be paid by the electing shareholders or partners. [1989 c.625 §54]

ADMINISTRATIVE PROVISIONS

314.805 Department to administer and enforce laws; enforcement districts; branch offices. The department shall administer and enforce the tax imposed by any law imposing tax upon or measured by net income. For this purpose the department may divide the state into districts. In each district a branch office may be established. The department may, from time to time, change the limits of such districts. [1957 c.632 §27 (enacted in lieu of 316.705 and 317.505)]

314.810 Administering oaths and taking acknowledgments. All officers empowered by law to administer oaths, the department, agents, auditors and such other employees as the department may designate, shall have the power to administer an oath to or take the acknowledgment of any person in respect of any return or report required by statute or the rules and regulations of the department. [1957 c.632 §29 (enacted in lieu of 316.715)]

314.815 Rules and regulations. The department may, from time to time, make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to enforce income tax laws. [1957 c.632 §30 (enacted in lieu of 316.720 and 317.505)]

314.820 [1957 c.632 §31 (enacted in lieu of 316.725 and 317.520); 1969 c.97 §2; repealed by 1973 c.402 §30]

314.825 [1957 c.632 §32 (enacted in lieu of 316.730 and 317.525); repealed by 1973 c.402 §30]

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

314.835 Divulging particulars of returns and reports prohibited. Except as otherwise specifically provided by law, it shall be unlawful for the department or any officer or employee of the department to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required in the administration of ORS 310.630 to 310.690, required in the administration of any local tax pursuant to ORS 305.620, or required under a law imposing a tax upon or measured by net income. It shall be unlawful for any person or entity to whom information is disclosed or given by the department pursuant to ORS 314.840 (2) or any other provision of state law to divulge or use such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judi-

cial order shall be issued compelling the department or any of its officers or employees, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues. As used in this section, "officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person. [1957 c.632 §34 (enacted in lieu of 316.740 and 317.535); 1971 c.682 §1; 1975 c.789 §13; 1979 c.690 §1]

314.840 Persons to whom information may be furnished. (1) The department may:

(a) Furnish any taxpayer or authorized representative, upon request of the taxpayer or representative, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer's name, address and social security number or employer identification number to the extent necessary in connection with the processing and mailing of forms for any report or return required in the administration of ORS 310.630 to 310.690, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor:

(A) With respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency

notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(iv) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(B) For use by an officer or employee of the Executive Department duly authorized or employed to prepare revenue estimates, or a person contracting with the Executive Department to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.202 to 291.226, or required for submission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342 to 291.348 and 291.445. The information disclosed or to which access is given under this subparagraph shall be confined to the identity of a corporate taxpayer, the amount of the corporate tax liability of the corporate taxpayer and the amount of the payments made by the corporation to the Department of Revenue under the corporate excise and income tax laws of this state. Any officer, employee or person furnished or granted access to information under this subparagraph shall not remove the information from the premises of the Department of Revenue.

(b) The Commissioner of Internal Revenue or authorized representative, for tax purposes only.

(c) The proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if such state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(d) The Multistate Tax Commission or its authorized representatives, for tax purposes only. However, the Multistate Tax Commission may make such information available to the Commissioner of Internal Revenue or the proper officer of any state or the District of Columbia, or their authorized representatives, for tax purposes only, if the state or district has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality.

(e) The Attorney General, assistants and employees in the Department of Justice, or

other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

(f) Employee of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department's administration of the tax laws.

(g) Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the department deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the department and such legal entities, in the department's administration of the tax laws.

(h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

(i) The Department of Insurance and Finance, to the extent the department requires such information to determine whether it is appropriate to adjust those workers' compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

(j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under section 2, Article VI of the Oregon Constitution; the Adult and Family Services Division of the Department of Human Resources pursuant to ORS 314.860 and 418.135; the Support Enforcement Division of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Service Examiners, pursuant to ORS 673.710; and the State Board of Accountancy, pursuant to ORS 673.415.

(k) The Director of the Department of Insurance and Finance to determine that a person complies with ORS chapter 656 and the Assistant Director for Employment of the

Department of Human Resources to determine that a person complies with ORS chapter 657, the following employer information:

- (A) Identification numbers.
- (B) Names and addresses.
- (C) Inception date as employer.
- (D) Nature of business.
- (E) Entity changes.
- (F) Date of last payroll.

(L) The Assistant Director for Mental Health and Developmental Disability Services to determine that a person has the ability to pay for care that includes services provided by the state institutions as described in ORS 179.321 or the Mental Health and Developmental Disability Services Division or to collect any unpaid cost of care as provided by ORS chapter 179.

(m) Employees of the Employment Division of the Department of Human Resources to the extent the department deems disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657.

(n) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

(o) A designated employee of the Department of Environmental Quality. The information shall consist of a copy of the Oregon tire fee quarterly return filed or obtained pursuant to ORS 459.504 to 459.619 (1989 Edition), to the extent necessary for the Department of Environmental Quality to determine qualification as a tire retailer as defined in ORS 459.705. Such information shall not include audit materials.

(3) Each officer or employee of the department and each person described or referred to in paragraph (a), (e) to (k) or (n) of subsection (2) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that

the person is aware of the penalties for the violation of ORS 314.835.

(4) The Department of Revenue may recover the costs of furnishing the information described in paragraphs (k), (L) and (n) of subsection (2) of this section from the respective agencies. [1957 c.632 §35 (enacted in lieu of 316.745 and 317.540); 1959 c.114 §1; 1971 c.682 §2; 1973 c.106 §1; 1975 c.368 §9; 1975 c.789 §19; 1977 c.430 §3; 1979 c.690 §2; 1981 c.827 §1; 1985 c.605 §20; 1987 c.94 §102; 1987 c.647 §9; 1987 c.884 §1; 1989 c.348 §15; 1989 c.901 §6; 1991 c.362 §3; 1991 c.374 §1; 1991 c.882 §14]

Note: The amendment to 314.840 by section 6, chapter 901, Oregon Laws 1989, first applies to quarterly reports required to be filed on or after April 30, 1990. See section 9, chapter 901, Oregon Laws 1989.

314.845 Certificate of department as evidence. The certificate of the department to the effect that a tax has not been paid, that a return has not been filed or that information has not been supplied, as required by or under any law imposing a tax upon or measured by net income, shall be prima facie evidence that the tax has not been paid, that the return has not been filed or that the information has not been supplied. [1957 c.632 §36 (enacted in lieu of 316.750 and 317.545)]

314.850 Statistics. The department shall prepare and publish annually statistics, reasonably available, with respect to the operation of income tax laws, including amounts collected, classification of taxpayers and other facts considered pertinent and valuable. [1957 c.632 §37 (enacted in lieu of 316.755)]

314.855 Rewards for information. The department may pay rewards to persons, other than officers or employees of the department, furnishing information that leads to the recovery of tax from other persons guilty of violating the provisions of income tax laws. Such rewards shall not exceed 10 percent of the net amount of tax, penalty and interest recovered by suit or otherwise and shall be paid only in cases where such evasions of tax would not be disclosed by the audit of returns or from other information available to the department. [1957 c.632 §38 (enacted in lieu of 316.760 and 317.550)]

314.860 Disclosure of homeowner or renter refund information to assist in recovery of public assistance overpayments; requests for information public record. (1) The Department of Revenue may disclose certain information relative to applicants for homeowner or renter refund, or elderly rental assistance, to the Assistant Director for Adult and Family Services or to employees of the Adult and Family Services Division. The information disclosed by the Department of Revenue shall be confined to the names, addresses and social security numbers of applicants for refund under ORS 310.630 to 310.690 for the current and preceding calendar year. The information re-

requested shall be confined to those names, addresses and social security numbers which will assist in the collection of debts due and owing to the State of Oregon arising from client-caused overpayments of public assistance and shall be used solely for such purpose and shall not be used or disclosed for any other purpose. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2).

(2) Disclosure under this section shall be given only upon written request of the Assistant Director for Adult and Family Services. The form for the request shall be prescribed by the assistant director and approved by the Director of the Department of Revenue.

(3) The Department of Revenue shall keep on file the requests for disclosure made pursuant to this section. The requests constitute a public record within the meaning of ORS 192.410 to 192.505. [1979 c.690 §18]

Note: 314.860 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.865 Use of certain information for private benefit prohibited. A person granted access to information described in ORS 314.835 under ORS 314.840 (2)(a)(B) for the purpose of preparing revenue estimates shall not knowingly or intentionally use the information disclosed or the information to which access is given for any purpose if the effect of the use is private pecuniary benefit for the person or for a member of the person's household. [1981 c.827 §2]

Note: 314.865 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 314 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

314.870 Time for performing certain acts postponed by reason of service in a combat zone. (1) Section 7508 of the Internal Revenue Code, insofar as it describes periods of time to be disregarded with respect to the performance of acts relative to federal income tax liability of an individual (or individual and spouse) who performs service in an area designated as a combat zone, or is hospitalized as a result of injury received while serving in such area, shall apply as appropriate to the same or similar acts for purposes of the tax imposed by this chapter and ORS chapter 316.

(2) If an individual is entitled to the benefits of subsection (1) of this section with

respect to any return and if the return is timely filed (determined after the application of subsection (1) of this section), then notwithstanding ORS 314.415 or other law, any overpayment of tax with respect to such return shall bear interest from the due date of the return (determined without the application of subsection (1) of this section).

(3) If the federal income tax liability of any taxpayer is forgiven under section 692 of the Internal Revenue Code for any tax period, then the Oregon income tax liability for the same tax period shall be forgiven in the same manner.

(4) As used in this section, "Internal Revenue Code" means the Internal Revenue Code as described under ORS 314.011 (2), and as thereafter amended by the Act known as Time Extension For Individuals in Desert Shield Operations (P.L. 102-2). [1991 c.177 §4]

Note: Section 5, chapter 177, Oregon Laws 1991, provides:

Sec. 5. (1) Section 4 (1) of this Act [314.870 (1)] applies to acts that have not been performed as of the effective date of this Act [September 29, 1991].

(2) Section 4 (2) of this Act applies to returns for tax years beginning on or after January 1, 1990. If any overpayment of tax with respect to which section 4 (2) of this Act applies has been refunded prior to the effective date of this Act, the amount of the interest to which the taxpayer becomes entitled due to the retroactive application of subsection (2) of this section shall be considered an overpayment and the taxpayer or representative may apply for a refund of the interest within the time and in the manner that other refunds of overpayments of 1990 tax and interest are applied for.

(3) Section 4 (3) of this Act [314.870 (3)] applies to individuals who die on or after August 2, 1990, while in active service as a member of the Armed Forces of the United States in a combat zone or as a result of wounds, disease or injury incurred while so serving. If, on or after August 2, 1990, and prior to the effective date of this Act, any tax, interest or penalty that would have been forgiven pursuant to section 4 (3) of this Act or would not have accrued or been assessed had the subsection been in effect, the tax, interest or penalty is abated, or if paid, shall be refunded in the manner provided by law for income tax, interest or penalty refunds. [1991 c.177 §5]

PENALTIES

314.990 [Repealed by 1953 c.310 §3]

314.991 Penalties. (1) A person or an officer or employee of a corporation or a member or employee of a partnership who violates ORS 314.075 is liable to a penalty of not more than \$1,000, to be recovered by the Attorney General, in the name of the state, by action in any court of competent jurisdiction, and is also guilty of a Class C felony. The penalties provided in this subsection shall be additional to all other penalties in this chapter.

(2) Violation of ORS 314.835 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a

period of five years thereafter. [1957 c.632 §39 (enacted in lieu of 316.990 and 317.990); 1971 c.682 §3; 1973 c.402 §26; 1981 c.724 §1]
