

# Chapter 316

1991 EDITION

## Personal Income Tax

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**GENERAL PROVISIONS**

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

**316.003 Goals.** (1) The goals of the Legislative Assembly are to achieve for Oregon's citizens a tax system which recognizes:

(a) Fairness and equity as its basic values; and

(b) That the total tax system should use seven guiding principles as measures by which to evaluate tax proposals.

(2) Those guiding principles are:

(a) Ability to pay;

(b) Fairness;

(c) Efficiency;

(d) Even distribution;

(e) The tax system should be equitable where the minimum aspects of a fair system are:

(A) That it shields genuine subsistence income from taxation;

(B) That it is not regressive; and

(C) That it imposes approximately the same tax burden on all households earning the same income;

(f) Adequacy; and

(g) Flexibility.

(3) To meet those goals of Oregon's tax system, any tax must be considered in conjunction with the effects of all other taxes on Oregonians. [1991 c.457 §1a]

**Note:** 316.003 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**316.005** [1953 c.304 §1; repealed by 1969 c.493 §99]

**316.007 Policy.** It is the intent of the Legislative Assembly, by the adoption of this chapter, insofar as possible, to make the Oregon personal income tax law identical in effect to the provisions of the federal Internal Revenue Code relating to the measurement of taxable income of individuals, estates and trusts, modified as necessary by the state's jurisdiction to tax and the revenue needs of the state; to achieve this result by the application of the various provisions of the federal Internal Revenue Code relating to the definition of income, exceptions and exclusions therefrom, deductions (business and personal), accounting methods, taxation of trusts, estates and partnerships, basis, depreciation and other pertinent provisions relating to gross income as defined therein, modified as provided in this chapter, result-

ing in a final amount called "taxable income"; and to impose a tax on residents of this state measured by taxable income wherever derived and to impose a tax on the income of nonresidents that is ascribable to sources within this state. [1969 c.493 §2; 1971 s.s. c.4 §1; 1987 c.293 §1; 1989 c.625 §1]

**316.010** [1953 c.304 §2; 1953 c.552 §1; repealed by 1969 c.493 §99]

**316.012 Terms have same meaning as in federal laws.** Any term used in this chapter has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined in this chapter. Any reference in this chapter to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended on or before December 31, 1990, even where the amendments take effect or become operative after that date, except where the Legislative Assembly has specifically provided otherwise. [1969 c.493 §3; 1971 s.s. c.4 §2; 1975 c.672 §3; 1983 c.162 §59; 1985 c.802 §1; 1987 c.293 §2; 1989 c.625 §2; 1991 c.457 §1]

**316.013 Determination of federal adjusted gross income.** Unless the context requires otherwise and notwithstanding ORS 316.012, whenever, in the calculation of Oregon taxable income, reference to the taxpayer's federal adjusted gross income is required to be made, the taxpayer's federal adjusted gross income shall be as determined under the provisions of the Internal Revenue Code as they may be in effect for the tax year of the taxpayer without any of the additions, subtractions or other modifications or adjustments required under this chapter. [1985 c.802 §3a]

**316.014 Determination of net operating loss, carryback and carryforward.** (1) Notwithstanding ORS 316.012, in the computation of state taxable income the net operating loss, net operating loss carryback and net operating loss carryforward shall be the same as that contained in the Internal Revenue Code as it exists at the close of the tax year for which the return is filed and shall not be adjusted for any changes or modifications contained in this chapter or by the case law of this state.

(2) In the case of a nonresident, the net operating loss deduction, net operating loss carryback and net operating loss carryforward shall be that described in subsection (1) of this section which is attributable to Oregon sources.

(3) If any provision in ORS 316.047 or 316.127 appears to require an adjustment to a net operating loss, net operating loss

carryback or net operating loss carryforward contrary to the provisions of this section, that adjustment shall not be made. [1985 c.802 §18]

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

**316.016** [1973 c.119 §2; repealed by 1975 c.672 §8]

**316.017** [1969 c.493 §3a; repealed by 1969 c.493 §3b]

**316.018 Application of Payment-in-kind Tax Treatment Act of 1983.** The Payment-in-kind Tax Treatment Act of 1983 (P.L. 98-4, as amended by section 1061 of P.L. 98-369) shall apply for purposes of determining Oregon taxable income under this chapter, notwithstanding that the Act is not part of the Internal Revenue Code. [1985 c.802 §42]

**316.019 Application of certain substantiation requirements of Internal Revenue Code; luxury automobiles and other mixed-use property.** (1) Notwithstanding ORS 316.012 and 316.032, Oregon taxable income shall be determined using section 274 (d) of the Internal Revenue Code, and the regulations adopted thereunder, as that section and its regulations are in effect for the tax year of the taxpayer for federal income tax purposes.

(2) Notwithstanding ORS 316.012 and 316.032, section 280F of the Internal Revenue Code, and the regulations adopted thereunder, as that section and its regulations are in effect and applicable for the tax year of the taxpayer for federal income tax purposes, shall apply in determining Oregon taxable income. This subsection shall apply to property placed in service on or after January 1, 1985, in tax years beginning on or after January 1, 1985. [1985 c.802 §46]

**316.020** [1953 c.304 §4; repealed by 1969 c.493 §99]

**316.021 Application of Deficit Reduction Act of 1984.** (1)(a) Notwithstanding ORS 316.012 (1983 Replacement Part), and subject to all other provisions of this chapter in effect and applicable to transactions occurring on or after January 1, 1984, the Deficit Reduction Act of 1984 (P.L. 98-369) insofar as it applies to transactions occurring on or after January 1, 1984, shall apply to the same transactions for Oregon tax purposes.

(b) Notwithstanding ORS 316.012 (1985 Replacement Part), and subject to all other provisions of this chapter in effect and applicable to transactions occurring on or after January 1, 1985, the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) insofar as it applies to transactions occurring on or after January 1, 1985, shall apply to the same transactions for Oregon tax purposes. The amendments by

the Act described as the Simplification of Imputed Interest Rules of 1985 (P.L. 99-121) to section 168 of the Internal Revenue Code apply to property placed in service after May 8, 1985, but do not apply to property to which section 105(b)(2) and (3) of the Act (P.L. 99-121) apply.

(2)(a) If a deficiency is assessed against any taxpayer for a tax year for which subsection (1) of this section applies and the deficiency, or any portion thereof, is attributable to any retroactive treatment for Oregon tax purposes given P.L. 98-369 or 99-121 under subsection (1) of this section, then any interest or penalty assessed under ORS chapter 305, 314 or this chapter with respect to the deficiency or portion shall be canceled.

(b) If a refund is due any taxpayer for a tax year for which subsection (1) of this section applies and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment given P.L. 98-369 or 99-121 for Oregon tax purposes under subsection (1) of this section, then notwithstanding ORS 314.415 or other law, the refund shall be paid without interest.

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

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

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

(c) For purposes of subparagraph (A) of paragraph (a) of this subsection, if a taxpayer is not required to file an Oregon return for a tax year beginning in 1985, the taxpayer shall reflect the change in an amended return for the tax year to which the change relates.

(d)(A) If a taxpayer fails to make an election under subparagraph (A) of paragraph

(a) of this subsection, the department shall make any changes under subparagraph (A) of paragraph (a) of this subsection on the return to which the change or changes relate within the period as specified for assessing a deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1985 return is filed, whichever period expires later.

(B) If a taxpayer fails to file an amended return under subparagraph (B) of paragraph (a) of this subsection, the department shall make any changes under subparagraph (B) of paragraph (a) of this subsection on the return to which the change or changes relate within the period as specified for assessing a deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a 1987 return is filed, whichever period expires later. [1985 c.802 §58; 1987 c.293 §3]

**316.022 General definitions.** As used in this chapter, unless the context requires otherwise:

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

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

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

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

(5) "Part-year resident" means an individual taxpayer who changes status during a tax year from resident to nonresident or from nonresident to resident.

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

(7) "Taxpayer" means any natural person, estate, trust, or beneficiary whose income is in whole or in part subject to the taxes imposed by this chapter, or any employer required by this chapter to withhold personal income taxes from the compensation of employees for remittance to the state. [1969 c.493 §§4, 5, 6, 7, 9 and 1969 c.520 §42b; 1985 c.141 §2; 1987 c.293 §4]

**316.023 Application of federal Tax Reform Act of 1986.** (1) For purposes of subsections (2) to (15) of this section, "TRA" means the federal Tax Reform Act of 1986 (P.L. 99-514).

(2) Unless the context requires otherwise, the amendments, repeals and new matter contained in chapter 293, Oregon Laws 1987, apply generally to tax years beginning on or after January 1, 1987, or to transactions occurring on or after January 1, 1987, in tax

years beginning on or after January 1, 1987. However, certain changes made by the federal Tax Reform Act of 1986 (P.L. 99-514) and adopted by the amendments to ORS 316.007, 316.012, 317.010, 317.013 and 317.018 by sections 1, 2 and 31 to 33, chapter 293, Oregon Laws 1987, apply for federal tax purposes as follows:

(a) To tax years beginning prior to January 1, 1987;

(b) To transactions occurring before, on or after December 31, 1986, in tax years ending after that date; or

(c) To transactions occurring prior to January 1, 1987, but with tax consequences for federal purposes only for tax years beginning after December 31, 1986.

(3) The changes described in paragraph (a) of subsection (2) of this section, if otherwise applicable for Oregon tax purposes, shall apply to and are specifically adopted for tax years beginning prior to January 1, 1987.

(4) The changes described in paragraphs (b) and (c) of subsection (2) of this section if otherwise applicable for Oregon tax purposes, shall apply to and are specifically adopted for transactions occurring before, on or after December 31, 1986, in tax years ending after December 31, 1986, or beginning after December 31, 1986, whichever is applicable.

(5) The changes described in subsections (3) and (4) of this section are exemplified by, but are specifically not limited to the following:

(a) The amendments made by section 122 of the TRA (relating to charitable and employee achievement awards) which apply to prizes and awards granted after December 31, 1986.

(b) The amendments by section 123 of the TRA (relating to scholarships and fellowships) which apply to tax years beginning after December 31, 1986, but only in the case of scholarships and fellowships granted after August 16, 1986.

(c) The amendments to the Internal Revenue Code relating to depreciation and the expensing of certain depreciable business assets by sections 201 and 202 of the TRA which apply generally for property placed in service on or after January 1, 1987, in tax years ending on or after that date. However, if an election is made under section 203(a)(1)(B) of the TRA, that election shall be considered to be made for Oregon tax purposes. In addition, the transitional rules contained in sections 203 and 204 of the TRA shall apply for Oregon purposes to the extent they can be made applicable, in the same manner as for federal tax purposes.

(d) Section 611 of the TRA (reducing the dividends received deduction for corporations) which applies to dividends received or accrued after December 31, 1986, in tax years ending after that date. In conjunction with this paragraph, the amendments to ORS 317.267 by chapter 293, Oregon Laws 1987, apply to dividends received or accrued after December 31, 1986, in tax years ending after that date.

(e) Section 1103 of the TRA (relating to the deduction for a spousal IRA), which applies to tax years beginning before, on or after December 31, 1985.

(f) Section 1708(a) of the TRA (relating to Vietnam MIA's) which applies to tax years beginning after December 31, 1982.

(6) If the TRA allows or requires an adjustment to the federal tax return filed for a tax year beginning prior to January 1, 1987, and such an adjustment is made, the adjustment (if adopted for Oregon tax purposes) shall also be made to the corresponding Oregon return notwithstanding any law or rule to the contrary, in the manner provided under ORS 314.135.

(7) If certain transactions are grandfathered by the TRA or the changes in the federal law made by the TRA are otherwise made inapplicable to those transactions, the same treatment shall be given those transactions for Oregon tax purposes unless otherwise provided under this chapter and ORS chapter 317, 318 or other law governing the determination of Oregon personal income and Oregon corporate excise and income taxes.

(8) Subsections (2) to (6) of this section do not apply to the amendments to ORS 316.021 and 317.021 by chapter 293, Oregon Laws 1987.

(9) Subsections (2) to (6) of this section do not apply to the amendments to ORS 118.020, 119.035, 267.380, 307.380 and 310.630 made by sections 65 to 69, chapter 293, Oregon Laws 1987.

(10) The amendments to ORS 310.630 by section 66, chapter 293, Oregon Laws 1987, apply to property taxes billed or rent constituting property taxes paid in calendar years beginning on or after January 1, 1987.

(11) Subsections (2) to (6) of this section do not apply to the amendments creating a new paragraph (c) of subsection (3) of ORS 316.680. The amendments to ORS 316.680 by section 23, chapter 293, Oregon Laws 1987, creating a new paragraph (c) of subsection (3) of ORS 316.680 apply to tax years beginning on or after January 1, 1986.

(12) ORS 316.588 and the amendments to ORS 314.525, 316.579 and 316.587 by sections

22, 22a and 61a, chapter 293, Oregon Laws 1987, first apply to estimated tax payments due for tax years beginning on or after January 1, 1988.

(13) ORS 316.683 first applies to distributions made by regulated investment companies or fiduciaries, including banks, savings associations or credit unions, to the taxpayer for taxable years of the taxpayer beginning on or after January 1, 1987.

(14) Subsections (2) to (6) of this section do not apply to the amendments to ORS 314.385 and 314.395 by sections 59a and 59b, chapter 293, Oregon Laws 1987. The amendments to ORS 314.385 and 314.395 by sections 59a and 59b, chapter 293, Oregon Laws 1987, apply to tax years beginning on or after January 1, 1988.

(15) The amendments to ORS 317.476 by section 45d, chapter 293, Oregon Laws 1987, first apply to losses occurring in tax years beginning on or after January 1, 1987. [1987 c.293 §§71, 72, 73]

Note: 316.023 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**316.024 Application of federal law to determination of taxable income.** Section 243 of the Tax Reform Act of 1986 (P.L. 99-514) shall not apply for purposes of determining taxable income under this chapter. [1987 c.293 §12a]

**316.025** [1953 c.304 §5; repealed by 1957 c.632 §1 (314.075 and 314.080 enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

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

(a) An individual who is domiciled in this state unless the individual:

(A) Maintains no permanent place of abode in this state;

(B) Does maintain a permanent place of abode elsewhere; and

(C) Spends in the aggregate not more than 30 days in the taxable year in this state; or

(b) An individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 200 days of the taxable year in this state unless the individual proves that the individual is in the state only for a temporary or transitory purpose.

(2) For purposes of paragraph (b) of subsection (1) of this section, a fraction of a calendar day shall be counted as a whole day. [1969 c.493 §8; 1987 c.158 §49]

**316.030** [1953 c.304 §6; repealed by 1957 c.632 §1 (314.075 and 314.080 enacted in lieu of 316.025, 316.030, 317.015 and 317.020)]

**316.032 Department to administer law; policy as to federal conflicts and technical corrections.** (1) The department shall administer and enforce this chapter.

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

(3) When portions of the Internal Revenue Code incorporated by reference as provided in ORS 316.007 or 316.012 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.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in ORS 316.007 or 316.012 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 ORS 316.007 or 316.012 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. [1969 c.493 §10; 1985 c.802 §1a; 1987 c.293 §5]

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

**316.037 Imposition and rate of tax.**(1)(a) A tax is imposed for each taxable year on the entire taxable income of every resident of this state. The amount of the tax shall be determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$2,000.....	5% of taxable income
Over \$2,000 but not over \$5,000.....	\$100 plus 7% of the excess over \$2,000
Over \$5,000.....	\$310 plus 9% of the excess over \$5,000

(b) For tax years beginning in each calendar year, the department shall adopt a table which shall apply in lieu of the table contained in paragraph (a) of this subsection, as follows:

(A) The minimum and maximum dollar amounts for each rate bracket for which a tax is imposed shall be increased by the cost-of-living adjustment for the calendar year.

(B) The rate applicable to any rate bracket as adjusted under subparagraph (A) of this paragraph shall not be changed.

(C) The amounts setting forth the tax, to the extent necessary to reflect the adjustments in the rate brackets, shall be adjusted.

(c) For purposes of paragraph (b) of this subsection, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the U.S. City Average Consumer Price Index for the average of the monthly indexes for the second quarter of the calendar year exceeds the average of the monthly indexes of the second quarter of the calendar year 1992.

(d) As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(e) If any increase determined under paragraph (b) of this subsection is not a multiple of \$50, the increase shall be rounded to the next lowest multiple of \$50.

(2) A tax is imposed for each taxable year upon the entire taxable income of every part-year resident of this state. The amount of the tax shall be computed under subsection (1) of this section as if the part-year resident were a full-year resident and shall be multiplied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources within this state.

(3) A tax is imposed for each taxable year on the taxable income of every full-year nonresident that is derived from sources within this state. The amount of the tax shall

be determined in accordance with the table set forth in subsection (1) of this section. [1969 c.493 §11; 1975 c.674 §1; 1977 c.872 §1; 1979 c.649 §1; 1983 c.684 §23; 1985 c.141 §1; 1987 c.293 §6; 1991 c.457 §1b]

Note: Section 25a, chapter 457, Oregon Laws 1991, provides:

Sec. 25a. The amendments to ORS 316.037 by section 1a of this Act apply to tax years beginning on and after January 1, 1993. [1991 c.457 §25a]

316.040 [1953 c.304 §7; repealed by 1969 c.493 §99]

**316.042 Amount of tax where joint return used.** In the case of a joint return of husband and wife, pursuant to ORS 316.122 or pursuant to ORS 316.367, the tax imposed by ORS 316.037 shall be twice the tax which would be imposed if the taxable income were cut in half. For purposes of this section, a return of a head of household or a surviving spouse, as defined in subsections (a) and (b) of section 2 of the Internal Revenue Code, shall be treated as a joint return of husband and wife. [1969 c.493 §12; 1975 c.674 §2; 1987 c.293 §7; 1987 c.647 §10]

**316.047 Transitional provision to prevent doubling income or deductions.** If any provision of the Internal Revenue Code or of this chapter requires that any amount be added to or deducted from federal gross income or the net income taxable under this chapter that previously had been added to or deducted from net income taxable under the Oregon law in effect prior to the taxpayer's taxable year as to which this chapter is first effective, then, in such event, appropriate adjustment shall be made to the net income for the year or years subject to this chapter so as to prohibit the double taxation or the double deduction of any such amount that previously had entered into the computation of taxable income. Differences such as the difference in basis of property used by the taxpayer for federal and Oregon income tax returns and on account of the treatment of operating losses shall be resolved by application of this principle. However, the department, in its audit of a return, shall not apply any adjustment under this section which, in its opinion, if applied would result in an increase or decrease of tax liability of less than \$25. [1969 c.493 §13; 1987 c.293 §8]

**316.048 Taxable income of resident.** The entire taxable income of a resident of this state is the federal taxable income of the resident as defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter. [Formerly 316.062]

316.049 [1977 c.755 §2; renumbered 316.777]

316.050 [1977 c.553 §2; renumbered 316.783]

316.051 [1977 c.390 §2; renumbered 316.788]

316.052 [1977 c.390 §3; 1979 c.691 §2; renumbered 316.794]

316.053 [1977 c.390 §4; renumbered 316.799]

**316.054 Social Security benefits to be subtracted from federal taxable income.**

(1) In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of any social security benefits, as defined in section 86 of the Internal Revenue Code (Title II social security or tier 1 railroad retirement benefits) included in gross income for federal income tax purposes under section 86 of the Internal Revenue Code.

(2) Notwithstanding any provision to the contrary in ORS 316.012, for purposes of subsection (1) of this section, "Internal Revenue Code" means the Internal Revenue Code as it is amended and in effect or operative for the tax year of the taxpayer. [1985 c.154 §2]

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

**316.056 Interest or dividends on municipal obligations subtracted from federal taxable income.** In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the interest or dividends on obligations of counties, cities, districts, ports or other public or municipal corporations or political subdivisions of this state, to the extent includable in gross income for federal income tax purposes. However, the amount subtracted under this section shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this section, and by any expenses incurred in the production of interest or dividend income described in this section. [1987 c.293 §23b; 1989 c.988 §1]

316.057 [1977 c.872 §8; renumbered 316.806]

316.058 [1977 c.872 §9; renumbered 316.812]

316.059 [1977 c.872 §10; renumbered 316.818]

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

316.061 [1979 c.887 §2; renumbered 316.824]

316.062 [1969 c.493 §14; renumbered 316.048]

316.063 [1979 c.887 §§3, 4; renumbered 316.832]

316.064 [1979 c.707 §2; renumbered 316.838]

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

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

316.067 [1969 c.493 §15; 1971 c.686 §12; 1971 c.736 §1; 1973 c.1 §1; 1973 c.88 §1; 1973 c.402 §18; 1973 c.753 §3; 1977 c.784 §1; 1979 c.414 §5; 1979 c.436 §1; 1979 c.579 §7; 1983 c.381 §1; renumbered 316.680]

316.068 [1975 c.672 §§2, 2a, 10b, 13; subsection (7) enacted as 1975 c.650 §2; 1977 c.795 §10; 1977 c.872 §12; 1978 c.9 §1; 1979 c.240 §1; 1979 c.436 §6; 1981 c.679 §1; 1981 c.896 §1; 1983 c.684 §6; renumbered 316.695]

**316.069** [1981 c.778 §34; renumbered 316.744]

**316.070** [1953 c.304 §13; repealed by 1969 c.493 §99]

**316.071** [1981 c.801 §2; renumbered 316.690]

**316.072** [1969 c.467 §6; 1979 c.376 §1; 1981 c.705 §1; renumbered 316.685]

**316.073** [1975 c.672 §12; repealed by 1991 c.457 §24]

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

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

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

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

(2) As used in this section:

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

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

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

(4) In addition to the income tax relief provided by subsections (1), (2) and (3) of this section, any provision in the laws of the United States or in the Internal Revenue Code of 1954 providing income tax relief for returning prisoners of war, persons in a missing status, their spouses, heirs, devisees or executors shall apply to the measurement of the taxable income of individuals, estates and trusts under this chapter in the same taxable year as that provided in such federal laws. [1973 c.475 §§2, 3; 1975 c.672 §4]

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

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

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

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

**316.077** [1969 c.493 §16; renumbered 316.697]

**CREDITS**

**316.078 Tax credit for dependent care expenses necessary for employment.**(1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to a percentage of employment-related expenses allowable pursuant to section 21 of the Internal Revenue Code as of December 31, 1990, notwithstanding the limitation imposed by section 26 of the Internal Revenue Code as of December 31, 1990. The percentage shall be determined on the basis of federal taxable income, as defined in section 63 of the Internal Revenue Code as of December 31, 1990, and as reflected on the federal return, whether or not a joint return, of the taxpayer for the taxable year, in accordance with the following table:

If federal taxable income is:	The percentage is:
Not over \$5,000 .....	30%
Over \$5,000 but not over \$10,000.....	15%
Over \$10,000 but not over \$15,000.....	8%
Over \$15,000 but not over \$25,000.....	6%
Over \$25,000 but not over \$35,000.....	5%

Over \$35,000 but not	
over \$45,000 .....	4%
Over \$45,000 .....	0%

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

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(4) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. [1975 c.672 §15a; 1977 c.872 §3; 1979 c.691 §4; 1983 c.684 §9; 1985 c.802 §4; 1987 c.293 §10; 1989 c.625 §7; 1989 c.1047 §11; 1991 c.457 §2]

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

**316.080** [1953 c.304 §12; renumbered 316.475]

**316.081** [1973 c.503 §15; 1975 c.705 §11; 1981 c.502 §1; renumbered 316.844]

**316.082 Credit for taxes paid another state.** (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any in-

come tax imposed on the individual, or on an Oregon S corporation of which the individual is a member (to the extent of the pro rata share of the individual of the S corporation), for the taxable year by another state of the United States or the District of Columbia on income derived from sources therein and that is also subject to tax under this chapter.

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

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

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

(5) Credit shall not be allowed under this section for income taxes paid to a state which allows a nonresident a credit against the income taxes imposed by that state for taxes paid or payable to the state of residence. It is the purpose of this subsection to avoid duplicative taxation through use of a nonresident, rather than a resident, credit for taxes paid or payable to another state.

(6) For purposes of this section, "Oregon S corporation" means a corporation that has elected S corporation status for Oregon excise and income tax purposes. [1969 c.493 §17; 1981 c.801 §3; 1987 c.647 §11; 1991 c.838 §6]

Note: See note under 316.131.

**316.083 Exception to ORS 316.844.** ORS 316.844 shall not apply in any case in which a carryover basis for certain property acquired from a decedent dying after December 31, 1976, is provided by section 1023 of the Internal Revenue Code (Tax Reform Act of 1976). [1977 c.666 §35]

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

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

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

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

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

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

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

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

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

(6) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9) The tax claim for tax credit shall be substantiated by submission, with the tax return, of the State Department of Fish and Wildlife notice of final project certification. [1981 c.720 §16; 1983 c.684 §10; 1991 c.877 §1]

**316.085 Personal exemption credit; recomputing credit annually.** (1)(a) There shall be allowed a personal exemption credit against taxes otherwise due under this chap-

ter. The credit shall equal \$85 multiplied by the number of personal exemptions allowed under section 151 of the Internal Revenue Code.

(b) In the case of an individual with respect to whom a credit under paragraph (a) of this subsection is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to such individual for such individual's taxable year is zero.

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

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(3) For each taxable year beginning on or after January 1, 1987, the Department of Revenue shall recompute the dollar amount of the personal exemption credit allowed for state personal income tax purposes. The computation shall be as follows:

(a) Divide the Portland Consumer Price Index for the average of the first six months of the current calendar year by the Portland Consumer Price Index for the average of the first six months of 1986.

(b) Recompute the dollar amount of the personal exemption credit by multiplying \$85 by the appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round off the amount obtained under this paragraph to the nearest \$1.

(4) As used in subsection (3) of this section, "Portland Consumer Price Index" means the Consumer Price Index for All Urban Consumers (Portland -- all items) as published by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of this subsection, the revision of the Consumer Price Index which is the most consistent with the Portland Consumer Price Index for 1986 shall be used.

(5) For purposes of determining if a personal exemption credit or an additional personal exemption credit is allowable under

this chapter or determining the number of personal exemption credits allowed, section 151(d)(3) of the Internal Revenue Code shall be disregarded. [1985 c.345 §2, 3; 1987 c.293 §13; 1991 c.457 §2a]

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

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

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

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

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

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

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

(c) The taxpayer must claim the credit in the tax year during which the cost of connecting to the geothermal heating system provided by a geothermal heating district was incurred.

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

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

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

(b) \$1,000.

(6) A credit under this section may be claimed by a taxpayer for connecting to a geothermal heating system in those tax years which begin on or after January 1, 1980, but prior to January 1, 1996.

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

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

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

(10) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(11) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

(13) Any amount used as the basis for a tax credit under ORS 316.116 shall not be used as a basis for a tax benefit under this section. [1979 c.733 §2; 1983 c.684 §11; 1989 c.880 §12]

**316.087 Credit for the elderly or permanently and totally disabled.** (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter in an amount equal to 40 percent of the credit for the elderly or the permanently and totally disabled allowable pursuant to section 22 of the Internal Revenue Code as of December 31, 1990, notwithstanding the limitation imposed by section 26 of the Internal Revenue Code as of December 31, 1990.

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

(3) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(4) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(5) No credit shall be allowed under this section for the taxable year if the taxpayer claims the credit allowed under ORS 316.157. [1969 c.493 §18; 1971 c.736 §2; 1977 c.872 §4; 1979 c.691 §5; 1983 c.684 §12; 1985 c.802 §5; 1987 c.293 §14; 1987 c.545 §1; 1989 c.625 §8; 1991 c.457 §3; 1991 c.823 §2]

316.088 [1977 c.811 §2; 1979 c.534 §1; 1981 c.894 §1; 1983 c.684 §13; 1989 c.648 §64; repealed by 1991 c.877 §41]

**316.089 Definitions for ORS 316.091.** As used in ORS 316.091 and section 2, chapter 521, Oregon Laws 1985:

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

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

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

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

(d) The crop would otherwise go to waste.

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

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

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

(b) In the event there is no previous cash buyer, a market price determined by the gleaning cooperative based upon the market price of the nearest regional wholesale buyer or the regional u-pick market price. [1977 c.852 §2; 1979 c.622 §2; 1985 c.521 §3]

Note: Section 6, chapter 521, Oregon Laws 1985, provides:

Sec. 6. Sections 2 and 5 and the amendments to ORS 316.089 by section 3 of this Act apply to donations of crops made in tax years beginning on or after January 1, 1986, and prior to January 1, 1993.

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

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

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

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

(a) The name and address of the grower;

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

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

(d) The wholesale market price determined by the gleaning cooperative, in the event there is no previous cash buyer of the crop; and

(e) Other information required by the Department of Revenue by rule.

(3) Tax claim for tax credit shall be substantiated by submission with the tax return, of the form described in subsection (2) of this section, a statement verified by the taxpayer that the donation was made under circum-

stances described in ORS 316.089 (1) and a copy of an invoice or other statement identifying the price received by the grower for the crops of comparable grade or quality if there is a previous cash buyer.

(4) Any tax credit otherwise allowable under this section for a tax year beginning on or after January 1, 1985, which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. [1977 c.852 §3; 1979 c.622 §3; 1985 c.630 §1]

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

**316.093** [1977 c.839 §8; 1979 c.412 §5a; repealed by 1987 c.769 §20]

**316.094 Credit for reforestation of underproductive forestlands.** (1) A credit against the taxes otherwise due under this chapter shall be allowed in an amount equal to 30 percent of reforestation project costs actually paid or incurred to reforest underproductive Oregon forestlands. Such costs include, but are not limited to site preparation, tree planting and other silviculture treatments considered necessary by the State Forester to establish commercial, hardwood or softwood stands on appropriate sites. Subject to subsection (5) of this section:

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

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

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

(a) A statement by the State Forester that the land and project meet the preliminary specifications established by the State

Forester or that the new forest is established, whichever is applicable at the time.

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

(c) A statement that the landowner or person in possession of the land is aware that maintenance practices, including release, may be needed to insure that a new forest is established and will remain established.

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

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

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

(c) Those costs paid or incurred to grow Christmas trees, ornamental trees, shrubs or plants, or, except as provided under ORS 321.274 or 321.426, those costs paid or incurred to grow hardwood timber described under ORS 321.267 (1)(e) or 321.415 (5).

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

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

(4) To qualify for the credit:

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

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

(c) The taxpayer must be a private individual, group, Indian tribe or other native group, association or other nonpublic legal entity owning, purchasing under recorded contract of sale or leasing at least five acres of Oregon commercial forestland.

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

year, but may not be carried forward for any tax year thereafter. In all cases the taxpayer must be the person who made the investment into the project.

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

(7) In compliance with ORS 183.310 to 183.550, the Department of Revenue and the State Forestry Department may adopt rules consistent with law for carrying out the provisions of this section.

(8) As used in this section, "underproductive Oregon forestlands" means Oregon commercial forestlands not meeting the minimum stocking standards of the Oregon Forest Practices Act.

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

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

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

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

(b) The Department of Revenue, may appeal that determination in the manner pro-

vided for in ORS 526.475 (2). [1979 c.578 §7; 1985 c.749 §1; 1987 c.605 §1; 1989 c.887 §1; 1991 c.714 §6; 1991 c.877 §2]

**Note:** Section 5, chapter 605, Oregon Laws 1987, as amended by chapter 887, Oregon Laws 1989, provides:

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

**Note:** Section 9, chapter 714, Oregon Laws 1991, provides:

**Sec. 9.** The amendments to ORS 316.094 and 317.102 by sections 6 and 7 of this Act apply to all reforestation project costs paid or incurred in connection with a reforestation project for which a preliminary certificate is issued for a tax year beginning on or after January 1, 1992. [1991 c.714 §9]

**316.095 Credit for sewage treatment works connection costs.** (1) A resident individual shall be allowed a credit of \$800 against the taxes otherwise due under this chapter, for installing or connecting to a sewage treatment works if:

(a) Required by an order issued, before July 1, 1989, under ORS 454.275 to 454.380 or ORS chapters 468, 468A and 468B;

(b) Required by a rule adopted, before July 1, 1989, by the Environmental Quality Commission;

(c) Required by, installed or connected pursuant to the terms of an intergovernmental agreement, entered into before July 1, 1989, between a local governing body and the Environmental Quality Commission; or

(d) Required by an order from the Assistant Director for Health under ORS 222.840 to 222.915 or 431.705 to 431.760 issued after January 1, 1988, and before July 1, 1995.

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

(a) Subject to subsection (4) of this section, the credit must be claimed for the year in which the connection is made or the costs are incurred. The credit applies to installations or connections made on or after January 1, 1985.

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

(c) The treatment works must be required by an order or rule of the Environmental Quality Commission, required by, installed or connected consistent with an intergovernmental agreement between a local governing body and the Environmental Quality Commission or required by an order or finding from the Assistant Director for Health under ORS 222.840 to 222.915 or 431.705 to 431.760.

(d) The residence connected to the treatment works must be the principal residence of, and owned by, the taxpayer claiming the credit.

(3) The credit allowed in any one year shall not exceed one-fifth of the total amount of the credit granted under this section per qualifying residence or the tax liability of the taxpayer.

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

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

(6) The tax claim for tax credit shall be substantiated by submission, with the tax return, of receipt of payment by the taxpayer. For purposes of this subsection, "receipt of payment" means a canceled check or an actual receipt for payment issued by the installing or constructing entity and issued on the date the payment is or was actually acknowledged.

(7) This section applies for costs actually incurred for installing or connecting to a sewage treatment works pursuant to an order, rule or intergovernmental agreement of the Environmental Quality Commission under ORS 454.275 to 454.380 or ORS chapters 468, 468A and 468B. [1987 c.890 §§2, 3; 1989 c.953 §1; 1991 c.781 §1]

Note: Section 2, chapter 781, Oregon Laws 1991, provides:

Sec. 2. (1) Subject to subsections (2) to (4) of this section, the amendments to ORS 316.095 by section 1 of this Act apply to tax years beginning on or after January 1, 1985.

(2) Notwithstanding ORS 305.265, 314.410 or other law, upon compliance with subsection (3) of this section, for a tax year beginning on or after January 1, 1985, and prior to January 1, 1991, any return, including but

not limited to a return of estimated tax under ORS 316.557 to 316.589, shall be adjusted, any assessment of taxes, including tax, interest and penalty, shall be canceled, and any credit or refund due the taxpayer shall be paid, without interest, to the extent necessary to carry out the retroactive application under subsections (1) and (3) of this section.

(3) Any taxpayer who has not been granted a credit under ORS 316.095 (1987 Replacement Part or 1989 Edition) for a tax year beginning on or after January 1, 1985, and before January 1, 1991, because the taxpayer had no or insufficient tax liability, or for other reason, may make application for the credit allowed by the amendments to ORS 316.095 by section 1 of this Act and this section. The application shall be made on or before April 15, 1993. Personal income tax forms prepared and distributed for the tax years 1991 and 1992 shall contain information describing the credit and the manner in which application under this subsection may be made. If a taxpayer fails to make the application described in this subsection within the required time, no adjustment, cancellation, credit or refund shall be made under subsections (1) and (2) of this section.

(4) The amendments to ORS 316.095 by section 1 of this Act increasing the amount of the credit from \$750 to \$800 apply only to those connections that are made, or for which the costs are incurred, in a tax year that begins on or after January 1, 1992. [1991 c.781 §2]

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

(2) A credit against taxes due under this chapter shall be allowed to an employee, as described in ORS 316.152 for amounts paid during the taxable year for purposes of this section and ORS 735.600 to 735.650 to purchase medical insurance, as defined in ORS 735.605 (5).

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

Year of Participation	Dollar Amount Per Covered Employee Per Month
1989	\$25
1990	\$25
1991	\$18.75
1992	\$12.50
1993 to July 1, 1995	\$ 6.25

(4) As used in this section "employer" means an employer carrying on a business, trade, occupation or profession in this state

who is an employer within the meaning of ORS 653.705.

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

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

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

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(10) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may not be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. [1987 c.591 §13; 1989 c.381 §8; 1991 c.877 §3; 1991 c.916 §14]

Note: Sections 10, 11, 13 and 14, chapter 381, Oregon Laws 1989, as amended by chapters 877 and 916, Oregon Laws 1991, provide:

Sec. 10. Before January 1, 1992, the board shall report publicly on the number of employees provided health care benefits as described in section 7 of this Act on October 1, 1991, who did not receive such benefits before April 1, 1989. If the number exceeds 50,000, ORS 316.096 and 317.113 are further amended as provided in sections 11 and 12 of this Act, effective January 1, 1992. In determining the minimum number for purposes of this section, the Insurance Pool Governing Board shall include the number of employees who are covered by the pool or who were covered by the pool during the period and whose coverage was withdrawn from the pool but continued by means described in and which

has been reported to the board under section 7 of this Act. [1989 c.381 §10]

Sec. 11. ORS 316.096, as amended by section 8 of this Act, (and by section 4, chapter 877, Oregon Laws 1991, and section 16, chapter 916, Oregon Laws 1991,) is further amended to read:

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

(2) A credit against taxes due under this chapter shall be allowed to an employee, as described in ORS 316.152 for amounts paid during the taxable year for purposes of this section and ORS 735.600 to 735.650 to purchase medical insurance, as defined in ORS 735.605 (5).

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

Year of Participation	Dollar Amount Per Covered Employee Per Month
1989	\$25
1990	\$25
1991	\$25
1992	\$18.75
1993 to July 1, 1995	\$12.50

(4) As used in this section, "employer" means an employer carrying on a business, trade, occupation or profession in this state who is an employer within the meaning of ORS 653.705.

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

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

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

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident

occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

**Sec. 13.** Before January 1, 1993, the board shall report publicly on the number of employees provided health care benefits as described in section 7 of this Act on October 1, 1992, who did not receive such benefits before April 1, 1989. If the number exceeds 100,000, ORS 316.096 and 317.113 are further amended as provided in sections 14 and 15 of this Act, effective January 1, 1993. In determining the minimum number for purposes of this section, the Insurance Pool Governing Board shall include the number of employees who are covered by the pool or who were covered by the pool during the period and whose coverage was withdrawn from the pool but continued by means described in and which has been reported to the board under section 7 of this Act. [1989 c.381 §13]

**Sec. 14.** ORS 316.096, as amended by sections 8 and 11 of this Act, (and by section 5, chapter 877, Oregon Laws 1991, and section 17, chapter 916, Oregon Laws 1991,) is further amended to read:

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

(2) A credit against taxes due under this chapter shall be allowed to an employee, as described in ORS 316.152 for amounts paid during the taxable year for purposes of this section and ORS 735.600 to 735.650 to purchase medical insurance, as defined in ORS 735.605 (5).

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

Year of Participation	Dollar Amount Per Covered Employee Per Month
1989	\$25
1990	\$25
1991	\$25
1992	\$18.75
1993 to July 1, 1995	\$18.75

(4) As used in this section, "employer" means an employer carrying on a business, trade, occupation or profession in this state who is an employer within the meaning of ORS 653.705.

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

(6) Any amount of expenses paid by an employer under this section and ORS 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785 shall not be included as income to the employee for purposes of this chapter. If such expenses have been included in arriving at federal

taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under this chapter. As used in ORS 316.162, with respect to the employee, "wages" does not include expenses paid under this section and ORS 317.113, 318.170, 653.715 to 653.765, 653.775 and 653.785.

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

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

**Note:** Section 15, chapter 916, Oregon Laws 1991, provides:

**Sec. 15.** The amendments to ORS 316.096 by sections 16 and 17 of this Act are subject to the same effective date and the same conditions as those set forth in sections 10 and 13, chapter 381, Oregon Laws 1989. [1991 c.916 §15]

**316.097 Credit for pollution control facility.** (1) A credit against taxes imposed by this chapter for a pollution control facility or facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

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

(3) To qualify for the credit the pollution control facility must be erected, constructed or installed in accordance with the provisions of ORS 468.165 (1) and must be issued certification under ORS 468.170 prior to December 31, 1995.

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

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

(B) A person who, as a lessee or pursuant to an agreement, conducts the trade or busi-

ness that operates or utilizes such property; or

(C) A person who, as an owner or lessee owns or leases a pollution control facility used for resource recovery as defined in ORS 459.005. Such person may, but need not, operate such facility or conduct a trade or business that utilizes property requiring such a facility. If more than one person has an interest under this subparagraph in a resource recovery facility, only one may claim the credit allowed under this section. The person claiming the credit as between an owner and lessee under this subparagraph shall be designated in a written statement signed by both the lessor and lessee of the facility; this statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed. As used in this paragraph, "owner" includes a contract purchaser; and

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

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

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

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

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

(6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not exceed one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control.

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

(8) Upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering such facility as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an S corporation as defined in section 1361 of the

Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a facility for purposes of this subsection.

(9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in ORS 468.170.

(10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section. [See 316.480; 1973 c.831 §8; 1977 c.795 §11; 1977 c.866 §10; 1979 c.691 §6; 1981 c.408 §1; 1983 c.637 §6; 1987 c.596 §2; 1989 c.802 §2; 1991 c.877 §6]

**316.098 Credit for gleaning fish.** (1) As used in this section:

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

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

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

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

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

(a) A commercial fisherman who contributes or aids, assists or causes to be contributed through a person described in paragraph (b) of this subsection, weigh-backs to a gleaning cooperative, as defined in ORS 316.089, or to an officially designated recipient member of Oregon Food Share, a private nonprofit corporation.

(b) A wholesaler, canner or other fish processor who accepts weigh-backs from a commercial fisherman or agent of a commercial fisherman and delivers or causes the weigh-backs to be delivered to a gleaning cooperative, as defined in ORS 316.089, or to an officially designated recipient member of Oregon Food Share, a private nonprofit corporation.

(3) The amount of the credit allowed to each taxpayer described under subsection (2) of this section is five percent of the fair market value of the weigh-backs contributed during the tax year of the taxpayer.

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

(5) At the time of a contribution made as described under subsection (2) of this section, the director, supervisor or other appropriate official of the gleaning cooperative or Oregon Food Share to which the contribution is made shall supply to the commercial fisherman or wholesaler, canner or other fish processor, two copies of a form prescribed by the Department of Revenue. The form shall:

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

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

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

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

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

(6) Tax claim for tax credit under this section shall be substantiated by submission with the tax return, of the form described in subsection (5) of this section, a statement verified by the taxpayer that the contribution was made as described in subsection (2) of this section and a copy of a receipt or other statement identifying the price paid for fish of the same species as the weigh-backs on the date the weigh-backs were landed. [1985 c.438 §2; 1991 c.877 §9]

Note: Section 7, chapter 438, Oregon Laws 1985, provides:

Sec. 7. This Act [316.098 and 318.102] applies to tax years beginning on or after January 1, 1985, and prior to January 1, 1994. [1985 c.438 §7]

Note: See note under 317.150.

**316.099 Credit for early intervention services for disabled child.** (1) As used in this section, unless the context requires otherwise:

(a) "Early intervention services" means programs of treatment and habilitation designed to address a child's developmental deficits in sensory, motor, communication, self-help and socialization areas.

(b) "Disabled child" means a child from the age of identification of the disability to the age of 18 who has been determined eligible for early intervention services or is diagnosed for the purposes of special education as being autistic, trainable mentally retarded, multidisabled, visually impaired, hearing impaired, deaf-blind, orthopedically impaired or other health impaired, in accordance with State Board of Education rules.

(c) "Special education" means specially designed instruction to meet the unique needs of a disabled child, including regular classroom instruction, instruction in physical education, home instruction and instruction in hospitals, institutions and special schools.

(2) The State Board of Education shall adopt rules further defining "disabled child" for purposes of this section. A diagnosis obtained for the purposes of entitlement to special education or early intervention services shall serve as the basis for a claim for the additional credit allowed under subsection (3) of this section.

(3) In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes for a dependent child of the taxpayer, there shall be allowed an additional personal exemption credit for a disabled child if the child is a disabled child at the close of the tax year. The amount of the credit shall be equal to the amount allowed as the personal exemption credit for the dependent child for state personal income tax purposes for the tax year.

(4) Each taxpayer qualifying for the additional personal exemption credit allowed by this section may claim the credit on the personal income tax return. However, the claim shall be substantiated by any proof of entitlement to the credit as may be required by the state board by rule. [1985 c.531 §2; 1987 c.293 §15; 1989 c.224 §50a; 1989 c.491 §1]

**316.102 Credit for political contributions.** (1) A credit against taxes shall be allowed for voluntary contributions in money made in the taxable year:

(a) To a national political party or to a committee thereof or to a minor political party as defined in ORS 248.008.

(b) To or for the use of a person who must be a candidate for nomination or election to a federal, state or local elective office in any primary, general or special election in this state. The person must, in the calendar year in which the contribution is made, either be listed on a primary, general or special election ballot in this state or have filed in this state one of the following:

- (A) A prospective petition;
- (B) A declaration of candidacy;
- (C) A certificate of nomination; or
- (D) A designation of a principal campaign committee.

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

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

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

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

(a) The total contribution, not to exceed \$50 on a separate return; the total contribution, not to exceed \$100 on a joint return; or

(b) The tax liability of the taxpayer.

(3) The claim for tax credit shall be substantiated by submission, with the tax return, of official receipts of the candidate, agent, trust, committee, association or organization to whom contribution was made.

(4) A credit against taxes for a contribution to a national political party or to a committee thereof shall be allowed under this section only if the state central committee of the national political party, that is also a major political party under ORS 248.006, is organized in compliance with ORS 248.075. The Department of Revenue shall allow no credit against taxes for contributions to a national political party or to a committee thereof if the department receives

notice from the Secretary of State under ORS 248.095.

(5) As used in this section, "national political party" means:

(a) In the case of contributions made during a taxable year of the taxpayer in which the electors of President and Vice President are chosen, a political party presenting candidates or electors for such offices on the official election ballot of 10 or more states; or

(b) In the case of contributions made during any other taxable year of the taxpayer, a political party which met the qualifications described in paragraph (a) of this subsection in the last preceding election of a President and Vice President. [1969 c.432 §2; 1973 c.119 §3; 1975 c.177 §1; 1977 c.268 §1; 1979 c.190 §413; 1985 c.802 §6; 1987 c.293 §16; 1989 c.986 §1]

**316.103 Credit for investment for recycling plastics.** (1) A credit against taxes imposed by this chapter for the investments certified under ORS 468.940 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

(2) A taxpayer shall be allowed a tax credit under this section each year for five years beginning in the year the investment receives final certification under ORS 468.940. The maximum credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or 10 percent of the certified cost of the taxpayer's investment.

(3) To qualify for the credit the investment must be made in accordance with the provisions of ORS 468.935.

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

(A) The owner of the business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product;

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

(C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a beneficial interest in a business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. If more than one person has an interest under this subparagraph in a qualifying business and one or more persons receive a certificate, such person or persons may allocate all or any part of the certified invest-

ment cost among any persons and their successors or assigns having an interest under this subparagraph. Such allocation shall be evidenced by a written statement signed by the person or persons receiving the certificate and designating the persons to whom the certified investment costs have been allocated and the amount of certified investment cost allocated to each. This statement shall be filed with the Department of Revenue not later than the final day of the first tax year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate certified investment costs allocated between or among more than one person exceed the amount of the total certified cost of the investment. As used in this paragraph, "owner" includes a contract purchaser;

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

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

(5) A credit under this section may be claimed by a taxpayer for a business receiving final certification of an investment under ORS 468.940 only if the investment is made on or after January 1, 1986, but before July 1, 1995.

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

(7) Upon any sale, exchange, or other disposition of a qualifying business, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering the investment of such business as of the date of such disposition. The transferee may apply for a new certificate under ORS 468.940, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of shares in an S corporation as defined in section 1361 of the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a business for purposes of this subsection.

(8) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in ORS 468.935.

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

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

(11) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(12) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(13) No credit shall be allowed under this section and under ORS 468.925 to 468.965 for any portion of a facility for which the taxpayer claims a tax credit or ad valorem tax relief under ORS 307.405, 316.097, 316.116 or 316.140 to 316.142 and 469.185 to 469.225. [1985 c.684 §12; 1989 c.765 §1; 1989 c.958 §10; 1991 c.877 §7]

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

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

(a) The Oregon Capital Corporation must have been certified by the Financial Insti-

tutions Division under section 7, chapter 911, Oregon Laws 1987.

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

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

(A) Before July 1, 1989; and

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

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

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

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

(6) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9) The amount of any tax credit allowed under this section shall be used to reduce the basis of the taxpayer's investment in the Oregon Capital Corporation. Federal taxable

income shall be modified to the extent necessary to carry out the provisions of this subsection. [1987 c.911 §8b; 1991 c.877 §8]

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

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

**316.107 Federal tax credits allowable only as specified.** No credits applied directly to the income tax calculated for federal purposes pursuant to the Internal Revenue Code shall be applied in calculating the tax due under this chapter except those prescribed in this chapter. [1969 c.493 §20; 1973 c.402 §19; 1985 c.802 §7]

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

**316.109 Credit for tax by another jurisdiction on sale of residential property.**

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

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

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

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

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

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

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

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

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

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

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

**316.116 Credit for energy yield of alternative energy device.** (1) A resident individual shall be allowed a credit against the taxes otherwise due under this chapter,

based upon the first year energy yield of the alternative energy device that qualifies under ORS 469.160 to 469.180. For collective or noncollective investment, the credit allowed under this section for each dwelling shall not exceed the lesser of:

(a) \$1,500 or the first year energy yield in kilowatt hours per year multiplied by 60 cents per dwelling utilizing the alternative energy device used for space heating, cooling, electrical energy or domestic water heating for tax years beginning on or after January 1, 1990, but before January 1, 1996.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to \$1,500 for tax years beginning on or after January 1, 1990, but before January 1, 1996.

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

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

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

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

(D) The credit must be claimed for the tax year during which the alternative energy device which has been certified under ORS 469.160 to 469.180 first is placed in service. However, for tax years beginning on or after January 1, 1990, the credit may be claimed for the tax year in which the alternative energy device was purchased if the system is operational by April 1 of the next following tax year.

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

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

(4) Except as provided under subsection (7) of this section, a credit under this section may be claimed by a taxpayer for an alternative energy device for those tax years which begin on or after January 1, 1990, but before January 1, 1996.

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

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

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

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

(9) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(10) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

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

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

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

(c) "First year energy yield" has the meaning given in ORS 469.160.

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

(13) As used in this section, "taxpayer" includes a transferee of a verification form under ORS 469.170 (5).

(14) Notwithstanding any provision of subsection (1) of this section, the sum of the credit allowed under this section plus any similar credit allowed for federal income tax purposes shall not exceed the cost to the taxpayer for the acquisition, construction and installation of the alternative energy device. [1977 c.196 §8; 1979 c.670 §2; 1981 c.894 §3; 1983 c.684 §14; 1983 c.768 §1; 1987 c.492 §1; 1989 c.626 §6; 1989 c.880 §§9, 11]

Note: Section 14, chapter 626, Oregon Laws 1989, provides:

Sec. 14. The amendments to ORS 316.116 by section 6 of this Act apply to taxable years beginning on or after January 1, 1988. [1989 c.626 §14]

Note: Section 10, chapter 880, Oregon Laws 1989, provides:

Sec. 10. Amendments to ORS 316.116 by section 9 of this Act first apply to tax years beginning on or after January 1, 1982. [1989 c.880 §10]

## TAXATION OF NONRESIDENTS

**316.117 Proration between Oregon income and other income for nonresidents, part-year residents and trusts.** (1) Except as provided under subsection (2) of this section, the proportion for making a proration for nonresident taxpayers of the standard deduction or itemized deductions, the personal exemption credits and any accrued federal or foreign income taxes, or for part-year resident taxpayers of the amount of the tax, between Oregon source income and income from all other sources is the federal adjusted gross income of the taxpayer from Oregon sources divided by the taxpayer's federal adjusted gross income from all sources. If the numerator of the fraction described in this subsection is greater than the denominator, the proportion of 100 percent shall be used in the proration required by this section. As used in this subsection, "federal adjusted gross income" means the federal adjusted gross income of the taxpayer with the additions, subtractions and other modifications to

federal taxable income contained in this chapter that relate to adjusted gross income.

(2) For part-year resident trusts, the proration made under this section shall be made by reference to the taxable income of the fiduciary. [1969 c.493 §21; 1971 c.672 §1; 1973 c.269 §1; 1975 c.672 §5; 1977 c.872 §5; 1981 c.801 §4; 1983 c.684 §15; 1985 c.141 §5; 1987 c.293 §17]

**316.118 Pro rata share of S corporation income of nonresident shareholder.** (1) The pro rata share of S corporation income of a nonresident shareholder constitutes income or loss derived from or connected with sources in this state as provided in ORS 316.127 (5).

(2) In determining the pro rata share of S corporation income of a nonresident shareholder, there shall be included only that part derived from or connected with sources in this state of the shareholder's distributive share of items of S corporation income, gain, loss and deduction (or item thereof) entering into the federal adjusted gross income of the shareholder, as such part is determined under rules adopted by the department in accordance with the general rules under ORS 316.127.

(3) Any modifications, additions or subtractions to federal taxable income described in ORS chapter 316 that relates to an item of S corporation income, gain, loss or deduction (or item thereof) shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes of the item to which the modification, addition or subtraction relates, but limited to the portion of such item derived from or connected with sources in this state.

(4) A nonresident shareholder's pro rata share of items of income, gain, loss or deduction (or item thereof) shall be determined under ORS 314.734 (1). The character of shareholder items for a nonresident shareholder shall be determined under ORS 314.734 (2). [1989 c.625 §52; 1991 c.877 §11]

**316.122 Separate or joint determination of income for husband and wife.** (1) If the federal taxable income of husband and wife (one being a part-year resident and the other a nonresident) is determined on a joint federal return, their taxable income in this state shall be separately determined, unless they elect to file a joint return, in which case their tax on their joint income shall be determined in this state pursuant to ORS 316.037 (3).

(2) If the federal taxable income of husband and wife (one being a full-year resident and the other a part-year resident) is determined on a joint federal return, their taxable income in this state shall be separately determined, unless they elect to file a joint re-

turn, in which case their tax on their joint income shall be determined in this state pursuant to ORS 316.037 (2).

(3) If the federal taxable income of husband and wife (one being a full-year resident and the other a nonresident) is determined on a joint federal return, their taxable income in the state shall be separately determined, unless they elect to file a joint return, in which case their tax on their joint income shall be determined in this state pursuant to ORS 316.037 (3).

(4) For purposes of computing the tax of a husband and wife under this section, if one of the spouses is a full-year resident individual, then as used in ORS 316.037 (2) or (3), that spouse's taxable income derived from Oregon sources is that spouse's entire federal taxable income, defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter.

(5) The provisions of ORS 316.367 with respect to joint returns apply if both husband and wife are part-year residents or full-year nonresidents. [1969 c.493 §22; 1985 c.802 §8; 1987 c.647 §3]

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

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

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

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

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

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

(5) A nonresident partner's distributive share of items of income, gain, loss or deduction (or item thereof) shall be determined under ORS 314.714 (2). The character of partnership items for a nonresident partner shall be determined under ORS 314.714 (1). [1989 c.625 §32]

**316.125** [1953 c.304 §17; repealed by 1969 c.493 §99]

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

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

(b) The portion of the modifications, additions or subtractions to federal taxable income provided in this chapter that relate to adjusted gross income derived from sources in this state, including any modifications attributable to the nonresident as a partner.

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

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

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

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

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

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

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

(7) Compensation paid by the United States for service in the Armed Forces of the United States performed by a nonresident does not constitute income derived from sources within this state. [1969 c.493 §23; 1971 c.672 §2; 1973 c.269 §2; 1975 c.705 §4; 1983 c.684 §15a; 1989 c.625 §9]

**316.130 Determination of taxable income of full-year nonresident.** (1) The taxable income for a full-year nonresident individual is adjusted gross income attributable to sources within this state determined under ORS 316.127, with the modifications (except those provided under subsection (2) of this section) as otherwise provided under this chapter, less the deductions allowed under subsection (2) of this section.

(2)(a) A full-year nonresident individual shall be allowed the deduction for a standard deduction or itemized deductions allowable to a resident under ORS 316.695 (1) in the proportion provided in ORS 316.117.

(b) A full-year nonresident individual shall be allowed to deduct the amount of any accrued federal income taxes and foreign country income taxes as provided in ORS 316.690 in the proportion provided in ORS 316.117.

(c)(A) A full-year nonresident individual shall be allowed to deduct the amount of any alimony or separate maintenance payments paid during such individual's taxable year in the proportion provided in ORS 316.117 except that in determining the proportion the

taxpayer's adjusted gross income shall not include a deduction for alimony. For purposes of this paragraph, "alimony or separate maintenance payment" has the meaning given the phrase in section 215 of the Internal Revenue Code.

(B) No deduction shall be allowed under this paragraph if the alimony or separate maintenance payment is not includible in the gross income of the nonresident individual for federal income tax purposes under section 682 of the Internal Revenue Code.

(3)(a) A full-year nonresident who is a self-employed individual shall be allowed to deduct that individual's contributions to a qualified plan, deductible on that individual's federal income tax return pursuant to section 401 of the Internal Revenue Code, in the proportion that the individual's earned income from Oregon sources bears to the individual's earned income from all sources. "Earned income" has the meaning given in section 401(c)(2) of the Internal Revenue Code. If the numerator of the fraction described in this paragraph is greater than the denominator, the proration of 100 percent shall be used.

(b) A full-year nonresident shall be allowed to deduct that individual's qualified retirement contributions, deductible on that individual's federal income tax return pursuant to section 219 of the Internal Revenue Code, in the proportion that the individual's compensation from Oregon sources bears to the individual's compensation from all sources. "Compensation" has the meaning given in section 219(f)(1) of the Internal Revenue Code. [1985 c.141 §4; 1987 c.293 §18; 1987 c.647 §12; 1989 c.626 §7]

**316.131 Credit allowed to nonresident for taxes paid to state of residence.** (1) A nonresident shall be allowed a credit against the taxes otherwise due under this chapter for income taxes imposed by and paid to the state of residence (not including any preference, alternative or minimum tax) on income taxable under this chapter, subject to the following conditions:

(a) The credit shall be allowed only if the state of residence either:

(A) Does not tax the income of residents of this state derived from sources within that state; or

(B) Allows residents of this state a credit against income taxes imposed by that state on income for tax paid or payable under this chapter.

(b) The credit shall not be allowed for taxes paid to a state which allows its residents a credit against the taxes imposed by that state for income tax paid or payable under this chapter irrespective of whether its

residents are allowed a credit against the taxes imposed by this chapter for income taxes paid to that state.

(c) Credit shall be allowed only for the proportion of the taxes paid to the state of residence (not including preference, alternative or minimum taxes) as the adjusted gross income taxable under this chapter and also subject to taxes in the state of residence bears to the entire adjusted gross income upon which the taxes paid to the state of residence are imposed.

(d) The credit shall not exceed the proportion of the tax payable under this chapter as the adjusted gross income subject to tax in the state of residence and also taxable under this chapter bears to the entire adjusted gross income (as modified) taxable under this chapter.

(2) For purposes of this section, the amount of "income taxes" paid to another state shall include the taxpayer's pro rata share of any taxes on, or according to, or measured by, income or profits paid or accrued, which were paid by an S corporation. [1991 c.838 §5]

Note: Section 8, chapter 838, Oregon Laws 1991, provides:

Sec. 8. Section 5 [316.131] and the amendments to ORS 316.082 and 316.292 by sections 6 and 7 of this Act apply to tax years beginning on or after January 1, 1992. [1991 c.838 §8]

## ADDITIONAL CREDITS

### (Dependent Care)

**316.132 Credit for work on dependent care facility.** (1) A credit against the taxes otherwise due under this chapter is allowed to an employer, based upon costs actually paid or incurred by the employer, to acquire, construct, reconstruct, renovate or otherwise improve real property so that the property may be used primarily as a dependent care facility.

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

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

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

(c) \$100,000.

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

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

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

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

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

(c) The person or persons operating the dependent care facility on the property acquired, constructed, reconstructed, renovated or improved must hold a certificate of approval (temporary or not) issued under ORS 418.805 to 418.885 by the Children's Services Division to operate the facility on the property on the last day of the tax year of any tax year in which credit under this section is claimed.

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

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

(f) The dependent care facility, the costs of the acquisition, construction, reconstruction, renovation or improvement upon which the credit granted under this section is based, must be placed in operation before January 1, 2002.

(4) The total amount of the costs upon which the credit allowable under this section is based, and the total amount of the credit, shall be determined by the employer, subject to any rules adopted by the department, during the tax year in which the property acquired, constructed, reconstructed, renovated or otherwise improved is first placed in operation as a dependent care facility certified by the Children's Services Division under ORS 418.805 to 418.885. One-tenth of the total credit is allowable in that tax year and one-tenth of the total credit is allowable in each succeeding tax year, not to exceed nine tax years, thereafter. No credit shall be allowed under this section for any tax year at the end of which the dependent care facility is not in actual operation under a current certificate of approval (temporary or not) issued by the Children's Services Division nor shall any credit be allowed for any tax year at the end of which the employer is not providing dependent care assistance entitled to exclusion (whole or partial) from employee income for federal tax purposes under section 129 of the Internal Revenue Code for dependent care on the property. Any tax credit allowable under this section in a tax year may be carried forward in the same manner and to the same tax years as if it were a tax credit described in ORS 316.134.

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

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

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

(b) "Employer" means a resident, part-year resident or full-year nonresident employer carrying on a business, trade, occupation or profession in this state.

(c) "Internal Revenue Code" has the meaning given the term in ORS 316.134.

(7) The department shall require that evidence that the person operating the dependent care facility on the date that the

taxpayer's tax year ends holds a current certificate of approval (temporary or otherwise) to operate the facility accompany the tax return on which any amount of tax credit granted under this section is claimed, or that such evidence be separately furnished. If the evidence is not so furnished, no credit shall be allowed for the tax year for which the evidence is not furnished. The Children's Services Division shall cooperate by making such evidence, in an appropriate form, available to the person operating the facility, if the person is currently entitled to a certificate of approval (temporary or not) so that, if necessary, it may be made available to the taxpayer. [1987 c.682 §3; 1991 c.877 §12; 1991 c.929 §1]

**316.133 Child development program contributions.** (1) A tax credit against the taxes otherwise due under this chapter is allowed for contributions actually made during the tax year to:

(a) A school district child development program that has been approved by the Department of Education under ORS 336.850; or

(b) A school district student-parent program that has been approved by the Department of Education under ORS 336.850.

(2) The amount of the credit is 50 percent of the sum of the contributions made by the taxpayer during the tax year to both programs. Subject to subsection (3) of this section, the amount of the credit shall not exceed \$5,000 for each program location.

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

(4) The credit is allowable to a resident or a nonresident taxpayer.

(5) The credit is allowable only if the contributions are made exclusively for use by a program approved under ORS 336.850.

(6) The credit is allowable only for contributions made after the date the Department of Education approves the program.

(7) If, for the tax year, a deduction is allowable under this chapter for the same contributions that are used to determine the amount of the credit, the deduction shall be reduced by the amount of the credit allowed.

(8) The department, with the assistance of the Department of Education, shall adopt rules to carry out the purposes of this section, including but not limited to rules setting forth requirements for substantiation of contributions and use of contributions. [1991 c.928 §2]

Note: Section 6, chapter 928, Oregon Laws 1991, provides:

Sec. 6. Sections 2 and 4 of this Act [316.133 and 317.134] and the amendments to ORS 318.031 by section 5 of this Act apply to tax years beginning on or after January 1, 1991, and before January 1, 1996. [1991 c.928 §6]

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

(2) The amount of the credit allowed under subsection (1) of this section shall be 50 percent of the amount so paid or incurred by the employer during the taxable year but shall not exceed \$2,500 of day care assistance actually provided to the employee.

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

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

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

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

(6) If the credit allowed under subsection (1) or (3) of this section is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) shall be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section shall be made at the time of filing the tax return in accordance with any rules adopted by the department.

(7) The amount upon which the credit allowed under subsection (1) of this section

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

(8) A nonresident shall be allowed the credit allowed under subsection (1) or (3) of this section. The credit shall be computed in the same manner and be subject to the same limitations as the credit granted to a resident.

(9) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(10) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

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

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

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

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 1990.

(13) In the case of an onsite facility, in accordance with any rules adopted by the department, the amount upon which the credit allowed under subsection (1) of this section is based, with respect to any dependent, shall be based upon utilization and the value of the services provided. [1987 c.682 §2; 1989 c.625 §10; 1991 c.457 §6; 1991 c.877 §13]

Note: Section 10, chapter 682, Oregon Laws 1987, as amended by section 3, chapter 929, Oregon Laws 1991, provides:

Sec. 10. Sections 2, 5 and 8, chapter 682, Oregon Laws 1987 [316.134, 317.135 and 318.175], apply to tax years beginning on or after January 1, 1988, and prior to January 1, 2002. For all prior taxable years, the law in effect and applicable for those years shall continue to apply. [1987 c.682 §10; 1991 c.929 §3]

Note: Section 29, chapter 457, Oregon Laws 1991, provides:

Sec. 29. The amendments to ORS 316.134 and section 5, chapter 682, Oregon Laws 1987 [317.135], by sections 6 and 11 of this Act apply to tax years beginning on or after January 1, 1989, and prior to January 1, 1992. [1991 c.457 §29]

Note: Section 53, chapter 877, Oregon Laws 1991, provides:

Sec. 53. (1) Except as provided in subsections (2) and (3) of this section, the amendments to ORS 316.134 and section 5, chapter 682, Oregon Laws 1987 [317.135], by sections 13 and 31 of this Act (credit for dependent care assistance) apply to tax years beginning on or after January 1, 1989, and prior to January 1, 1992.

(2) The amendments to ORS 316.134 (6) and subsection (6) of section 5, chapter 682, Oregon Laws 1987, by sections 13 and 31 of this Act apply to tax years beginning on or after January 1, 1991, and prior to January 1, 1992.

(3) Section 36 of this Act and the amendments to ORS 316.134 and section 5, chapter 682, Oregon Laws 1987, by sections 13 and 31 of this Act relating to S corporations apply to tax years beginning on or after January 1, 1991, and prior to January 1, 1992. [1991 c.877 §53]

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

Sec. 87. The amendments to ORS 316.134 and section 5, chapter 682, Oregon Laws 1987 [317.135], by sections 10 and 20, chapter 625, Oregon Laws 1989, (relating to dependent care assistance credit) apply to tax years beginning on or after January 1, 1988, and prior to January 1, 2002. [1989 c.625 §87; 1991 c.929 §4]

316.135 [1979 c.554 §2; renumbered 316.752]

316.136 [1979 c.554 §3; renumbered 316.758]

316.137 [1979 c.554 §4; renumbered 316.765]

316.138 [1979 c.554 §5; renumbered 316.771]

### (Fish Protection)

**316.139 Credit for fish screening devices, by-pass devices or fishways.** (1) There shall be allowed a credit against tax due under this chapter for taxpayers that install fish screening devices, by-pass devices or fishways, when required to do so by ORS 498.248 (1), 498.268 (1), 509.605 (1), 509.615 (1)

or section 2, chapter 858, Oregon Laws 1991, and the diversion is not part of a hydroelectric project required to be licensed under the Federal Energy Regulatory Commission. Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which the final certification is issued under subsection (10) of this section.

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

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

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

(5) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the installation of a fish screening device, by-pass device or fishway. The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

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

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

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

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

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

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

(d) Within 30 days from the date of mailing of the order, any person against whom an order is directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed

to the State Fish and Wildlife Director. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

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

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

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

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

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

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

(13) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, all prior tax relief provided to the holder of the certificate by virtue of the certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder.

(14) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, the certificate holder shall be denied any further relief provided under this section and ORS 317.145 in connection with the fish screening device, by-pass device or fishway, as the case may be, from and after the date that the order of revocation becomes final.

(15) In the event that the fish screening device, by-pass device or fishway is destroyed by flood, natural disaster or act of God before all of the credit has been used, the tax-

payer may nevertheless claim the credit as if no destruction had taken place.

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

(17) The State Department of Fish and Wildlife shall adopt rules for carrying out the provisions of this section and report to the interim committee created under ORS 171.605 to 171.640 to make studies of and inquiries into state revenue matters. [1989 c.924 §2; 1991 c.858 §10; 1991 c.877 §14]

### (Energy Conservation Facilities)

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

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

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

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

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

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

succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in subsection (1) of this section only as provided in this subsection.

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

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

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

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

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

(c) A subsidiary or an affiliated interest, as defined in ORS 757.015, of a public utility described in paragraph (a) of this subsection. [1979 c.512 §12; 1981 c.894 §10; 1991 c.877 §15]

**316.141 Other grants or credits as offset to cost of facility.** If a taxpayer obtains a grant or tax credit from the Federal Government other than an investment credit granted under section 46 of the Internal Revenue Code of 1986 as it reads on December 31, 1990, or a low income housing tax credit granted under section 42 of the Internal Revenue Code as it reads on December 31, 1990, in connection with a facility which has been certified by the Director of the Department of Energy, the certified cost of the facility shall be reduced on a dollar for dollar basis. Any income tax credits which such taxpayer would be entitled to under ORS 316.140 to 316.142 and 469.185 to 469.225 after any such reduction shall not be reduced by such federal grants or tax credits. Taxpayers applying for federal grants or credits shall notify the Department of Revenue by certified mail within 30 days of each such application, and of the receipt of any such grant. [1979 c.512 §15; 1981 c.894 §11; 1989 c.765 §2; 1991 c.457 §7]

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

only on the portion of the cost that is privately financed.

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

(3) A taxpayer who receives a tax credit or ad valorem tax relief on a pollution control facility or an alternate energy device under ORS 307.405, 316.097 or 316.116 is not eligible for a tax credit on the same facility or device under ORS 316.140 to 316.142 and 469.185 to 469.225.

(4) No credit shall be allowed under ORS 316.140 if the taxpayer has received a tax credit on the same facility or device under ORS 316.103. [1979 c.512 §16, 17; 1981 c.894 §12; 1989 c.765 §3]

#### (Rural Medical Practice)

**316.143 Credit available to person providing medical care in rural area.** (1) A resident or nonresident individual certified as eligible under section 7, chapter 893, Oregon Laws 1989, licensed under ORS chapter 677, who is engaged in the practice of medicine, and who has a rural practice that amounts to 60 percent of the individual's practice, shall be allowed an annual credit against taxes otherwise due under this chapter in the sum of \$5,000, not to exceed 10 tax years, during which the individual retains such practice and membership if the individual is actively practicing in and is a member of the medical staff of one of the following hospitals:

(a) A type A hospital designated as such by the Office of Rural Health;

(b) A type B hospital designated as such by the Office of Rural Health, so long as the type B hospital is not within the boundaries of a metropolitan statistical area, or if the hospital is located within the boundaries of a metropolitan statistical area, is located 30 or more highway miles from the closest hospital within the major population center in the metropolitan statistical area; or

(c) A type C rural hospital, if the Office of Rural Health makes the findings required by ORS 316.146.

(2) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117. If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(3) For purposes of this section, an "individual's practice" shall be determined on the basis of actual time spent in practice each week in hours or days, whichever is consid-

ered by the Office of Rural Health to be more appropriate. In the case of a shareholder of a corporation or a member of a partnership, only the time of the individual shareholder or partner shall be considered and the full amount of the credit shall be allowed to each shareholder or partner who qualifies in an individual capacity.

(4) As used in this section, "type A hospital," "type B hospital" and "type C hospital" have the meaning for those terms provided in ORS 442.470. [1989 c.893 §2; 1991 c.877 §16]

**Note:** Section 56, chapter 877, Oregon Laws 1991, provides:

**Sec. 56.** (1) Except as provided in subsections (2) and (3) of this section, the amendments to ORS 316.143, 316.144, 316.146, 442.555, 442.560, 442.570 and section 7, chapter 893, Oregon Laws 1989, by sections 16 to 22 of this Act and the repeal of ORS 317.142 by section 41 of this Act apply to tax years beginning on or after January 1, 1990, and before January 1, 1995.

(2) The amendments to section 7 (2), chapter 893, Oregon Laws 1989, by section 19 of this Act apply to tax years of individuals beginning on or after January 1, 1991.

(3) The amendments to ORS 316.143 by section 16 of this Act that create a new subsection (1)(b) of ORS 316.143 apply to tax years of individuals beginning on or after January 1, 1991. [1991 c.877 §56]

**316.144 Credit for provider not on hospital staff.** A resident or nonresident individual who is certified as eligible under section 7, chapter 893, Oregon Laws 1989, and is licensed as a physician under ORS chapter 677, registered as a physician assistant under ORS chapter 677, licensed as a nurse practitioner under ORS chapter 678 or licensed as a certified registered nurse anesthetist under ORS chapter 678 is entitled to the tax credit described in ORS 316.143 even if not a member of the hospital medical staff if the Office of Rural Health certifies that the individual:

(1) Has a rural practice that amounts to 60 percent of the individual's practice; and

(2) If a physician or a physician assistant, can cause a patient to be admitted to the hospital; and

(3) If a certified registered nurse anesthetist, is employed by or has a contractual relationship with one of the hospitals described in ORS 316.143 (1)(a) to (c). [1989 c.893 §3; 1991 c.877 §17]

**Note:** See note under 316.143.

316.145 [1979 c.561 §4; renumbered 316.849]

**316.146 Credit for medical staff at type C hospital.** A member of the medical staff of a type C hospital who meets the requirements of ORS 316.144 (1) and (2) is entitled to the tax credit described in ORS 316.143 if:

(1) The hospital is isolated due to geographic conditions, complies with rules relating to emergency response and is subject

to such other special factors as the Office of Rural Health by rule may prescribe; and

(2) The hospital is designated by the Office of Rural Health as being subject to particular problems in recruiting and retaining medical staff and is located in an area that is medically underserved. [1989 c.893 §6a; 1991 c.877 §18]

Note: 316.146 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See note under 316.143.

#### (Costs in Lieu of Nursing Home Care)

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

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

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

(b) Who has a "household income," as defined by ORS 310.630, for the taxable year, not to exceed the maximum amount of household income allowed in ORS 310.640 (1989 Edition) for a homeowner or renter refund.

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

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

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

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

(d) Whose care or any portion thereof is not paid for under ORS chapter 414. [1979 c.494 §2; 1991 c.786 §5]

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

be \$250 or eight percent of the expenses paid or incurred during the taxable year, whichever is less.

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

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

**316.150** [1979 c.414 §2; renumbered 316.854]

#### (Apprenticeship)

**316.151 Credit for youth apprenticeship sponsorship.** (1) A business tax credit against the taxes otherwise due under this chapter shall be allowed to an eligible taxpayer who sponsors eligible students who participate in the youth apprenticeship program established under ORS 344.745 and 344.750. The amount of the credit shall be the wages paid to participating students by the sponsoring training agent taxpayer during the tax year, excluding wages paid after the first year of participation, and in an amount not to exceed \$2,500 in any one tax year.

(2)(a) A nonresident training agent shall be allowed the credit provided under this section computed in the same manner and subject to the same limitations as the credit allowed to a resident of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

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

but may not be carried forward for any tax year thereafter.

(4)(a) The credit allowed under this section is in addition to any deduction otherwise allowable under this chapter.

(b) No other credit allowed under this chapter or ORS chapter 317 or 318 shall be based upon all or any portion of amounts upon which the credit allowed under this section is based. [1991 c.859 §4]

Note: Section 9, chapter 859, Oregon Laws 1991, provides:

Sec. 9. Sections 4 and 6 of this Act [316.151 and 317.141] apply to tax years beginning on or after January 1, 1991, and before January 1, 1996. [1991 c.859 §9]

### (Health Insurance)

**316.152 Credit for health insurance purchased by employees in very small employee groups.** Employees who are employed in small employer groups of one or two employees who are unable to purchase a health benefit plan and who purchase medical insurance through the Oregon Medical Insurance Pool created by ORS 735.610 shall be provided with a credit against their personal income tax as provided in ORS 316.096. [1991 c.916 §13]

Note: 316.152 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### (Mobile Homes; Moving Expense)

**316.153 Credit for involuntary moving of mobile home.** (1) As used in this section:

(a) "Involuntary move" means a move forced on an owner due to the termination of the owner's rental agreement for a facility space resulting from the closure of the facility, or portion of the facility, as defined in ORS 90.500.

(b) "Mobile home" has the meaning given "manufactured dwelling" in ORS 446.003, and includes only a mobile home with a fair market value of \$50,000 or less on the date that the mobile home is involuntarily moved.

(c) "Qualified individual" means an individual who:

(A) Owns and occupies as a principal residence, on the date of the involuntary move, a mobile home involuntarily moved; and

(B) Has a federal adjusted gross income, as described under ORS 316.013, of \$30,000 or less for the tax year in which the mobile home is involuntarily moved.

(2) A qualified individual is allowed a credit against the taxes otherwise due under

this chapter. The amount of the credit is the lesser of:

(a) \$1,500; or

(b) The actual cost of moving and setting up the mobile home after subtracting any payments or reimbursements received by the qualified individual under ORS 90.630 (4) and (5).

(3)(a) One-third of the total amount of credit allowed under this section must be claimed by the qualified individual for the tax year in which the mobile home is involuntarily moved and one-third of the credit in each of the two tax years immediately following.

(b) Any credit which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(c) The credit allowed to a qualified individual is available for only one involuntary move of a mobile home.

(d) If the taxpayer is married at the close of the tax year, the credit shall be allowed to only one taxpayer if the spouses file separate returns for the tax year. Marital status shall be determined as provided under section 21 (d)(3) and (4) of the Internal Revenue Code. [1991 c.846 §2]

Note: Section 3, chapter 846, Oregon Laws 1991, provides:

Sec. 3. Section 2 of this Act [316.153] applies to tax years beginning on or after January 1, 1992, and before January 1, 1996. [1991 c.846 §3]

### (Farm-worker Housing)

**316.154 Credit for farm-worker housing construction or rehabilitation.** (1) As used in this section:

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

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

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

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

(c) "Eligible costs" includes finance costs, construction costs, excavation costs and permit costs and excludes land costs.

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

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

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

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

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

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

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

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

(4) The credit shall apply only to a seasonal or a year-round farm-worker housing project that is physically begun on or after January 1, 1990.

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

(6) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the tax-

payer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

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

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

(8)(a) If the taxpayer is a person who is not, and will not be, the owner or operator of the seasonal or year-round farm-worker housing, the taxpayer is entitled to the credit allowed under this section only if, upon completion of the seasonal or year-round farm-worker housing project and first occupation by farm workers, the housing complies with all safety or health laws, rules, regulations and standards applicable for farm-worker housing.

(b) If the taxpayer is a person who is, or will be, the owner or operator of the seasonal or year-round farm-worker housing at any time during the period for which the credit is claimed, the housing must:

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

(B) If registration is required, be registered as a farm-worker camp with the Bureau of Labor and Industries under ORS 658.750; and

(C) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid indorsement as a farm-worker camp operator under ORS 658.730.

(c) For purposes of this section, "owner" does not include a person whose only interest in the housing is as holder of a security interest.

(9)(a) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the department may order the disallowance

of the credit allowed under this section if it finds, by order, that:

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

(B) In the event that an owner or operator claims or claimed the credit:

(i) The taxpayer has failed substantially to comply with the occupational safety or health laws, rules, regulations or standards; or

(ii) After occupancy and if registration is required, the seasonal or year-round farm-worker housing is not registered as a farm-worker camp with the Bureau of Labor and Industries under ORS 658.750; or

(iii) After occupancy and if an indorsement is required, the seasonal or year-round farm-worker housing is not operated by a person who holds a valid indorsement as a farm-worker camp operator under ORS 658.730.

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

(c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section and ORS 317.146, in connection with the seasonal or year-round farm-worker housing project, as the case may be, from and after the date that the order of disallowance becomes final.

(10) In the event that the farm-worker housing is destroyed by fire, flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place. In the event of fire, if the fire chief of the fire protection district or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325, by the taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the department. Upon conviction of arson, the department shall disallow the credit in accordance with subsection (9) of this section.

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

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the

credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(12) The department may adopt rules for carrying out the provisions of this section. [1989 c.963 §2; 1991 c.766 §3; 1991 c.877 §10]

**Note:** Section 6 (1), chapter 963, Oregon Laws 1989, provides:

**Sec. 6.** (1) Sections 2 and 4 of this Act [316.154 and 317.146] shall apply to seasonal or year-round farm-worker housing projects completed in tax years that begin on or after the January 1 immediately following the date that both chapter 962, Oregon Laws 1989, and chapter 964, Oregon Laws 1989, have become both effective and operative [August 2, 1989] and which are completed before January 1, 1996. [1989 c.963 §6 (1)]

**Note:** Section 5, chapter 766, Oregon Laws 1991, provides:

**Sec. 5.** The amendments to sections 2 and 4, chapter 963, Oregon Laws 1989 [316.154 and 317.146], by sections 3 and 4 of this Act shall apply to seasonal or year-round farm-worker housing projects completed in tax years that begin on or after January 1, 1991, and that are completed before January 1, 1996. [1991 c.766 §5]

### (Bone Marrow Transplant)

**316.155 Credit for bone marrow transplant expense.** (1) As used in this section:

(a) "Bone marrow donor expense" means the sum of the amounts paid or incurred during the tax year by an employer for the following:

(A) Development of an employee bone marrow donation program.

(B) Employee education related to bone marrow donation, including but not limited to the need for donors and an explanation of the procedures used to determine tissue type and donate bone marrow.

(C) Payments to a health care provider for determining the tissue type of an employee who agrees to register or registers as a bone marrow donor.

(D) Wages paid to an employee for time reasonably related to tissue typing and bone marrow donation.

(E) Transportation of an employee to the site of a donation or any other service which is determined by the Health Division by rule as essential for a successful bone marrow donation.

(b) "Employee" means an individual who:

(A) Is regularly employed by the taxpayer for more than 20 hours per week;

(B) Who is not a temporary or seasonal employee; and

(C) Whose wages are subject to withholding under ORS 316.162 to 316.212.

(c) "Wages" has the meaning given the term for purposes of ORS 316.162 to 316.212.

(2) A business tax credit against the taxes otherwise due under this chapter for the tax year is allowed to a resident employer. The amount of the credit is equal to 25 percent of the bone marrow donor expense paid or incurred during the tax year by an employer to provide a program for employees who are potential bone marrow donors or who actually become bone marrow donors.

(3)(a) Except as provided under paragraph (b) of this subsection, the allowance of a credit under this section shall not affect the computation of taxable income for purposes of this chapter.

(b) If in determining the amount of the credit for any tax year an amount allowed as a deduction under section 170 of the Internal Revenue Code is included in bone marrow donation expense, the amount allowed as a deduction shall be added to federal taxable income.

(4) The credit allowed under this section shall be allowed to a nonresident employer in the same manner as the credit is allowed to a resident employer.

(5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter. [1991 c.652 §8]

Note: Section 12, chapter 652, Oregon Laws 1991, provides:

Sec. 12. Sections 8 and 10 of this Act [316.155 and 317.149] and the amendments to ORS 318.031 by section 11 of this Act apply to bone marrow donation expense incurred in tax years beginning on or after January 1, 1991, and before January 1, 1995. [1991 c.652 §12]

### (Retirement Income)

#### 316.157 Credit for retirement income.

(1) In the case of a resident eligible individual, there shall be allowed as a credit against the taxes otherwise due under this chapter for the taxable year an amount equal to the

lesser of the tax liability of the taxpayer or nine percent of net pension income.

(2) For purposes of this section:

(a) "Eligible individual" means any individual who is receiving pension income and who has attained the following age before the close of the taxable year:

(A) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, the individual must attain 58 years of age before the close of the taxable year.

(B) For taxable years beginning on or after January 1, 1993, and before January 1, 1995, the individual must attain 59 years of age before the close of the taxable year.

(C) For taxable years beginning on or after January 1, 1995, and before January 1, 1997, the individual must attain 60 years of age before the close of the taxable year.

(D) For taxable years beginning on or after January 1, 1997, and before January 1, 1999, the individual must attain 61 years of age before the close of the taxable year.

(E) For taxable years beginning on or after January 1, 1999, the individual must attain 62 years of age before the close of the taxable year.

(b) "Household income" has that meaning given in ORS 310.630 except that "household income" shall not include social security benefits received by the taxpayer or the spouse of the taxpayer.

(c) "Net pension income" means:

(A) For eligible individuals filing a joint return, the lesser of the pension income of the eligible individuals received during the taxable year or the excess, if any, of \$15,000 over the sum of the following amounts:

(i) Any social security benefits received by the eligible individual, or by the spouse of the individual, during the taxable year; and

(ii) The excess, if any, of household income over \$30,000.

(B) For an eligible individual filing a return other than a joint return, the lesser of the pension income of the eligible individual received during the taxable year or the excess, if any, of \$7,500 over the sum of the following amounts:

(i) Any social security benefits received by the eligible individual during the taxable year; and

(ii) The excess, if any, of household income over \$15,000.

(d) "Pension income" means income included in federal taxable income from:

(A) Distributions from or pursuant to an employee pension benefit plan, as defined in

section 3(2) of the Employee Retirement Income Security Act of 1974, which satisfies the requirements of section 401 of the Internal Revenue Code;

(B) Distributions from or pursuant to a public retirement system of this state or a political subdivision of this state, or a public retirement system created by an Act of this state or a political subdivision of this state, or the public retirement system of any other state or local government;

(C) Distributions from or pursuant to a federal retirement system created by the Federal Government for any officer or employee of the United States, including any person retired from service in the United States Civil Service, the Armed Forces of the United States or any agency or subdivision thereof;

(D) Distributions or withdrawals from or pursuant to an eligible deferred compensation plan which satisfies the requirements of section 457 of the Internal Revenue Code;

(E) Distributions or withdrawals from or pursuant to an individual retirement account, annuity or trust or simplified employee pension which satisfies the requirements of section 408 of the Internal Revenue Code; and

(F) Distributions or withdrawals from or pursuant to an employee annuity, including custodial accounts treated as annuities, subject to section 403 (a) or (b) of the Internal Revenue Code.

(e) "Social security benefits" means social security benefits, as defined in section 86 of the Internal Revenue Code (Title II social security or tier 1 railroad retirement benefits).

(3) A nonresident eligible individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be allowed only in that proportion that the eligible individual's pension income included in federal adjusted gross income from Oregon sources bears to the eligible individual's pension income included in federal adjusted gross income from all sources.

(4) If a change in the taxable year of the eligible individual occurs as described in ORS 314.085, or if the department terminates the tax year of the eligible individual under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 316.085.

(5) If a change in the status of the eligible individual from resident to nonresident or from nonresident to resident occurs, the

credit allowed by this section shall be determined in a manner consistent with subsection (3) of this section.

(6) For purposes of this section, "federal adjusted gross income" is as described in ORS 316.013. [1991 c.823 §5]

**316.158 Effect upon ORS 316.157 of determination of invalidity; severability.** (1) It is the intent of the Legislative Assembly that no part of ORS 316.157 be the law if any part of ORS 316.157 is held to be invalid or unconstitutional. However, no amended return or payment of additional taxes shall be required for any year prior to the year in which any part of ORS 316.157 is held to be invalid or unconstitutional by a court of last resort.

(2) Except as provided in subsection (1) of this section, it is the intent of the Legislative Assembly that the provisions of ORS 237.201, 310.635, 316.087, 316.157, 316.158, 316.680 and 316.695 be severable as provided in ORS 174.040. [1991 c.823 §9]

**Note:** 316.158 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 10 (1), chapter 823, Oregon Laws 1991, provides:

**Sec. 10.** (1) Except as provided in subsection (2) of this section, this Act [237.201, 310.635, 316.087, 316.157, 316.158, 316.680 and 316.695] applies to taxable years beginning on or after January 1, 1991. [1991 c.823 §10 (1)]

**316.159 Credit for taxes paid to another state on retirement distributions.**

(1)(a) In addition to other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income of a resident individual the distributions received by the individual from a plan or trust described under subsection (2) of this section to the extent that:

(A) The distributions consist of contributions made in a tax period during which the individual was a nonresident; and

(B) The distributions consist of contributions made in a tax period for which no deduction, exclusion or exemption for the contributions was allowed or allowable to the individual for purposes of a state personal net income tax imposed during the period by the state of which the individual was a resident; and

(C) No deduction, exclusion, subtraction or other tax benefit has been allowed for the distributions by another state before the individual becomes a resident of this state.

(b) For purposes of this section, if any distributions (lump sum or periodic) received by a resident individual from a plan or trust described in subsection (2) of this section meet the requirements of paragraph (a) of

this subsection, then for purposes of the subtraction allowed by this section, those distributions shall be considered to be the distributions first received by the individual after the individual has become a resident of this state.

(c) For purposes of ORS 316.082 (credit for taxes paid to another state), any distributions received by a resident individual from a plan or trust described in subsection (2) of this section which meet the requirements of paragraph (a) of this subsection shall be considered income subject to tax under this chapter notwithstanding the exclusion under this section.

(2) A plan or trust is described in this section if:

(a) The plan or trust is an individual retirement account described in section 408 of the Internal Revenue Code; or

(b) The trust forms part of a pension or profit-sharing plan that provides contributions or benefits for employees, some or all of whom are owner-employees, as defined under section 401(c)(3) of the Internal Revenue Code.

(3) The following contributions are not contributions to which the subtraction under subsection (1) of this section is accorded:

(a) Contributions made during a tax period, or portion thereof, for which the taxpayer was a nonresident required to file an Oregon return, to the extent that a deduction or exclusion was allowable under this chapter for those contributions; or

(b) Contributions for which the taxpayer was allowed a credit for taxes paid to another state under ORS 316.082.

(4) A subtraction shall not be allowed under this section for interest or other income arising from investment of contributions made to a plan or trust described in subsection (2) of this section.

(5) For purposes of the subtraction allowed under subsection (1) of this section:

(a) Distributions received by the taxpayer from a plan or trust described in subsection (2) of this section shall be considered to initially consist of a recovery of contributions.

(b) Once the distributions equal the cumulative contributions, all further distributions shall constitute interest or other income arising from investment of the contributions.

(6) The department may adopt rules requiring substantiation of the contributions and tax treatment upon which the subtraction under this section is based. Failure to provide substantiation as required under the rules shall result in denial of the sub-

traction otherwise allowed under this section. [1991 c.838 §2]

Note: Section 3, chapter 838, Oregon Laws 1991, provides:

Sec. 3. (1) Except as provided in subsection (2) of this section, the subtraction under section 2 of this Act [316.159] applies to distributions received in tax periods beginning on or after January 1, 1991.

(2) If a taxpayer received a distribution during a tax period beginning before January 1, 1991, and if at the time the distribution was received the taxpayer was a resident and would have been entitled to the subtraction under section 2 of this Act had section 2 of this Act been in effect and applicable, then notwithstanding ORS 314.415 or other law, the taxpayer may claim the subtraction allowable under section 2 of this Act (or the sum of all of the subtractions allowable under this subsection) on the taxpayer's 1991 Oregon resident return. The subtraction accorded in this section shall not cause a loss or other carryback or carryforward to occur. [1991 c.838 §3]

### COLLECTION OF TAX AT SOURCE OF PAYMENT

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

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

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

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

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

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

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

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

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

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

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

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

(i) For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of religious duties required by such order, which duties are not commercial in nature.

(j) For services performed by an independent contractor, as that term is defined in ORS 670.600.

(3) "Employer" means:

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

(b) An officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the acts required of employers by ORS 316.167, 316.182, 316.197, 316.202 and 316.207. [1969 c.493 §24; 1971 c.690 §1; 1973 c.229 §1; 1977 c.604 §1; 1981 c.705 §3; 1985 c.87 §3; 1989 c.762 §2]

**316.164 When surety bond or letter of credit required of employer; enforcement.**

(1) Except as provided in subsection (3) of this section, if the department makes the findings required under subsection (2) of this section, the department may require any employer subject to ORS 316.162 to 316.212, except the state or its political subdivisions, to post a surety bond, or irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, with the department, to secure future payment of amounts required to be withheld and paid over to the department under ORS 316.162 to 316.212. The bond or letter of credit shall be in an amount equal to the amounts required to be withheld upon the wages paid or estimated to be paid by the employer for a period of four calendar quarters. The bond or letter of credit shall be in a form acceptable to the department. Posting of the bond or letter of credit shall not relieve the employer from withholding and paying over amounts based on wages paid by the employer under any provision of ORS 316.162 to 316.212. The department may, in its discretion, at any time apply such bond or letter of credit or part thereof to the delinquencies or indebtedness of the employer arising under any provision of ORS 316.162 to 316.212 and accruing after the date the bond or letter of credit was posted. Appeal of an action of the department under this section shall not relieve an em-

ployer of the requirement during the pendency of the appeal.

(2) Before requiring an employer to post a bond or irrevocable letter of credit under subsection (1) of this section, the department shall determine that the employer has failed to make payment to the department of amounts required to be withheld and paid over under any provision of ORS 316.162 to 316.212 for at least three calendar quarters, and the total amount of delinquent payments exceeds \$2,500, exclusive of interest or penalties. For purposes of this subsection, a payment shall not be considered delinquent if the employer's liability to withhold is subject to appeal to the director.

(3) The department shall not require a bond or irrevocable letter of credit to be posted under this section if the employer elects to notify the department of the times of payment of wages to the employees of the employer, and, notwithstanding ORS 316.197, to pay over amounts withheld within three banking days after the dates the wages were paid.

(4) Before requiring an employer to post a bond or irrevocable letter of credit or make payment of amounts required to be withheld in the manner prescribed in subsection (3) of this section, the department shall attempt to obtain payment of delinquent amounts through other methods of collection, however, the department is not required to seize or sell real or personal property in order to comply with the requirements of this subsection.

(5) Any bond or irrevocable letter of credit required under subsection (1) of this section shall become the sole property of the department and shall be held by the department to guarantee payment of withholding taxes by the employer. The bond or letter of credit shall be held for the benefit of the State of Oregon, subject only to the provisions of subsection (6) of this section. The bond or letter of credit shall be prior to all other liens, claims or encumbrances and shall be exempt from any process, attachment, garnishment or execution.

(6) If an employer ceases to be an employer subject to ORS 316.162 to 316.212, the department shall, upon receipt of all payments due from the employer for withheld amounts, cancel any bond or irrevocable letter of credit given under this section. Such bonds or letters of credit held for the benefit of the State of Oregon shall first be applied to any indebtedness or deficiencies due from the employer under ORS 316.162 to 316.212 and accruing after the date the bond or letter of credit was posted before any return is made to the employer. The employer shall have no interest in such bond or letter of

credit prior to full compliance with this section and all provisions of ORS 316.162 to 316.212.

(7) If an employer required to post a bond or irrevocable letter of credit or make payment of amounts withheld in the manner prescribed under this section makes full payment of all delinquent amounts due and owing at the time the bond, letter of credit or accelerated payment schedule was required and makes payment of amounts due under ORS 316.162 to 316.212 and files returns required in connection with those payments in a timely manner for the succeeding four calendar quarters, the department shall release the employer from the requirement to post the bond or letter of credit or make accelerated payments of amounts withheld.

(8) If any employer fails to comply with subsections (1) to (7) of this section, the Oregon Tax Court, upon commencement of an action by the department for that purpose, may order the employer to post the required bond or irrevocable letter of credit or make accelerated payments of amounts withheld. The employer's failure to obey an order of the court is punishable by contempt. If the Oregon Tax Court determines that an order of compliance enforceable by contempt proceedings will not assure the payment of withheld taxes by the employer, the court may enjoin the employer from further employing individuals in this state or continuing in business therein until the employer has complied with subsection (1) to (7) of this section. [1985 c.406 §§2, 3; 1991 c.331 §143]

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

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

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

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

(4) With the approval of the Executive Department, the department may enter into contracts with banking institutions including but not limited to Federal Reserve Banks, incorporated banks, trust companies, domestic building and loan associations, savings and loan associations or credit unions authorizing them to receive as financial agents of the department any tax required to be withheld and paid to the department. [1969 c.493 §25; 1975 c.394 §1; 1977 c.604 §2; 1982 a.s.1 c.1 §1]

**316.168 Employer required to file combined quarterly tax report.** (1) Except as otherwise provided by law, every employer subject to the provisions of ORS 316.162 to 316.212, ORS chapter 657, or a payroll-based tax imposed by a mass transit district and administered by the Department of Revenue under ORS 305.620, shall make and file a combined quarterly tax report upon a form prescribed by the department.

(2) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing, as provided in ORS 305.820.

(a) The report shall be accompanied by payment of any tax due and a combined tax payment coupon prescribed by the department. The employer shall indicate on the coupon the amount of the total payment and the portions of the payment to be paid to each of the tax programs.

(b) The Department of Revenue shall credit the payment to the tax programs in the amounts indicated by the employer on the coupon and shall promptly remit the payments to the appropriate taxing body.

(c) If the employer fails to allocate the payment on the coupon, the department shall allocate the payment to the proper tax programs on the basis of the percentage the payment bears to the total amount due.

(d) The Department of Revenue shall distribute copies of the combined quarterly tax report and the necessary tax payment information to each of the agencies charged with the administration of a tax covered by the report.

(e) The Department of Revenue and the Employment Division of the Department of Human Resources shall develop a system of account numbers and assign to each employer a single account number representing all of the tax programs included in the combined quarterly tax report. [1989 c.901 §2]

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

**316.171 Application of tax and report to administration of tax laws.** Except as provided in this section and ORS 314.840, 316.168, 316.197, 316.202 and 657.570, the statutes and regulations applicable to each agency, requiring a report and imposing a tax, shall govern the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, penalties, interest, administrative and judicial appeals and the procedures relating thereto. [1989 c.901 §3]

**316.172 Tax withholding tables to be prepared by department.** (1) The department shall prepare a table for use with the percentage method that provides for the deduction and withholding of a tax equal to a specific percent (to be determined by the department) of the amount by which the wages for a given payroll period (daily, weekly, bi-weekly, semimonthly, monthly, quarterly, semiannually or annually, as the case may be) exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption for each payroll period (such amount being determined by the department for each such period). The determinations of the department shall result, so far as is practicable, in withholding from the employee a sum substantially equivalent to the amount of the tax that the employee will be required to pay under this chapter upon such wages. To accomplish this purpose, the department may make special provision for employees who are in the state for limited periods of time.

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

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

**316.177 Reliance on withholding statement; penalty for statement without reasonable basis.** (1) If an employee does not

claim a different number of withholding exemptions for state withholding purposes, the employee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which the employee is entitled for federal income tax withholding purposes. If an employee does not claim a different number of withholding exemptions for state withholding purposes, the employer may rely upon the number of federal withholding exemptions claimed by the employee, or authorized or specified under the Internal Revenue Code. If the employee does claim a different number of withholding exemptions for state withholding purposes, the employer shall rely on the number specified on that claim.

(2) If any employee makes a statement for federal income tax withholding purposes which claims more than 10 withholding exemptions, or claims exemption from withholding and the employee's income is expected to exceed \$200 per week for both federal and state purposes, or claims exemption from withholding for state purposes but not for federal purposes, and as of the time the statement was made there was no reasonable basis for the statement, the department shall assess and collect from the employee a penalty of \$500.

(3) The penalty imposed under this section is in addition to any other penalty imposed by law. Any employee against whom 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 order of the department becomes final, the department may record the order and collect the amount assessed without interest in the same manner as income tax deficiencies are recorded and collected under ORS 314.430.

(4) The department may waive all or any part of the penalty imposed under subsection (2) of this section if the income tax liability of the employee for the taxable year is equal to or less than the sum of:

(a) The credits against taxes allowed under this chapter; and

(b) The payments of estimated tax which are considered payments on account of the tax liability of the employee under ORS 316.579 and 316.583. [1969 c.493 §27; 1987 c.293 §19; 1987 c.843 §20]

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

**316.182 Exemption certificate.** (1) Subject to subsection (2) or (3) of this section and if the employee does not claim a different number of withholding exemptions for purposes of this chapter, an employer shall use the exemption certificate filed by the employee with the employer under the in-

come tax withholding provisions of the Internal Revenue Code for determining the number of withholding exemptions to be used in computing the tax to be withheld under ORS 316.167 and 316.172. If a new exemption certificate is not filed as provided under section 1581 of the Tax Reform Act of 1986 (P.L. 99-514) for federal purposes, the employer shall use the same number of withholding exemptions as used for purposes of the Internal Revenue Code for determining the amount of tax to be withheld under ORS 316.167 and 316.172.

(2) The department may require an exemption certificate to be filed on a form prescribed by the department in any circumstance where the department finds that an exemption certificate filed for purposes of the Internal Revenue Code does not properly reflect the number of withholding exemptions allowable under this chapter.

(3) No exemption certificate need be procured from an employee whose wages consist of wages as defined in ORS 316.162 (2)(e). [1969 c.493 §28; 1987 c.293 §20]

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

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

**316.189 Withholding of state income taxes from certain periodic payments.** (1) As used in this section:

(a) "Commercial annuity" means an annuity, endowment or life insurance contract issued by an insurance company authorized to transact insurance in the State of Oregon.

(b) "Department" means the Oregon Department of Revenue.

(c) "Designated distribution" means any distribution or payment from or under an employer deferred compensation plan, an individual retirement plan or a commercial annuity. "Designated distribution" does not include any amount treated as wages as defined in ORS 316.162, the portion of any distribution or payment that is not includable in the gross income of the recipient or any distribution or payment made under section 404 (k)(2) of the Internal Revenue Code.

(d) "Employer deferred compensation plan" means any pension, annuity, profit-sharing or stock bonus plan or other plan deferring the receipt of compensation.

(e) "Individual retirement plan" means an individual retirement account described in section 408 (a) of the Internal Revenue Code or an individual retirement annuity described in section 408 (b) of the Internal Revenue Code.

(f) "Nonperiodic distribution" means any designated distribution which is not a periodic payment.

(g) "Payer" means any payer of a designated distribution doing business in or making payments or distributions from sources in this state.

(h) "Periodic payment" means a designated distribution which is an annuity or similar periodic payment.

(i) "Plan administrator" means a plan administrator as described in section 414 (g) of the Internal Revenue Code, who is the administrator of a plan created by an Oregon employer.

(j) "Qualified total distribution" means any designated distribution made under a retirement or annuity plan described in section 401 (a) or 403 (a) of the Internal Revenue Code, which consists of the balance to the credit of the employee, exclusive of accumulated deductible employee contributions, made within one taxable year of the recipient.

(2)(a) The payer of any periodic payment shall withhold from such payment the amount which would be required to be withheld from such payment under ORS 316.167 if the payment were wages paid by an employer to an employee. The time and manner of payment of withheld amounts to the department shall be the same as that required under ORS 316.197 for withholding of income taxes from wages.

(b) The payer of any nonperiodic distribution shall withhold from such distribution an amount determined under tables prescribed by the department.

(c) The maximum amount to be withheld under this section on any designated distribution shall not exceed 10 percent of the amount of money and the fair market value of other property received in the distribution. If the distribution is not subject to withholding for federal income tax purposes under section 3405 of the Internal Revenue Code, it shall not be subject to withholding under this section.

(3)(a) Except as provided in paragraph (b) of this subsection, the payer of a designated distribution shall withhold and be liable for

payment of amounts required to be withheld under this section.

(b) In the case of any plan described in section 401 (a) or section 403 (a) of the Internal Revenue Code, or section 301 (d) of the Tax Reduction Act of 1975, the plan administrator shall withhold and be liable for payment of amounts required to be withheld under this section, unless the plan administrator has directed the payer to withhold the tax and has provided the payer with the information required by rule of the department.

(4)(a) An individual may elect to have no withholding by a payer under subsection (2) of this section. If an individual has elected to have no federal withholding from payments or distributions described in this section the individual shall be deemed to have elected no withholding for state purposes, unless the individual notifies the payer otherwise.

(b) An election made under this subsection shall be effective as provided under rules promulgated by the department. The rules required under this paragraph shall provide the manner in which an election may be revoked and when such revocation shall be effective.

(5) The payer of any periodic payment or nonperiodic distribution shall give notice to the payee of the right to make an election to have no state withholding from the payment or distribution. The department shall provide by rule for the time and manner of giving the notice required under this subsection.

(6) Any rules permitted or required to be promulgated by the department under this section shall, insofar as is practicable, be consistent with corresponding provisions of section 3405 of the Internal Revenue Code and regulations promulgated thereunder.

(7) Any designated distribution shall be treated as if it were wages paid by an employer to an employee within the meaning of ORS 316.162 to 316.212 for all other purposes of ORS 316.162 to 316.212. In the case of any designated distribution not subject to withholding by reason of an election under subsection (4) of this section, the amount withheld shall be treated as zero. [1985 c.87 §9]

**Note:** 316.189 was added to and made a part of ORS chapter 316 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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

**316.191 Withholding taxes at time and in manner other than required by federal law.** Notwithstanding the provisions of ORS 316.197:

(1) When adherence to the federal withholding system creates an undue burden on an employer, the employer may request and the department may permit that taxes be withheld and paid over within a time and in a manner other than that required under federal law.

(2) If the department permits the modification of the time and manner of withholding and payment of taxes under this section the method of withholding and payment permitted shall, whenever possible, provide for withholding and payment in a manner similar to that required for other employers required to deduct and retain similar amounts of income taxes from wages paid to their employees in Oregon.

(3) The department shall adopt rules establishing the manner in which an employer may request a modification under this section, and may by rule prescribe a modification of the time and manner of withholding and payment of taxes in such instances as it considers necessary. The department may adopt by rule any exceptions to federal withholding requirements that have been adopted by the Internal Revenue Service. [1985 c.87 §2]

**316.192** [1969 c.493 §30; 1971 c.333 §2; repealed by 1985 c.602 §7]

**316.193 Withholding of state income taxes from federal retired pay for members of uniformed services.** (1) The Department of Revenue may enter into an agreement with the appropriate United States agency or instrumentality for the voluntary withholding of state income taxes from the retired pay of members of the uniformed services under the provisions of section 654, Public Law 98-525. The department is hereby authorized to do all acts and comply with any requirements necessary to enable retired members of the uniformed services to elect voluntary withholding of state income taxes from their retired pay.

(2) The department may establish by rule a minimum monthly amount to be withheld and paid over for any member electing voluntary withholding of state income taxes under an agreement entered into under subsection (1) of this section.

(3) Notwithstanding ORS 314.835 or 314.840, the department may disclose to the Department of Defense the name, address or social security number of any member electing voluntary withholding of state income taxes whenever necessary to enable the Department of Defense to implement such withholding under the terms of an agreement entered into under subsection (1) of this section.

(4) As used in this section:

(a) "Member" means any person retired from a regular or reserve component of one of the uniformed services, who has Oregon personal income tax liability in connection with the receipt of retired pay.

(b) "Retired pay" means pay and benefits received based on conditions of the federal retirement law, pay grade, years of service, date of retirement, transfer to Fleet Reserve or Fleet Marine Corps Reserve or disability.

(c) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the United States Public Health Service and the commissioned corps of the National Oceanic and Atmospheric Administration. [1985 c.87 §8]

Note: 316.193 was added to and made a part of ORS chapter 316 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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

**316.196 Withholding of state income taxes from federal retirement pay for civil service annuitant.** (1) The Department of Revenue may enter into an agreement with the United States Office of Personnel Management for the voluntary withholding of state income taxes from the retirement pay of United States civil service annuitants under the provisions of section 1705 of Public Law 97-35. The department is hereby authorized to do all acts and comply with any requirements necessary to enable retired United States civil servants to elect voluntary withholding of state income taxes from their retirement pay.

(2) The department shall establish by rule a procedure under which a United States civil service annuitant may request voluntary withholding under an agreement entered into under subsection (1) of this section. The procedure may include a minimum monthly amount to be withheld and paid over to the state.

(3) Notwithstanding ORS 314.835 or 314.840, the department may disclose to the United States Office of Personnel Management the name, address or social security number of any United States civil service annuitant electing voluntary withholding of state income taxes whenever necessary to enable the United States Office of Personnel Management to implement such withholding under the terms of an agreement entered into under subsection (1) of this section.

(4) As used in this section:

(a) "Civil service annuitant" means any person retired from the federal civil service who has Oregon personal income tax liability in connection with the receipt of retirement pay. "Civil service annuitant" includes a

survivor annuitant within the meaning of Title 5, United States Code, section 8331.

(b) "Retirement pay" means regular, recurring monthly annuity payments received based on conditions of federal retirement law, but does not include retired pay as defined in ORS 316.193. [1985 c.87 §7]

Note: 316.196 was added to and made a part of ORS chapter 316 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**316.197 Payment to department by employer; interest on delinquent payments.** (1)(a) Except as provided under ORS 316.191 or paragraph (b) of this subsection, within the time that each employer is required to pay over taxes withheld for federal income tax purposes for any period, the employer shall pay over to the department or to a financial agent of the department the amounts required to be withheld under ORS 316.167 and 316.172 for the same period. Any employer not required to withhold federal income taxes for any period but who is required to deduct and retain amounts from wages paid to an employee under ORS 316.167 and 316.172 for the same period shall pay over to the department or financial agent of the department, taxes withheld for the period, within the time and in the manner, as if the employer were required to withhold taxes for the period under federal law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, any employer of agricultural employees who is not required to withhold federal income taxes for any period but who is required to deduct and retain amounts from wages paid to those employees under ORS 316.167 and 316.172 shall pay over to the department, or financial agent of the department, taxes so withheld at the same time and for the same period for which the employer is required to pay over employer and employee taxes under chapter 21 of the Internal Revenue Code (Federal Insurance Contributions Act).

(2) Every amount so paid over shall be accounted for as part of the collections under this chapter. No employee has any right of action against an employer in respect of any moneys deducted from wages and paid over in compliance or intended compliance with this section.

(3) If any amount required to be withheld and paid over to the department is delinquent, interest shall accrue at the rate prescribed under ORS 305.220 on that amount from the last day of the month following the end of the calendar quarter within which the amount was required to be paid to the department to the date of payment. The provisions of this subsection shall not relieve any employer from liability for a late pay-

ment penalty under any other provision of law. [1969 c.493 §31; 1975 c.594 §1; 1982 s.s.1 c.1 §2; 1983 c.697 §1; 1985 c.87 §4; 1989 c.901 §7]

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

**316.202 Reports by employer; effect of failure to report; waiver.** (1) With each payment made to the department, every employer shall deliver to the department, on a form prescribed by the department showing the total amount of withheld taxes in accordance with ORS 316.167 and 316.172, and supply such other information as the department may require. The employer is charged with the duty of advising the employee of the amount of moneys withheld, in accordance with such regulations as the department may prescribe, using printed forms furnished or approved by the department for such purpose.

(2) Except as provided in subsection (4) of this section, every employer shall submit a combined quarterly return to the department on a form provided by it showing the number of payments made, the withheld taxes paid during the quarter and an explanation of federal withholding taxes as computed by the employer. The report shall be filed with the department on or before the last day of the month following the end of the quarter.

(3) The employer shall make an annual return to the department on forms provided or approved by it, summarizing the total compensation paid and the tax withheld for each employee during the calendar year and shall file the same with the department before February 16 of the year following that for which report is made. Failure to file the annual report without reasonable excuse on or before the 30th day after notice has been given to the employer of failure subjects the employer to a penalty of \$100. The department may prescribe circumstances under which the filing requirement imposed by this subsection is waived.

(4) Notwithstanding the provisions of subsection (2) of this section, employers of agricultural employees may submit returns annually showing the number of payments made and the withheld taxes paid. However, such employers shall make and file a combined quarterly tax report with respect to other tax programs, as required by ORS 316.168. [1969 c.493 §32; 1973 c.83 §1; 1982 s.s.1 c.1 §3; 1983 c.697 §2, 1987 c.366 §4; 1989 c.901 §8]

**316.205** [1953 c.304 §27; repealed by 1957 c.632 §1 (314.280 enacted in lieu of 316.205 and 317.180)]

**316.207 Liability for tax; warrant for collection; conference; appeal.** (1) Every employer who deducts and retains any amount under ORS 316.162 to 316.212 shall hold the same in trust for the State of

Oregon and for the payment thereof to the department in the manner and at the time provided in ORS 316.162 to 316.212.

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

(3)(a) In the case of an employer that is assessed pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member described in ORS 316.162 (3)(b) of such employer within three years from the time of assessment. Within 30 days from the date the notice of liability is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the conference letter is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the director in the manner provided in this chapter for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of liability is received by the department within 30 days after the notice of liability has been mailed, the notice of liability becomes final. In such event, the officer, employee or member may appeal the notice of liability to the director within 90 days after it became final in the manner provided in this chapter for an appeal from a notice of assessment.

(4)(a) In the case of a failure to file a withholding tax report on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to the provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member described in ORS 316.162 (3)(b) any time within three years after the assessment

of an employer described in ORS 316.162 (3)(a). The time of assessment against such officer, employee or member shall be 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment, and if desired, request a conference. Any conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, such officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the director in the manner provided in this chapter for an appeal from a notice of assessment.

(c) If neither payment nor written objection to the notice of determination and assessment is received by the department within 30 days after the notice of determination and assessment has been mailed, the notice of determination and assessment becomes final. In such event, the officer, employee or member may appeal the notice of determination and assessment to the director within 90 days after it became final in the manner provided in this chapter for an appeal from a notice of assessment.

(5)(a) Notwithstanding the provisions of ORS 314.835, 314.840 or 314.991, if more than one officer or employee of a corporation or more than one member or employee of a partnership may be held liable for payment of withheld taxes, the department may require any or all of the officers, members or employees who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, member or employee of the time and place set for the determination of liability.

(b) Each person notified of a joint determination under this subsection shall appear and present such information as is necessary to establish that person's liability or nonliability for payment of withheld taxes to the department. If any person notified fails to appear, the department shall make its determination on the basis of all the information and evidence presented. The department's

determination shall be binding on all persons notified and required to appear under this subsection.

(c) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.560 by any person determined to be liable for unpaid withholding taxes under this subsection, each person required to appear before the department under this subsection shall be impleaded by the plaintiff and made a party to the action before the tax court and shall make available to the Oregon Tax Court such information as was presented before the department, as well as such other information as may be presented to the court. If any person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the court shall make its determination on the basis of all the evidence introduced. All such evidence shall constitute a public record and shall be available to the parties and the court notwithstanding ORS 314.835, 314.840 or 314.991. The determination of the tax court shall be binding on all persons made parties to the action under this subsection.

(d) Nothing in this section shall be construed to preclude a determination by the department or the Oregon Tax Court that more than one officer, employee or member are jointly liable for unpaid withholding taxes. [1969 c.493 §33; 1985 c.406 §4; 1989 c.423 §3]

**316.209 Applicability of ORS 316.162 to 316.212 when services performed by qualified real estate agent or direct seller.** (1) For purposes of ORS 316.162 to 316.212, in the case of services performed as a qualified real estate agent or as a direct seller:

(a) The individual performing the services shall not be treated as an employee; and

(b) The person for whom the services are performed shall not be treated as an employer.

(2) As used in this section, "qualified real estate agent" means any individual if:

(a) The individual is a real estate licensee under ORS 696.010 to 696.490;

(b) Substantially all of the remuneration (whether or not paid in cash) for the services performed by the individual as a real estate licensee is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the real estate broker, real estate appraiser or real

estate organization for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes.

(3) As used in this section, "direct seller" means any individual if:

(a) The individual is:

(A) Engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis or any similar basis, which the department prescribes by rule, for resale by the buyer or any other person, in the home or otherwise than in a permanent retail establishment; or

(B) Engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment;

(b) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in paragraph (a) of this subsection is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes. [1983 c.597 §3]

**316.210** [1953 c.304 §28; repealed by 1957 c.632 §1 (314.285 enacted in lieu of 316.210 and 317.185)]

**316.212 Application of penalties, misdemeanors and jeopardy assessment; employer as taxpayer.** The provisions of the income tax laws in ORS chapters 305 and 314 and this chapter, relating to penalties, misdemeanors and jeopardy assessments, apply to employers subject to the provisions of ORS 316.162 to 316.212, and for these purposes any amount deducted or required to be deducted and remitted to the department under ORS 316.162 to 316.212 is considered the tax of the employer and with respect to such amount the employer is considered as a taxpayer. [1969 c.493 §34; 1982 s.s. c.16 §10; 1985 c.87 §5]

**316.215** [1969 c.493 §35; 1975 c.672 §6; 1978 c.9 §2; 1985 c.345 §5; repealed by 1987 c.293 §54]

**316.216 Alternate methods of filing, reporting and calculating liability for nonresident employer and employee in state temporarily.** (1) As used in this section:

(a) "Nonresident employer" means an employer who:

(A) Has no permanent place of business within this state; and

(B) Employs qualifying nonresident employees to perform temporary services in this state.

(b) "Qualifying nonresident employee" means an employee or independent contractor who:

(A) Is not a resident or part-year resident of this state;

(B) Performs temporary services in this state for one or more nonresident employers; and

(C) Has no income from Oregon sources other than income earned in connection with the performance of temporary services for one or more nonresident employers.

(c) "Temporary services" means services performed during a limited period of time, not to exceed 200 days in one calendar year.

(2) The department shall provide for alternate methods of filing, reporting or calculating tax liability, to be used by nonresident employers and qualifying nonresident employees to report and pay Oregon personal income tax on income earned in connection with the employees' performance of temporary services in this state. In providing for an alternate filing, reporting or calculating method, the department shall have the power to:

(a) Prescribe forms to be filed by nonresident employers to satisfy withholding registration, quarterly filing and account termination filing requirements under ORS 316.162 to 316.212, or employee estimated tax requirements under ORS 316.557 to 316.589.

(b) Prescribe forms to be filed by qualifying nonresident employees to satisfy annual personal income tax return requirements under ORS 316.362.

(c) Determine, based upon the circumstances, the amount of withholding or estimated tax payments necessary to result in a sum substantially equivalent to the amount of tax that a qualifying nonresident employee will be required to pay under this chapter.

(d) Enter into agreements pursuant to ORS 305.150 for the purpose of finally determining the Oregon personal income tax liability of qualifying nonresident employees.

(e) Determine whether and to what extent other provisions of this chapter shall be applied to nonresident employers or qualifying nonresident employees.

(3)(a) Except as provided in paragraph (b) of this subsection, a nonresident employer shall comply with the requirements of ORS 316.162 to 316.212 in the same manner as any other employer.

(b) A nonresident employer may elect to employ an alternate method established by the department pursuant to this section by notifying the department in the time and manner established by rule of the department. Any nonresident employer giving notice of election under this paragraph shall not be required to comply with the requirements of ORS 316.162 to 316.212.

(4)(a) Notwithstanding the election of a nonresident employer to employ the alternate method established by the department under this section, a qualifying nonresident employee may elect to report and pay Oregon personal income tax on income earned by the employee in connection with the employee's performance of temporary services in this state in the same manner as any other nonresident.

(b) If a nonresident employer does not make the election permitted under subsection (3) of this section, the qualifying nonresident employees of the employer shall report and pay Oregon personal income tax on income earned in connection with their performance of temporary services within this state in the same manner as any other nonresident.

(5) The department may adopt any rules it considers necessary to carry out the provisions of this section. [1985 c.352 §2; formerly 316.857]

316.217 [1969 c.493 §36; repealed by 1987 c.293 §56]

316.222 [1969 c.493 §37; repealed by 1987 c.293 §56]

316.227 [1969 c.493 §38; repealed by 1987 c.293 §56]

## ESTATES AND TRUSTS

### (Generally)

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

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

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

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

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

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

316.266 [1959 c.581 §4 (enacted in lieu of 316.265); last sentence derived from 1959 c.581 §11; last sentence of subsection (6) enacted as 1961 c.225 §3; 1969 c.103 §1; repealed by 1969 c.493 §99]

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

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

**316.272 Computation and payment on estate or trust.** The taxable income of an estate or trust shall be computed in the same

manner as in the case of an individual except as otherwise provided by this chapter. The tax shall be paid by the fiduciary. [1969 c.493 §40; 1983 c.684 §21]

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

**316.277 Associations taxable as corporations exempt from chapter.** (1) An association, trust or other unincorporated organization that is taxable as a corporation for federal income tax purposes is not subject to tax under this chapter, but is taxable as a corporation under ORS chapter 317 or 318, or both, as provided therein.

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

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

316.280 [1953 c.304 §34; 1953 c.552 §8; 1955 c.256 §1; paragraph (d) of subsection (6) of 1957 Replacement Part derived from 1955 c.256 §2; repealed by 1959 c.581 §5 (316.281 enacted in lieu of 316.280)]

316.281 [1959 c.581 §6 (enacted in lieu of 316.280); subsection (8) derived from 1959 c.581 §11; 1965 c.99 §1; repealed by 1969 c.493 §99]

### (Resident Estates and Trusts)

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

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

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

316.285 [1953 c.304 §35; repealed by 1959 c.581 §7 (316.286 enacted in lieu of 316.285)]

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

**316.287 "Fiduciary adjustment" defined; shares proportioned.** (1) The

"fiduciary adjustment" is the net amount of the modifications to federal taxable income described in this chapter (ORS 316.697 being applicable if the estate or trust is a beneficiary of another estate or trust) that relates to its items of income or deduction of an estate or trust.

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

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

**316.290** [1953 c.304 §36; repealed by 1959 c.581 §9 (316.291 enacted in lieu of 316.290)]

**316.291** [1959 c.581 §10 (enacted in lieu of 316.290); subsection (4) derived from 1959 c.581 §11; repealed by 1969 c.493 §99]

**316.292 Credit for taxes paid another state.** (1) For purposes of this section, an estate or trust is considered a resident of the state which taxes the income of the estate or trust irrespective of whether the income is derived from sources within that state.

(2) Notwithstanding the limitations contained in ORS 316.082 and 316.131, if an estate or trust is a resident of this state and also a resident of another state, the estate or trust shall be allowed a credit against the taxes imposed under this chapter for income taxes imposed by and paid to the other state, subject to the following conditions:

(a) Credit shall be allowed only for the proportion of the taxes paid to the other state as the income taxable under this chapter and also subject to tax in the other state bears to the entire income upon which the taxes paid to the other state are imposed.

(b) The credit shall not exceed the proportion of the tax payable under this chapter as the income subject to tax in the other state and also taxable under this chapter

bears to the entire income taxable under this chapter. [1969 c.493 §45; 1985 c.802 §10; 1991 c.838 §7]

Note: See note under 316.131.

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

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

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

**316.298 Accumulation distribution credit.** (1) A resident beneficiary of a trust whose adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this chapter for all or a proportionate part of any tax, paid by the trust under this chapter for any preceding taxable year, that would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in section 666 of the Internal Revenue Code.

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

**316.299** [1965 c.178 §2; repealed by 1969 c.493 §99]

### (Nonresident Estates and Trusts)

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

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

**316.306** [1955 c.608 §2; repealed by 1969 c.493 §99]

**316.307 Income of nonresident estate or trust.** For purposes of ORS 316.302 to 316.317:

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

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

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

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

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

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

(c) Less the amount of the deduction for its federal exemption. [1969 c.493 §48; 1983 c.684 §22]

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

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

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

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

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

(2) The department may by regulation establish such other method or methods of

determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state, and in the modifications related thereto, as may be appropriate and equitable. [1969 c.493 §49; 1975 c.705 §7]

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

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

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

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

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

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

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

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

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

316.342 [1969 c.493 §51; repealed by 1989 c.625 §27]

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

316.347 [1969 c.493 §52; repealed by 1989 c.625 §29]

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

316.352 [1969 c.493 §53; 1975 c.705 §8; repealed by 1989 c.625 §31]

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

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

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

## RETURNS; PAYMENTS; REFUNDS

**316.362 Persons required to make returns.** (1) An income tax return with respect to the tax imposed by this chapter shall be made by the following:

(a) Every resident individual:

(A) Who is required to file a federal income tax return for the taxable year; or

(B) Who has federal net income of more than \$600 if single or more than \$1,200 if married; or

(C) Who, having attained the age of 65 before the close of a taxable year, has federal net income of more than \$1,200 if single, more than \$1,800 if married and the spouse

of the individual has not attained the age of 65, or more than \$2,400, if both have attained the age of 65, before the close of the taxable year.

(b) Every nonresident individual:

(A) who has federal gross income from sources in this state of more than \$600 if single and \$1,200 if married; or

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

(C) Who has any taxable income.

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

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

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

(2) Nothing contained in this section shall preclude the department from requiring any individual, estate or trust to file a return when, in the judgment of the department, a return should be filed. [1969 c.493 §54; 1983 c.740 §90]

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

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

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

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

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

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

(6) Have margins that are adequate for purposes of readability, and have a line

length of the text not exceeding four inches for a column;

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

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

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

(2) As used in this section:

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

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

(c) "Average word length" means the total number of syllables in the instructions to the state income tax return form divided by the total number of words in the instructions. [1977 c.736 §3]

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

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

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

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

(3) If the federal income tax liabilities of husband and wife are determined on a joint federal return, they shall file a joint return under this chapter and their tax liabilities shall be joint and several; and

(4) If neither spouse is required to file a federal income tax return and either or both are required to file an income tax return under this chapter, they may elect to file separate or joint returns and pursuant to such election their liabilities shall be separate or joint and several. [1969 c.493 §55; 1985 c.802 §9]

**316.369 Relief from liability for erroneous items of one spouse.** (1) If a joint return has been made under this chapter for a taxable year and on the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse, upon compliance with subsection (2) of this section, the other spouse shall be relieved of liability for tax, including interest, penalties and other amounts, for the taxable year and to the extent that the liability is attributable to the grossly erroneous items.

(2) To qualify for relief from liability for tax under subsection (1) of this section, the other spouse must establish:

(a) If the Internal Revenue Service has made a determination under section 6013(e) of the Internal Revenue Code, for the same taxable year, that the determination relieved the spouse from liability for federal taxes; or

(b) If the Internal Revenue Service has not made a determination under section 6013(e) of the Internal Revenue Code with respect to the spouse, the spouse would be qualified to be relieved of liability for federal taxes for the same taxable year under section 6013(e) of the Internal Revenue Code and the regulations issued thereunder. [1983 c.627 §2, 3; 1985 c.802 §9a]

**316.370** [1953 c.304 §51; repealed by 1969 c.493 §99]

**316.371 Effect of relief from federal income tax liability of spouse.** (1) Notwithstanding any law or rule to the contrary, if pursuant to section 6004 of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647), the Internal Revenue Service determines that a spouse is relieved of liability for federal income tax upon a joint return filed for a taxable year, then and to the same extent the spouse shall be relieved of liability for tax, including interest, penalties and other amounts, imposed under this chapter for the same taxable year.

(2) If tax (including interest, penalties or other amounts) attributable to the disallowed deductions, as modified under this chapter, has been paid by the spouse, the tax shall be credited or refunded to the spouse but only if claim for refund is made to the department within one year after October 3, 1989. No interest on the credit or refund shall be allowed for any period before October 3, 1989. [1989 c.625 §12]

**316.372 Minor to file return; unpaid tax assessable against parent; when parent may file for minor.** (1) Except as provided in subsection (2) of this section, a minor shall file a return and include therein all items of income, including income attributable to personal services, and such income shall not be included on the return of the parent. All expenditures by the parent or the

minor attributable to such income are considered to have been paid or incurred by the minor. However, any tax assessed against the minor, to the extent, attributable to income from personal services, if not paid by the minor, for all purposes shall be considered as having also been properly assessed against the parent. For the purposes of this section the term "parent" includes an individual who is entitled to the services of a minor by reason of having parental rights and duties in respect of such minor.

(2) If a parent is eligible to elect and elects to include the interest and dividend income of a child on the parent's federal income tax return under section 1(g)(7)(B) of the Internal Revenue Code, the parent shall be considered to have elected to include the interest and dividend income of the child on the return filed by the parent for the same taxable period for purposes of this chapter. The child need not in such case file a return for purposes of this chapter for the taxable period to which the election applies. [1969 c.493 §56; 1989 c.625 §13a; 1991 c.457 §7a]

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

**316.377 Individual under disability.** An income tax return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by a duly authorized agent of the individual, guardian, conservator, fiduciary or other person charged with the care of the person or property of the individual other than a receiver in possession of only a part of the individual's property. [1969 c.493 §57; 1985 c.761 §13]

**316.380** [1953 c.304 §53; repealed by 1969 c.493 §99]

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

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

**316.385** [1963 c.435 §2; repealed by 1969 c.493 §99]

**316.387 Final account of a fiduciary; tax settlement.** (1) No final account of a fiduciary shall be allowed by any court unless the account shows, and the judge of the court finds, that all taxes imposed by this

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

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

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

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

316.397 [1969 c.493 §61; 1971 c.332 §1; 1975 c.672 §7; 1978 c.9 §3; 1981 c.801 §5; repealed by 1983 c.684 §24]

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

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

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

316.407 [1969 c.493 §63; 1971 c.354 §6; 1975 c.593 §18; 1979 c.470 §1; 1980 s.s. c.7 §23; repealed by 1989 c.625 §60]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316.467 [1969 c.493 §68; 1985 c.602 §14; renumbered 314.724 in 1989]

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

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

**316.475** [Formerly 316.080; amended by 1961 c.218 §1; repealed by 1969 c.493 §99]

**316.480** [1967 c.592 §7; 1969 c.340 §2; repealed by 1969 c.493 §99; see 316.097]

**316.485 Refund as contribution to Arts Development Fund.** (1) Individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Arts Development Fund by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form for residents a space for taxpayers to designate that a contribution be made to the Arts Development Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749. [1981 c.411 §1; 1989 c.987 §18]

**316.487 Refund as contribution to designated political party.** (1) Resident individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the political party designated. An individual resident taxpayer shall make the designation by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue, on the face of the Oregon income tax form for individuals, shall provide a place for resident individual taxpayers to make the designation provided by this section next to the name of a major political party. A space also shall be provided for the taxpayer to make a written designation of a minor political party to receive the contribution. The space for making the designation shall provide for checkoff boxes in the amount of \$1, \$5, \$10 or other dollar amount.

(3) If a person filing an individual tax return designates more than one political party to receive the contribution, the designation shall be void and no contribution shall be made.

(4) If a joint return is filed and only one political party is designated, that party shall receive a contribution in the total amount designated. If two political parties are designated on a joint return, each political party shall receive a contribution in the amount designated by each spouse. If more than two parties are designated, the designations shall be void and no contribution shall be made.

(5) If an organization which is not a political party is designated under this section, the designation is void and no contribution shall be made.

(6) As used in this section:

(a) "Major political party" means an affiliation of electors described in ORS 248.006.

(b) "Minor political party" means an affiliation of electors described in ORS 248.008.

(c) "Political party" means any major or minor political party. [1987 c.902 §7]

**316.490 Refund as contribution to Alzheimer's Disease Research Fund.** (1) Individual taxpayers who file an Oregon income tax return for purposes of this chapter and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Alzheimer's Disease Research Fund by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form a space for taxpayers to designate that a contribution be made to the Alzheimer's Disease Research Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749.

(3) A designation under subsection (1) of this section shall be made with respect to any taxable year on the returns for that taxable year, and once made shall be irrevocable. [1987 c.902 §2; 1989 c.987 §25]

**316.493 Refund as contribution to Children's Trust Fund.** (1) Recognizing again the policy set forth in ORS 418.189, that children are Oregon's most valuable resource and that child abuse and neglect is a threat to the physical, mental and emotional health of children; and further recognizing that the incidence of validated cases of reported child abuse and neglect has been increasing at an alarming rate in Oregon and represents an enormous threat to the welfare of our community, the Legislative Assembly hereby provides an additional opportunity to taxpayers to assist in child abuse and neglect prevention under ORS 418.187 to 418.199 by means of an income tax checkoff.

(2) Any individual taxpayer who files an Oregon income tax return and who will re-

ceive a tax refund from the Department of Revenue may designate that a contribution be made to the Children's Trust Fund established under ORS 418.199 by marking the appropriate box printed on the return pursuant to subsection (3) of this section.

(3) The department shall print on the face of the Oregon income tax form a space for taxpayers to designate that a contribution be made to the Children's Trust Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749.

(4) The Department of Revenue shall transfer to the Children's Trust Fund established under ORS 418.199 an amount as credited to the Children's Trust Fund under ORS 305.749. [1987 c.771 §2; 1989 c.987 §19]

**316.495 Refund as contribution to Oregon Peace Institute.** (1) Individual taxpayers who file an Oregon income tax return for purposes of ORS chapter 316 and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Oregon Peace Institute, a nonprofit corporation, by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form a space for taxpayers to designate that a contribution be made to the Oregon Peace Institute from their income tax refund. The space for designating the contribution shall provide for checkoff boxes as indicated under ORS 305.749.

(3) There is established as a separate and distinct fund in the State Treasury, the Oregon Peace Institute Fund. The fund shall consist of:

(a) An amount credited to the fund under ORS 305.749, which shall be transferred by the Department of Revenue to the fund.

(b) Gifts, grants and donations, in money or otherwise, for use as described in subsection (2) of this section, which the State Treasurer may solicit and accept from private and public sources and shall cause to be deposited and credited to the Oregon Peace Institute Fund.

(c) Interest or other earnings on the amounts described in paragraphs (a) and (b) of this subsection which shall inure to the benefit of the Oregon Peace Institute Fund.

(4) The Oregon Peace Institute shall report to the Oregon Senate and Oregon House Committees on Human Resources, appointed to serve at the Sixty-sixth Legislative Assembly, the amount of money received and Oregon programs to which funds were dis-

tributed, from the checkoff program established under subsection (1) of this section.

(5) If the State Treasurer determines that a member of the Oregon Senate and a member of the Oregon House of Representatives are not serving on the board of directors of the Oregon Peace Institute, the State Treasurer shall notify the department and no checkoff shall be provided for the checkoff program established under subsection (1) of this section for the tax years of taxpayers beginning in the calendar years following the calendar year of determination.

(6) The Department of Revenue shall have access to and control of the moneys held in the fund established in subsection (3) of this section, but shall use such moneys only for the purpose of payment to the Oregon Peace Institute. The moneys in the fund are continuously appropriated to the department for that purpose. The department shall determine the procedure for payment by administrative rule. [1989 c.987 §32]

## DISTRIBUTION OF REVENUE

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

(2) A working balance of unreceipted revenue from the tax imposed by this chapter may be retained for the payment of refunds, but such working balance shall not at the close of any fiscal year exceed the sum of \$1 million.

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

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

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

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

**316.513** [1965 c.592 §3; repealed by 1969 c.493 §99]

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

**316.520** [1953 c.304 §58; repealed by 1957 c.632 §1 (314.355 enacted in lieu of 316.520)]

**316.525** [1953 c.304 §59; repealed by 1969 c.493 §99]

**316.530** [1953 c.304 §60; repealed by 1969 c.493 §99]

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

**316.540** [1953 c.304 §62; repealed by 1969 c.493 §99]

**316.545** [1953 c.304 §63; repealed by 1957 c.632 §1 (314.385 enacted in lieu of 316.545 and 317.355)]

**316.550** [1953 c.304 §64; repealed by 1957 c.632 §1 (314.365 enacted in lieu of 316.550 and 317.365)]

**316.555** [1953 c.304 §65; repealed by 1957 c.632 §1 (314.370 enacted in lieu of 316.555)]

### PAYMENT OF ESTIMATED TAXES

**316.557 "Estimated tax" defined.** As used in ORS 316.557 to 316.589, "estimated tax" means the amount of income tax imposed under this chapter for the taxable year, as estimated by the individual, minus the sum of any credits as estimated by the individual against tax provided by this chapter. [1980 s.s. c.7 §4; 1985 c.603 §4]

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

**316.560** [1953 c.304 §66; repealed by 1957 c.632 §1 (314.295 enacted in lieu of 316.560 and 317.375)]

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

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

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

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

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

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

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

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

(2) No declaration is required if the estimated tax as defined in ORS 316.557 is less than \$500.

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

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

(5) The declaration shall contain information required by the department by rule. [1980 s.s. c.7 §§2, 2a, 5, 8; 1981 c.678 §1a; 1987 c.293 §21]

**316.565** [1953 c.304 §67; repealed by 1957 c.632 §1 (314.380 enacted in lieu of 316.565 and 317.380)]

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

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

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

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

(c) If they have different taxable years.

(3) If a husband and wife make a joint declaration but not a joint return for the taxable year, the husband and wife may, in such manner as they may agree, and after giving notice of the agreement to the department:

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

(b) Divide the estimated tax between them.

(4) If a husband and wife fail to agree, or fail to notify the department of the manner in which they agree, to the treatment of estimated tax for a taxable year for which they make a joint declaration but not a joint return, the payments shall be allocated between them according to rules adopted by the department. Notwithstanding ORS 314.835, 314.840 or 314.991, the department may disclose to either the husband or the wife the information upon which an allocation of estimated tax was made under this section. [1980 s.s. c.7 §3; 1985 c.603 §5]

**316.569 When declaration required of nonresident.** No declaration shall be required of a nonresident individual under ORS 316.557 to 316.589 unless:

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

(2) The nonresident individual has income, other than compensation for personal services subject to deduction and withholding under ORS 316.162, which is effectively connected with the conduct of a trade or

business within this state. [1980 s.s. c.7 §10; 1985 c.603 §6]

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

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

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

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

(2) For purposes of computing gross income under this section, an individual who is a stockholder of one or more electing small business corporations for federal income tax purposes shall consider his or her share of the gross income of the electing small business corporation as his or her individual income. The electing small business corporation gross income shall be classed as farming, fishing, nonfarming or nonfishing as the case may be in carrying out the provisions of this section. [1980 s.s. c.7 §12]

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

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

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

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

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding year. [1980 s.s. c.7 §11; 1981 c.678 §2; 1983 c.162 §64]

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

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

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

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

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

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

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

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

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

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

(9) An individual may pay an installment of the estimated tax before the date prescribed for its payment.

(10) Any payment of estimated tax received by the department shall first be applied to underpayments of estimated tax due for any prior installment due for the taxable year. Any excess amount shall be applied to the installment that next becomes due after the payment was received. [1980 s.s. c.7 §§16, 20; 1981 c.678 §3; 1985 c.603 §7; 1987 c.293 §22]

316.580 [1953 c.304 §70; 1955 c.595 §2; 1957 c.586 §17; renumbered 316.751]

**316.583 Effect of payment of estimated tax or installment; credit for overpayment of prior year taxes.** (1) Payment of the estimated income tax or any installment shall be considered payment on account of the income taxes imposed by this chapter for the taxable year.

(2) The department may adopt rules which enable the taxpayer or department to credit against the estimated income tax the amount the taxpayer or the department determines to be an overpayment of the income tax for a preceding taxable year. [1980 s.s. c.7 §§19, 21]

316.585 [1953 c.304 §71; 1955 c.595 §3; 1957 c.586 §18; renumbered 316.770]

**316.587 Effect of underpayment of estimated tax; computation of underpayment; interest; when not imposed.** (1) Except as provided in subsection (5) of this section, if an individual makes an underpayment of estimated tax, interest shall accrue at the rate established under ORS 305.220 for each month, or fraction thereof, on the amount underpaid for the period the estimated tax or any installment remains unpaid. The penalty provisions contained in ORS chapter 314 for underpayment of tax shall not apply to underpayments of estimated tax under ORS 316.557 to 316.589.

(2) For purposes of subsection (1) of this section, the amount of underpayment shall be the excess of the required installment over the amount (if any) of the installment paid on or before the due date for the installment.

(3) The period of underpayment shall run from the date the installment was due to the earlier of the following dates:

(a) The 15th day of the fourth month following the close of the taxable year; or

(b) With respect to any portion of the underpayment, the date on which the portion is paid.

(4) For purposes of paragraph (b) of subsection (3) of this section, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(5)(a) Interest accruing under subsection (1) of this section shall not be imposed if the individual was a resident of this state throughout the preceding taxable year and had no tax liability for that year, and the preceding taxable year was a taxable year of 12 months.

(b) Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax to the extent that the department determines that by reason of casualty, disaster or other unusual circumstances the imposition of interest would be against equity and good conscience.

(c) Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax if the department determines that:

(A) In the tax year the estimated tax payment was required to be made or in the tax year preceding such tax year, the taxpayer (i) retired after having attained age 62 or (ii) became disabled; and

(B) The underpayment was due to reasonable cause and not to willful neglect.

(d) Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax attributable to the pro rata share of a shareholder of the income of an S corporation if:

(A) The income is taxable income for an initial year for which S corporation status is elected for the corporation; and

(B) The shareholder is a nonresident or for the preceding taxable year was a part-year resident for Oregon tax purposes.

(6) For purposes of this section, the estimated tax shall be computed without any reduction for the amount of credit estimated to be allowed to the individual for the taxable year under ORS 316.187. The amount of the credit allowed under ORS 316.187 for the taxable year shall be considered a payment of estimated tax. An equal part of the credit shall be considered paid on each installment date for the taxable year, unless the taxpayer establishes the date on which all amounts were actually withheld, in which case the amount so withheld shall be considered payment of estimated tax on the dates on which the amounts were actually withheld.

(7) For purposes of subsections (5) and (8) of this section, the term "tax" means the tax imposed by this chapter minus any credits against tax allowed for purposes of this chapter, other than the credit against tax provided by ORS 316.187.

(8) For purposes of subsections (2) and (4) of this section, the term "required installment" means the amount of the installment which would be due if the estimated tax were equal to the lesser of:

(a) Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year); or

(b) One hundred percent of the tax shown on the return filed by the individual for the preceding taxable year, and the preceding taxable year was a taxable year of 12 months; or

(c) Ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. [1980 s.s. c.7 §22; 1982 s.s.1 c.16 §21; 1985 c.603 §8; 1987 c.293 §22a; 1989 c.625 §13b; 1991 c.457 §7h]

Note: See note under 314.525.

Note: Section 8, chapter 823, Oregon Laws 1991 (relating to certain retirement income), provides:

Sec. 8. If there is any underpayment of estimated tax for the 1991 tax year that is attributable to the amendments to ORS 237.201, 316.087 and 316.680 by sections 1 to 3 of this Act, no interest shall be imposed on the underpayment under ORS 316.587, nor shall any penalty be imposed. [1991 c.823 §8]

**316.588 When interest on underpayment not imposed.** Interest accruing under ORS 316.587 (1) shall not be imposed for any taxable year if the tax shown on the return for the taxable year (or, if no return is filed, the tax), minus the sum of any credits allowable for purposes of this chapter, including the credit allowable under ORS 316.187, is less than \$500. [1987 c.293 §22c]

**316.589 Application to short tax years and tax years beginning on other than January 1.** (1) The application of ORS 316.557 to 316.589 to taxable years of less than 12 months shall be in accordance with rules adopted by the Department of Revenue.

(2) In the application of ORS 316.557 to 316.589 to a taxable year beginning on any date other than January 1 there shall be substituted, for the months specified in ORS 316.557 to 316.589, the months which correspond thereto. [1980 s.s. c.7 §§14, 15; 1985 c.603 §9]

**316.590** [1953 c.304 §72; repealed by 1969 c.493 §99]

**316.605** [1953 c.304 §73; 1955 c.590 §1; repealed by 1957 c.632 §1 (314.405 enacted in lieu of 316.605 and 317.405)]

**316.610** [1953 c.304 §74; 1953 c.552 §14; 1957 c.17 §1; repealed by 1957 c.632 §1 (314.410 enacted in lieu of 316.610 and 317.410)]

**316.615** [1953 c.304 §75; 1953 c.552 §15; 1955 c.583 §1; 1957 c.23 §1; repealed by 1957 c.632 §1 (314.415 enacted in lieu of 316.615 and 317.415)]

**316.620** [1953 c.304 §76; 1955 c.355 §1; repealed by 1957 c.632 §1 (314.420 enacted in lieu of 316.620, 317.370 and 317.420)]

**316.625** [1953 c.304 §77; repealed by 1957 c.632 §1 (314.425 enacted in lieu of 316.625 and 317.425)]

**316.630** [1953 c.304 §78; repealed by 1957 c.632 §1 (314.430 enacted in lieu of 316.630 and 317.430)]

**316.635** [1953 c.304 §79; repealed by 1957 c.632 §1 (314.435 enacted in lieu of 316.635 and 317.435)]

**316.640** [1953 c.304 §80; repealed by 1957 c.632 §1 (314.440 enacted in lieu of 316.640, 317.440 and 317.445)]

**316.645** [1953 c.304 §81; 1961 c.504 §3; repealed by 1969 c.166 §8 and 1969 c.493 §99]

**316.650** [1953 c.304 §82; 1953 c.552 §16; repealed by 1957 c.632 §1 (314.445 enacted in lieu of 316.650 and 317.455)]

**316.655** [1953 c.304 §83; 1953 c.552 §17; repealed by 1957 c.632 §1 (subsections (1) and (2) of 314.450 enacted in lieu of 316.655 and 317.460)]

**316.660** [1953 c.304 §84; repealed by 1957 c.632 §1 (314.455 enacted in lieu of 316.660 and 317.465)]

**316.665** [1953 c.304 §85; 1953 c.552 §18; 1955 c.588 §1; repealed by 1957 c.632 §1 (314.460 enacted in lieu of 316.665 and 317.470)]

**316.670** [1953 c.304 §86; repealed by 1957 c.632 §1 (314.465 enacted in lieu of 316.670 and 317.475)]

**316.675** [1953 c.304 §87; 1953 c.552 §19; repealed by 1957 c.632 §1 (314.470 enacted in lieu of 316.675 and 317.480)]

## MODIFICATIONS TO TAXABLE INCOME GENERALLY

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

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

(b) The amount of any federal income taxes accrued by the taxpayer during the taxable year as described in ORS 316.685, less the amount of any refunds of federal taxes previously accrued for which a tax benefit was received.

(c)(A) If the taxpayer does not qualify for the subtraction under subparagraph (B) of this paragraph, compensation (other than pension or retirement pay) received for active service performed by a member of the Armed Forces of the United States in an amount not to exceed \$3,000 per annum.

(B) For the tax year of initial draft or enlistment into the Armed Forces of the United States or for the tax year of discharge from or termination of full-time active duty for the Armed Forces of the United States, compensation (other than pension or retirement pay or pay for service when on military reserve duty) paid by the Armed Forces of the United States for services performed outside this state, if the taxpayer is on active duty as a full-time officer, enlistee or draftee, with the Armed Forces of the United States.

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

(e)(A) Any expenses under ORS 118.070 (6) that have not been deducted in computing federal taxable income and have not been and will not be claimed as deductions for Oregon inheritance tax purposes under ORS 118.070.

(B) Amounts allowable under sections 2621 (a)(2) and 2622 (b) of the Internal Revenue Code to the extent that the taxpayer does not elect under section 642(g) of the Internal Revenue Code to reduce federal taxable income by those amounts.

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

(a) Interest or dividends, exempt from federal income tax, on obligations or securities of any foreign state or of a political subdivision or authority of any foreign state. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

(b) Interest or dividends on obligations of any authority, commission,

instrumentality and territorial possession of the United States which by the laws of the United States are exempt from federal income tax but not from state income taxes. However, the amount added under this paragraph shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this paragraph and by any expenses incurred in the production of interest or dividend income described in this paragraph.

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

(d) The amount of any allowance for depletion in excess of the taxpayer's adjusted basis in the property depleted, deducted on the taxpayer's federal income tax return for the taxable year, pursuant to sections 613, 613A, 614, 616 and 617 of the Internal Revenue Code.

(e) The amount of any gain which is deferred for tax recognition purposes upon the voluntary or involuntary conversion or exchange of tangible real or personal property as provided under ORS 314.290.

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

(g) For taxable years beginning on or after January 1, 1985, the dollar amount deducted under section 151 of the Internal Revenue Code for personal exemptions for the taxable year.

(3) Discount and gain or loss on retirement or disposition of obligations described under paragraph (a) of subsection (2) of this section issued on or after January 1, 1985, shall be treated for purposes of this chapter in the same manner as under sections 1271 to 1283 and other pertinent sections of the Internal Revenue Code as if the obligations, although issued by a foreign state or a political subdivision of a foreign state, were not tax exempt under the Internal Revenue Code. [Formerly 316.067; 1985 c.345 §7; 1985 c.802 §11; 1987 c.293 §23; 1987 c.647 §13; 1991 c.457 §7b; 1991 c.823 §3]

**316.681 Interest or dividends to benefit self-employed or individual retirement accounts.** ORS 316.680 (1)(a) shall apply to the interest or dividends described under ORS 316.680 (1)(a) to the extent such interest or dividends are includable in arriving at federal taxable income as distributions from plans to benefit the self-employed or from individual retirement accounts described un-

der sections 401 to 408 of the Internal Revenue Code. [1985 c.738 §2]

**316.683 State exempt-interest dividends.** (1) A regulated investment company, or a pool of assets managed by a fiduciary, including a bank, a savings association or a credit union, shall be qualified to pay state exempt-interest dividends, as defined in subsection (2) of this section, to its shareholders or beneficiaries.

(2) The term "state exempt-interest dividend" means any dividend or part thereof (other than a capital gain dividend, as defined in section 852(b) of the Internal Revenue Code) paid by a regulated investment company, or any pool of assets managed by a fiduciary, including but not limited to a bank, a savings association or a credit union, and designated by it as a state exempt-interest dividend in a written notice mailed to its shareholders or beneficiaries not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year (including state exempt-interest dividends paid after the close of the taxable year in the manner described in section 855 of the Internal Revenue Code) is greater than the excess of (a) the amount of interest and dividends received on obligations described in ORS 316.680 (1)(a), over (b) the sum of the amount of any deductible interest on indebtedness incurred to carry such obligations and the amount of any deductible expenses incurred in the production of interest and dividend income from such obligations, the portion of such distribution which shall constitute a state exempt-interest dividend shall be only that proportion of the amount so designated as the amount of such excess for such taxable year bears to the amount so designated. The exemption created by this section shall not exceed the portion of the dividend which is attributable to items of interest described in ORS 316.680 (1)(a).

(3) A state exempt-interest dividend shall be treated by a shareholder or beneficiary for all purposes as an item of interest described in ORS 316.680 (1)(a). The shareholder or beneficiary shall subtract from federal taxable income the state exempt-interest dividends received with respect to the shares of a regulated investment company or any pool of assets managed by a fiduciary, including but not limited to a bank, a savings association or a credit union. However, the amount subtracted under this section shall be reduced (but not below zero) by an amount equal to any deductible interest on indebtedness incurred to carry such shares multiplied by the state exempt-interest dividends and divided by the total dividends on such shares for the taxable year.

(4) If a shareholder of a regulated investment company, or a beneficiary of a pool of assets managed by a fiduciary, including a bank, a savings association or a credit union, receives a state exempt-interest dividend with respect to any share, and the share is held by the taxpayer for six months or less, then any loss on the sale or exchange of the share shall, to the extent of the amount the state exempt-interest dividend, be disallowed. The department may adopt rules that reduce the holding period requirements to less than six months.

(5) As used in this section:

(a) "Bank" means a banking institution, as defined in ORS 706.005 (6), or a national bank, as defined in ORS 706.005 (16).

(b) "Credit union" means a credit union as defined in ORS 723.006 or a federal credit union.

(c) "Savings association" means a savings association as defined in ORS 722.004 (16) or a federal association, as defined in ORS 722.004 (8). [1987 c.293 §12b; 1989 c.988 §2]

**316.685 Federal income tax deductions; accrual method of accounting required.**

(1) The federal income tax deduction provided by ORS 316.680 shall be as reported on the taxpayer's original return and shall be computed on the accrual method of accounting. Any adjustments to the federal income tax deduction now or hereafter required by Oregon law, including but not limited to the elimination of the self-employment tax, also shall be computed and eliminated according to the accrual method of accounting.

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

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

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

(b) Taxes paid pursuant to the Self-Employment Contribution Act, subtitle A, chapter 2, Internal Revenue Code. [Formerly 316.072; 1987 c.293 §24]

**316.687 Amount in excess of standard deduction for child; limitation.** There shall

be added to federal taxable income of a parent who makes an election under section 1(g)(7)(B) of the Internal Revenue Code any amount in excess of the standard deduction allowed for a child under ORS 316.695 (8)(a) but not in excess of \$1,000. The addition under this section shall be made for each child whose income is included in the taxable income of the parent under section 1(g)(7)(B) of the Internal Revenue Code. [1989 c.625 §13; 1991 c.457 §7c]

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

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

(a) Except as provided in paragraph (b) of this subsection, the sum of foreign country income taxes deducted in computing state taxable income and the modification for federal income taxes authorized by ORS 316.680 (1)(b) as limited by ORS 316.695 (3) shall not exceed \$3,000.

(b) In the case of a husband and wife filing separate tax returns, the sum described in paragraph (a) of this subsection shall be limited to \$1,500. [Formerly 316.071; 1985 c.345 §8; 1987 c.293 §24a]

**316.695 Additional modification of taxable income.** (1) In addition to the modifications to federal taxable income contained in this chapter, there shall be added to or subtracted from federal taxable income:

(a) If, in computing federal income tax for a taxable year, the taxpayer deducted itemized deductions, as defined in section 63(d) of the Internal Revenue Code, the taxpayer shall add the amount of itemized deductions deducted (the itemized deductions less an amount, if any, by which the itemized deductions are reduced under section 68 of the Internal Revenue Code).

(b) If, in computing federal income tax for a taxable year, the taxpayer deducted the standard deduction, as defined in section 63(c) of the Internal Revenue Code, the taxpayer shall add the amount of the standard deduction deducted.

(c)(A) From federal taxable income there shall be subtracted the larger of (i) the tax-

payer's itemized deductions or (ii) a standard deduction. Except as provided in subsection (9) of this section, for purposes of this subparagraph, "standard deduction" means the sum of the basic standard deduction and the additional standard deduction.

(B) For purposes of subparagraph (A) of this paragraph, the basic standard deduction is:

(i) \$3,000, in the case of joint return filers or a surviving spouse;

(ii) \$1,800, in the case of an individual who is not a married individual and is not a surviving spouse;

(iii) \$1,500, in the case of a married individual who files a separate return; or

(iv) \$2,640, in the case of a head of household.

(C) For purposes of subparagraph (A) of this paragraph, the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (8) of this section.

(D) As used in subparagraph (B) of this paragraph, "surviving spouse" and "head of household" have the meaning given those terms in section 2 of the Internal Revenue Code.

(E) In the case of the following, the standard deduction referred to in subparagraph (A) of this paragraph shall be zero:

(i) A husband or wife filing a separate return where the other spouse has claimed itemized deductions under subparagraph (A) of this paragraph;

(ii) A nonresident alien individual;

(iii) An individual making a return for a period of less than 12 months on account of a change in his or her annual accounting period;

(iv) An estate or trust;

(v) A common trust fund; or

(vi) A partnership.

(d) For the purposes of subparagraph (A) of paragraph (c) of this subsection, the taxpayer's itemized deductions are the sum of:

(A) The taxpayer's itemized deductions as defined in section 63(d) of the Internal Revenue Code (reduced, if applicable, as described under section 68 of the Internal Revenue Code) plus any amount of medical deduction disallowed under section 213(f) of the Internal Revenue Code and minus the deduction for Oregon income tax (reduced, if applicable, by the proportion that the reduction in federal itemized deductions resulting from section 68 of the Internal Revenue Code bears to the amount of federal itemized deductions as defined for purposes

of section 68 of the Internal Revenue Code); and

(B) The amount that may be taken into account under section 213(a) of the Internal Revenue Code, not to exceed seven and one-half percent of the federal adjusted gross income of the taxpayer, if the taxpayer has attained the following age before the close of the taxable year, or, in the case of a joint return, if either taxpayer has attained the following age before the close of the taxable year:

(i) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, a taxpayer must attain 58 years of age before the close of the taxable year.

(ii) For taxable years beginning on or after January 1, 1993, and before January 1, 1995, a taxpayer must attain 59 years of age before the close of the taxable year.

(iii) For taxable years beginning on or after January 1, 1995, and before January 1, 1997, a taxpayer must attain 60 years of age before the close of the taxable year.

(iv) For taxable years beginning on or after January 1, 1997, and before January 1, 1999, a taxpayer must attain 61 years of age before the close of the taxable year.

(v) For taxable years beginning on or after January 1, 1999, a taxpayer must attain 62 years of age before the close of the taxable year.

(2)(a) There shall be subtracted from federal taxable income any portion of the distribution of a pension, profit-sharing, stock bonus or other retirement plan, representing that portion of contributions which were taxed by the State of Oregon but not taxed by the Federal Government under laws in effect for tax years beginning prior to January 1, 1969, or for any subsequent year in which the amount that was contributed to the plan under the Internal Revenue Code was greater than the amount allowed under this chapter.

(b) Interest or other earnings on any excess contributions of a pension, profit-sharing, stock bonus or other retirement plan not permitted to be deducted under paragraph (a) of this subsection shall not be added to federal taxable income in the year earned by the plan and shall not be subtracted from federal taxable income in the year received by the taxpayer.

(3)(a) Except as provided in paragraph (b) of this subsection and subsections (4) and (5) of this section, in addition to the adjustments to federal taxable income required by ORS 316.680, there shall be added to federal taxable income the amount of any federal income taxes in excess of \$3,000, accrued by the

taxpayer during the taxable year as described in ORS 316.685, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(b) In the case of a husband and wife filing separate tax returns, the amount added shall be in the amount of any federal income taxes in excess of \$1,500, less the amount of any refund of federal taxes previously accrued for which a tax benefit was received.

(4)(a) If federal income taxes are paid or determined, due to additional assessments as described in ORS 316.685 (2), on income for a taxable year beginning on or before December 31, 1986, there shall be added to federal taxable income that portion of the federal income tax due to additional assessments which, when added to federal income tax previously paid and deducted for that prior taxable year on the taxpayer's Oregon return, exceeds \$7,000.

(b) In the case of a husband and wife filing separate tax returns, the amount to be added to federal taxable income under this subsection shall be that portion of the federal income tax due to additional assessments which, when added to federal income tax previously paid and deducted for that prior year on the taxpayer's Oregon return, exceeds \$3,500.

(5)(a) In addition to the adjustments required by ORS 316.130, a full-year nonresident individual shall add to taxable income a proportion of any accrued federal income taxes as computed under ORS 316.685 in excess of \$3,000, or \$7,000 if paragraph (a) of subsection (4) of this section is applicable, in the proportion provided in ORS 316.117.

(b) In the case of a husband and wife filing separate tax returns, the amount added under this subsection shall be computed in a manner consistent with the computation of the amount to be added in the case of a husband and wife filing separate returns under subsection (3) or (4) of this section, whichever is applicable. The method of computation shall be determined by the Department of Revenue by rule.

(6) Paragraph (b) of subsection (3), paragraph (b) of subsection (4) and paragraph (b) of subsection (5) of this section shall not apply to married individuals living apart as defined in section 7703(b) of the Internal Revenue Code.

(7)(a) For tax years beginning on or after January 1, 1981, and prior to January 1, 1983, income or loss taken into account in determining federal taxable income by a shareholder of an S corporation pursuant to sections 1373 to 1375 of the Internal Revenue Code shall be adjusted for purposes of determining Oregon taxable income, to the extent

that as income or loss of the S corporation, they were required to be adjusted under the provisions of ORS chapter 317.

(b) For tax years beginning on or after January 1, 1983, items of income, loss or deduction taken into account in determining federal taxable income by a shareholder of an S corporation pursuant to sections 1366 to 1368 of the Internal Revenue Code shall be adjusted for purposes of determining Oregon taxable income, to the extent that as items of income, loss or deduction of the shareholder the items are required to be adjusted under the provisions of this chapter.

(c) The tax years referred to in paragraphs (a) and (b) of this subsection are those of the S corporation.

(d) As used in paragraph (a) of this subsection, an S corporation refers to an electing small business corporation.

(8)(a) The taxpayer shall be entitled to an additional amount, as referred to in subparagraphs (A) and (C) of paragraph (c) of subsection (1) of this section, of \$1,000:

(A) For himself or herself if he or she has attained age 65 before the close of his or her taxable year; and

(B) For the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse for federal income tax purposes under section 151(b) of the Internal Revenue Code.

(b) The taxpayer shall be entitled to an additional amount, as referred to in subparagraphs (A) and (C) of paragraph (c) of subsection (1) of this section, of \$1,000:

(A) For himself or herself if he or she is blind at the close of the taxable year; and

(B) For the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse for federal income tax purposes under section 151(b) of the Internal Revenue Code. For purposes of this subparagraph, if the spouse dies during the taxable year, the determination of whether such spouse is blind shall be made immediately prior to death.

(c) In the case of an individual who is not married and is not a surviving spouse, paragraphs (a) and (b) of this subsection shall be applied by substituting "\$1,200" for "\$1,000."

(d) For purposes of this subsection, an individual is blind only if his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the

visual field subtends an angle no greater than 20 degrees.

(9) In the case of an individual with respect to whom a deduction under section 151 of the Internal Revenue Code is allowable for federal income tax purposes to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction (referred to in subparagraph (B) of paragraph (c) of subsection (1) of this section) applicable to such individual for such individual's taxable year shall not exceed the greater of:

(a) \$500; or

(b) The individual's earned income. [Formerly 316.068; 1985 c.141 §6; 1985 c.345 §9; 1985 c.802 §12; 1987 c.293 §25; 1989 c.625 §14; 1989 c.626 §8; 1991 c.457 §7d; 1991 c.823 §12]

Note: 316.068 (4) and (5) [renumbered 316.695] were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 316 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

**316.701** [1983 c.162 §61; repealed by 1987 c.293 §70]

**316.705** [1953 c.304 §88; repealed by 1957 c.632 §1 (314.805 enacted in lieu of 316.705 and 317.505)]

**316.706** [1957 c.586 §6; 1959 c.76 §1; 1961 c.506 §2; 1961 c.623 §1; repealed by 1969 c.493 §99]

**316.707 Computation of depreciation of property under federal law; applicability.** (1) To the extent that the amount allowed as a deduction under section 168 of the Internal Revenue Code (Accelerated Cost Recovery System) exceeds, or is less than, the amount that would be allowed as a deduction for depreciation for the property under the federal Internal Revenue Code as amended and in effect on December 31, 1980, the difference shall be added to, or subtracted from federal taxable income, whichever is applicable.

(2) The modifications required by subsection (1) of this section apply only to the differences in the computation of depreciation (reasonable allowance for exhaustion, wear, tear and obsolescence) under the Accelerated Cost Recovery System and the other methods of depreciation. Nothing in this section shall be construed to govern the eligibility of property for depreciation, or other provisions of the Internal Revenue Code which do not directly govern the computation of the deduction amount for recovery property.

(3) There shall be added to federal taxable income any amount deducted under section 179 of the Internal Revenue Code (election to expense certain depreciable busi-

ness assets). However, any asset with respect to which this section applies may be depreciated as otherwise provided under this chapter.

(4) Income included in federal taxable income by a shareholder of an S corporation pursuant to sections 1366 to 1368 of the Internal Revenue Code shall be adjusted for purposes of determining Oregon taxable income as required by the provisions of this section.

(5) This section shall not apply to property placed in service in taxable years beginning on or after January 1, 1985. [1983 c.162 §67; 1985 c.802 §13]

**316.710** [1953 c.304 §89; repealed by 1957 c.632 §1 (subsections (2), (3) and (4) of 306.040 enacted in lieu of 316.710)]

**316.711** [1957 c.586 §7; 1959 c.593 §7 (referred and rejected); 1961 c.623 §2; repealed by 1969 c.493 §99]

**316.714** [1957 c.586 §7; 1959 c.593 §8 (referred and rejected); 1963 c.627 §17 (referred and rejected); repealed by 1969 c.493 §99]

**316.715** [1953 c.304 §90; repealed by 1957 c.632 §1 (314.810, enacted in lieu of 316.715)]

**316.716 Differences in basis on federal and state return.** (1) Upon the taxable sale, exchange or disposition of any asset in a tax year beginning on or after January 1, 1983, federal taxable income shall be increased or decreased by an amount which will reflect one or more of the following:

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

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

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

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

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

(2) There shall be added to or subtracted from federal taxable income any amount necessary to carry out the purposes of subsection (1) of this section.

(3) If a taxpayer has taken a federal credit, which requires as a condition of the

use of the federal credit the reduction of a corresponding deduction, and the federal credit is not allowable for Oregon purposes, the taxpayer shall be allowed the deduction for Oregon tax purposes. [1983 c.162 §69; 1985 c.802 §14]

**316.718** [1989 c.625 §6; repealed by 1991 c.457 §24]

**316.720** [1953 c.304 §91; repealed by 1957 c.632 §1 (314.815 enacted in lieu of 316.720 and 317.505)]

**316.721** [1957 c.586 §12; repealed by 1969 c.493 §99]

**316.723 Qualified reinvestment dividend from reinvestment in stock of public utilities.** (1) Section 305(e) of the Internal Revenue Code (dividend reinvestment in stock of public utilities) shall not apply in determining Oregon taxable income. Taxpayers selling stock, on or after January 1, 1982, of public utilities the basis of which is determined by section 305(e)(7) of the Internal Revenue Code shall subtract from federal taxable income the qualified reinvestment dividend as defined in section 305 (e)(2) of the Internal Revenue Code for which the stock was received and which was included in Oregon taxable income.

(2) As used in this section, "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect and operative on December 31, 1988. [1983 c.162 §70; 1985 c.802 §15; 1987 c.293 §26; 1991 c.457 §7e]

**316.725** [1953 c.304 §92; repealed by 1957 c.632 §1 (314.820 enacted in lieu of 316.725 and 317.520)]

**316.729 Changing inventory valuation method; interest on tax exempt savings certificates; applicability of federal law.**

(1) Taxpayers taking advantage of the special provisions in sections 472(d) and (f) and 474 of the Internal Revenue Code to change to a last in, first out inventory valuation method during the period of time sections 2 and 3, chapter 613, Oregon Laws 1981, were in effect, shall add to or subtract from federal taxable income the difference between the 1983 beginning inventory for federal income tax purposes and the 1982 ending inventory for Oregon tax purposes.

(2) In addition to the modifications to federal taxable income contained in ORS chapter 316, for tax years beginning before January 1, 1984, there shall be subtracted from federal taxable income interest on certain tax exempt savings certificates which is required to be restored to federal taxable income pursuant to section 128(e) of the Internal Revenue Code and which has already been included in Oregon taxable income in a previous year.

(3) For taxable years that begin on or after January 1, 1981, section 2, chapter 613, Oregon Laws 1981, shall not apply to the provisions of the Internal Revenue Code relating to:

(a) Sections 1371 and 1372 of the Internal Revenue Code (pertaining to subchapter S corporations).

(b) Sections 421 and 422A of the Internal Revenue Code (concerning incentive stock options).

(c) Section 1034 of the Internal Revenue Code (pertaining to the sale of a personal residence).

(d) Section 121 of the Internal Revenue Code (pertaining to the one time exclusion of a gain from the sale of a personal residence by an individual who has attained age 55). [1983 c.162 §73]

**316.730** [1953 c.304 §93; repealed by 1957 c.632 §1 (314.825 enacted in lieu of 316.730 and 317.525)]

**316.731** [1957 c.586 §13; repealed by 1969 c.493 §99]

**316.735** [1953 c.304 §94; repealed by 1957 c.632 §1 (314.830 enacted in lieu of 316.735 and 317.530)]

**316.737 Amount specially taxed under federal law to be included in computation of state taxable income.** If a taxpayer has taken a deduction to arrive at federal taxable income for the purpose of having that income taxed in a manner different from the taxation of federal taxable income, the amount which was deducted and specially taxed shall be added to federal taxable income in the computation of state taxable income. However, if any portion of the amount added was treated as capital gain in arriving at federal taxable income, that portion shall be treated as capital gain in the computation of state taxable income. [1983 c.162 §76; 1987 c.293 §27]

**316.740** [1953 c.304 §95; 1957 c.75 §1; repealed by 1957 c.632 §1 (314.835 enacted in lieu of 316.740 and 317.535)]

**316.741** [1957 c.586 §8; repealed by 1969 c.493 §99]

**316.742 Health insurance costs of self-employed.** (1) If the deduction described under section 162(l) of the Internal Revenue Code (health insurance costs of self-employed individuals) is not otherwise allowed, or to the extent that the deduction is not allowed for purposes of this chapter, in addition to the other modifications contained in this chapter, in the case of an individual described under and to which section 162(l) of the Internal Revenue Code applies, there shall be subtracted from federal taxable income an amount equal to an amount determined and limited as described under section 162(l) of the Internal Revenue Code, except that the exclusions shall not be reduced as provided under section 162(l)(3)(B).

(2) As used in this section, "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 1990. [1991 c.457 §7g]

**316.744 Cash payments for energy conservation.** Any amount received as a cash payment for energy conservation measures under ORS 469.631 to 469.687 is exempt

from the tax imposed under this chapter. [Formerly 316.069; 1985 c.802 §16]

**316.745** [1953 c.304 §96; repealed by 1957 c.632 §1 (314.840 enacted in lieu of 316.745 and 317.540)]

**316.746 Heating oil remedial action costs.** In addition to other modifications provided in this chapter, there shall be subtracted from federal taxable income in the computation of state taxable income the amount of any payments for remedial action costs, which are included in federal taxable income, not otherwise deductible and made by the Oil Heat Commission under ORS 469.228 to 469.286, to or for the benefit of an individual who is responsible for the remedial action. [1991 c.641 §4]

**Note:** Section 10, chapter 641, Oregon Laws 1991, provides:

**Sec. 10.** Section 4 of this Act [316.746] and the amendments to ORS 469.274 by section 7 of this Act first apply to taxable years beginning after December 31, 1988. [1991 c.641 §10]

**316.750** [1953 c.304 §97; repealed by 1957 c.632 §1 (314.845 enacted in lieu of 316.750 and 317.545)]

**316.751** [Formerly 316.580; repealed by 1969 c.493 §99]

**316.752 Definitions for ORS 316.752 to 316.771.** For purposes of ORS 316.752 to 316.771:

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

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

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

(c) Has a physical or mental condition that limits the abilities of the person to earn a living, maintain a household or provide personal transportation for the person without employing special orthopedic or medical equipment or outside help.

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

(3) "Outside help" includes, but is not limited to, unrelated individuals whom the severely disabled taxpayer employs to keep house, maintain the house or yard, or to transport the taxpayer. [Formerly 316.135; 1987 c.158 §50; 1989 c.224 §51]

**316.755** [1953 c.304 §98; repealed by 1957 c.632 §1 (314.850 enacted in lieu of 316.755)]

**316.758 Additional personal exemption credit for severely disabled persons.** In addition to the personal exemption credit allowed by this chapter for state personal income tax purposes, there shall be allowed an additional personal exemption credit for the taxpayer if the taxpayer is severely disabled at the close of the taxable year. The amount of the credit shall be equal to the amount allowed as the personal exemption credit for the taxpayer for state personal income tax

purposes for the taxable year. [Formerly 316.136; 1985 c.345 §10; 1987 c.293 §28]

**316.760** [1953 c.304 §99; repealed by 1957 c.632 §1 (314.855 enacted in lieu of 316.760 and 317.550)]

**316.761** [1957 c.586 §9; 1963 c.627 §18 (referred and rejected); 1963 s.s. c.3 §1; repealed by 1969 c.493 §99]

**316.765 Additional personal exemption credit for spouse of severely disabled person; conditions.** (1) An additional personal exemption credit in the same amount as allowed under ORS 316.758 for a severely disabled taxpayer shall be allowed for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse:

(a) Is severely disabled;

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

(c) Is not the dependent of another taxpayer.

(2) In the case of a joint return, each spouse who is severely disabled shall be allowed the additional credit in the amount provided under ORS 316.758 if the spouse otherwise qualifies under this section.

(3) For purposes of this section, the determination of whether the spouse is severely disabled shall be made as of the close of the taxable year of the taxpayer except that if the spouse dies during such taxable year such determination shall be made as of the time of the death of the spouse. [Formerly 316.137; 1985 c.345 §11; 1987 c.293 §29]

**316.770** [Formerly 316.585; 1963 c.83 §1; repealed by 1969 c.493 §99]

**316.771 Proof of status for exemption credit.** Each person qualifying for the additional personal exemption credit allowed in ORS 316.758 and 316.765 may claim the credit on the personal income tax return. However, the claim shall be substantiated by a letter from a licensed physician or osteopath describing the nature and extent of the physical disability. [Formerly 316.138; 1985 c.345 §12; 1987 c.293 §30]

**316.775** [1957 c.586 §10; 1959 c.234 §3; repealed by 1969 c.493 §99]

**316.777 Income derived from sources within federally recognized American Indian reservation exempt from tax.** (1) Any income derived from sources within the boundaries of an active Indian reservation in Oregon by any enrolled member of a federally recognized American Indian tribe residing on an Oregon Indian reservation at the time the income is earned, is exempt from tax under this chapter.

(2) An extract from the tribal rolls or other documentary proof of the taxpayer's enrolled status and other additional proofs as may be required by the Department of Revenue, shall be attached to or accompany

any return for any year for which exemption under subsection (1) of this section is claimed. [Formerly 316.049; 1985 c.317 §1]

**316.780** [1957 c.586 §11; repealed by 1969 c.493 §99]

**316.783 Amounts received for condemnation of Indian tribal lands.** Amounts received as condemnation awards as a result of condemnation by the Federal Government of Indian tribal lands are exempt from the tax imposed by this chapter. [Formerly 316.050]

**316.785 Income derived from exercise of Indian fishing rights.** Income derived from the exercise of rights of any Indian tribe to fish secured by treaty, Executive order or Act of Congress is exempt from the tax imposed by this chapter if section 7873 of the Internal Revenue Code does not permit a like federal tax to be imposed on such income. [1989 c.625 §5]

**316.787 Payments to Japanese and Aleuts under Civil Liberties Act of 1988.** Amounts paid to an eligible individual (persons of Japanese ancestry and Aleut civilian residents of the Pribilof Islands and the Aleutian Islands) under section 1989b-4, Title I, or 1989c-5, Title II, of the Civil Liberties Act of 1988 (P.L. 100-383) shall be treated for purposes of this chapter as damages for human suffering and shall be exempt from the taxes imposed under this chapter. [1989 c.625 §4]

**Note:** Section 83, chapter 625, Oregon Laws 1989, provides:

**Sec. 83.** Section 4 of this Act [316.787] (relating to reparations paid to persons of Japanese ancestry and Aleut civilian residents of the Pribilof Islands and the Aleutian Islands) applies to taxable years beginning on or after January 1, 1988. [1989 c.625 §83]

**316.788** [Formerly 316.051; repealed by 1987 c.293 §70]

**316.789 Persian Gulf Desert Shield active military service.** (1) Compensation received for active service as a member in the Armed Forces of the United States outside this state during any month beginning on or after August 1, 1990, and before the date designated by the President of the United States as the date of termination of combatant activities in the Persian Gulf Desert Shield area is excluded from gross income for purposes of this chapter.

(2) To the extent included in arriving at federal taxable income, there shall be subtracted from the federal taxable income of a resident or nonresident individual any compensation described in subsection (1) of this section that is not entitled to subtraction under ORS 316.127, 316.680 or other law.

(3) For purposes of this section, "compensation" does not include pension or retirement pay. [1991 c.177 §2]

**316.790** [1953 c.304 §116; 1957 c.528 §3; repealed by 1969 c.493 §99]

**316.794** [Formerly 316.052; repealed by 1987 c.293 §70]

**316.799** [Formerly 316.053; repealed by 1987 c.293 §70]

### MISCELLANEOUS

**316.802** [1969 c.493 §71; renumbered 316.970]

**316.805** [1953 c.304 §100; repealed by 1969 c.493 §99]

**316.806 Definitions for ORS 316.806 to 316.818.** As used in ORS 316.806 to 316.818:

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

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

(3) "Construction worker" means a person who is a member of a recognized construction trade, craft, union or industrial occupation and who is lawfully engaged in the performance of labor, pursuant to contract or subcontract, at a construction project.

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

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

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

(5) "Traveling expenses" includes gas, oil and automobile repairs and maintenance, but does not include meals unless the construction worker is required by the employer to stay overnight at the construction job site. [Formerly 316.057]

**316.810** [1953 c.304 §101; repealed by 1969 c.493 §99]

**316.812 Certain traveling expenses.** In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income traveling expenses, as defined in ORS 316.806, incurred by a construction worker during the first year of continuous employment on the same construction job site. However, if employment on the same construction job site is temporarily interrupted for any reason whatsoever, the period of interruption shall not be taken into account in determining the one-year period. [Formerly 316.058]

**316.815** [1953 c.304 §102; 1955 c.582 §1; repealed by 1969 c.493 §99]

**316.818 Proof of expenses.** The modification to federal taxable income by ORS 316.812 shall be substantiated by any proof required by the Department of Revenue by rule. [Formerly 316.059]

**316.820** [1953 c.304 §103; 1963 c.627 §19 (referred and rejected); repealed by 1969 c.493 §99]

**316.824 Definitions for ORS 316.824 and 316.832.** As used in ORS 316.824 and 316.832:

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

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

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

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

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

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

(5) "Traveling expenses" includes gas, oil and automobile repairs and maintenance but does not include meals or lodging. [Formerly 316.061]

**316.825** [1953 c.304 §104; repealed by 1969 c.493 §99]

**316.827** [1957 s.s. c.15 §7; last sentence derived from 1957 s.s. c.15 §8; 1963 c.627 §20 (referred and rejected); repealed by 1969 c.493 §99]

**316.830** [1953 c.304 §105; repealed by 1969 c.493 §99]

**316.832 Travel expenses for loggers.** (1) In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income traveling expenses, as defined in ORS 316.824, incurred by a logger in job-related travel.

(2) The modification to federal taxable income by subsection (1) of this section shall be substantiated by any proof required by the Department of Revenue by rule. [Formerly 316.063]

**316.834 Underground storage tank pollution prevention or essential services grant.** In addition to the modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of any underground storage tank pollution prevention or essential services grant made by the Department of Environmental Quality under section 6, chapter 863, Oregon Laws 1991, to any taxpayer. [1991 c.863 §33]

**316.835** [1953 c.304 §106; repealed by 1969 c.493 §99]

**316.838 Art object donation.** (1) If an art object has not been previously sold or

otherwise transferred by its creator and the creator makes a charitable contribution of the art object that qualifies for the deduction allowed by section 170 of the Internal Revenue Code for the taxable year, there shall be subtracted from federal taxable income any positive amount obtained by subtracting:

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

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

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

(3) No additional subtraction shall be allowed to the taxpayer-creator under this section unless the tax return is accompanied by a copy of an appraisal report showing the fair market value of the art object at the time the contribution was made. [Formerly 316.064; 1989 c.938 §1]

Note: Section 3, chapter 938, Oregon Laws 1989, provides:

Sec. 3. The amendments to ORS 316.838 by section 1 of this Act and the repeal by section 2 of this Act apply to tax years beginning on or after January 1, 1989. For all prior tax years the law applicable for those years shall continue to apply. [1989 c.938 §3]

316.840 [1953 c.304 §107; 1961 c.506 §3; repealed by 1969 c.493 §99]

**316.844 Special computation of gain or loss where farm use value used.** (1) Notwithstanding any other provision of this chapter, when gain or loss is included in federal taxable income:

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

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

there shall be added to federal taxable income the difference between the taxable gain or loss that would otherwise be determined under this chapter and the gain or loss that would be taxable had the basis for federal tax purposes been computed using the forest or farm use value provided for under ORS 118.155 instead of the basis computed pursu-

ant to section 1014 of the Internal Revenue Code.

(2) This section applies to gains and losses from dispositions of property acquired from a decedent, or from property the basis of which is computed in whole or in part with respect to property acquired from a decedent, whose death occurred before January 1, 1987. [Formerly 316.081; 1987 c.646 §13]

**316.849 Income attributable to production of substitute fuel.** If a commercial plant produces methanol, ethanol or other substitute fuel and 75 percent of the production is used in making gasohol in any tax year, that portion of the taxable net income attributable to the production of methanol, ethanol or other substitute fuel for such tax year is exempt from any tax imposed under this chapter. To qualify for the exemption authorized by this section, there shall be filed with the tax return of the taxpayer claiming the exemption a certificate furnished by the Department of Energy that the plant produced a commercially marketable grade of methanol, ethanol or other substitute fuel and that 75 percent of the production during the tax year was used or committed for use in making gasohol. [Formerly 316.145]

316.854 [Formerly 316.150; 1985 c.802 §16a; repealed by 1987 c.293 §70]

316.855 [1953 c.304 §108; 1963 c.305 §1; repealed by 1969 c.493 §99]

316.857 [1989 1985 c.352 §2; renumbered 316.216 in 1989]

316.860 [1953 c.304 §109; repealed by 1969 c.493 §99]

**316.863 Effect of federal law changes on certain pension, profit-sharing or other retirement plans.** For tax years beginning after the date specified in ORS 316.012 for the recognition of the Internal Revenue Code for Oregon tax purposes, if part I of subchapter D of chapter 1 of Subtitle A of the Internal Revenue Code is amended to allow greater contributions to or to require or permit any other provision in any of the pension, profit-sharing, stock bonus or other retirement plans, mentioned in part I of subchapter D of chapter 1 of Subtitle A of the Internal Revenue Code, amendments to those plans and contributions to those plans in conformity with those new federal amendments shall not disqualify those plans for Oregon tax purposes and shall not increase or diminish the deductions otherwise allowable on the Oregon return based on the Internal Revenue Code as amended on the date specified in ORS 316.012. [1985 c.802 §3]

316.865 [1953 c.304 §110; repealed by 1969 c.493 §99]

316.870 [1953 c.304 §111; repealed by 1969 c.493 §99]

**316.871 Definitions for ORS 316.872.** As used in ORS 316.871 and 316.872, unless the context requires otherwise:

(1) "Consideration" includes money, property or securities. If consideration is for other than money, consideration shall mean the amount equal to the adjusted basis to the corporation of the property received reduced by any liability to which the property was subject or which was assumed by the corporation as of the time the property was received.

(2) "Security" means any security as defined in ORS 59.015 (13)(a).

(3) "Small business corporation" means a corporation that:

(a) Is organized in this state or authorized to transact business in this state under the Oregon Business Corporation Act and which has its primary place of business or commercial domicile in Oregon as determined under the administrative rule of the Department of Revenue.

(b) Had total employment of no more than 200 employees, as measured by the number of employees covered by federal unemployment insurance on December 31 of the year preceding issuance of the small business stock, a majority of which employees were covered by Oregon unemployment insurance on December 31 of the year preceding acquisition of the small business stock. However, if more than 50 percent of the outstanding equity securities of all classes are held by another corporation, the employment of the controlling corporation shall be counted as employment of the eligible corporation for purposes of this paragraph.

(c) Had gross receipts for its tax year ending in the calendar year previous to the calendar year in which the tax year of the taxpayer claiming the credit under ORS 316.872, begins of which not more than 25 percent were obtained from royalties, rents, dividends, interest, annuities and sales and exchanges of property. However, this restriction does not apply to companies whose primary business is the sale or development of computer software.

(d) Is not engaged primarily in the business of managing, holding, buying or selling real property.

(e) Has not issued small business securities for consideration in excess of \$1 million. Any small business securities issued by affiliates of the corporation as defined in section 1504 of the Internal Revenue Code shall be aggregated with the small business securities issued by the corporation for purposes of the \$1 million limit.

(4) "Small business security" means a security issued by a small business corporation and purchased by a taxpayer directly from the same small business corporation, or purchased by a taxpayer from an underwriter which is selling the securities as part of a plan to raise new debt or equity capital for the small business corporation. The Department of Revenue shall, upon request, designate those small business security issues which fit the definition set forth in this paragraph. [1985 c.715 §2; 1987 c.293 §9]

**316.872 Deferral of gain on sale of small business securities.** (1) If a small business security owned by a taxpayer is sold by the taxpayer, and within six months from the date of sale, another small business security is purchased by the taxpayer, gain from the sale shall only be recognized to the extent that the sales price of the small business security sold exceeds the cost of purchasing the new small business security.

(2) Where the purchase of a new small business security results, under subsection (1) of this section, in the nonrecognition of gain on the sale of an old small business security, in determining the basis of the new small business security, the basis shall be reduced by an amount equal to the amount of the gain not so recognized on the sale of the old small business security.

(3) Federal taxable income shall be modified to the extent necessary to carry out the provisions of this section. [1985 c.715 §3; 1987 c.647 §15]

Note: Section 4, chapter 715, Oregon Laws 1985, provides:

Sec.4. This Act [316.871 and 316.872] applies to small business securities acquired during tax years beginning on or after January 1, 1986, and prior to January 1, 1990. [1985 c.715 §4]

Note: Section 16, chapter 647, Oregon Laws 1987, provides:

Sec. 16. The amendments to section 3, chapter 715, Oregon Laws 1985 [316.872], by section 15 of this Act apply to small business security acquired during tax years beginning on or after January 1, 1986, and prior to January 1, 1990. [1987 c.647 §16]

316.875 [1953 c.304 §112; repealed by 1969 c.493 §99]

316.880 [1953 c.304 §113; repealed by 1969 c.493 §99]

316.885 [1953 c.304 §114; repealed by 1969 c.493 §99]

**316.970 Effect of chapter 493, Oregon Laws 1969.** This chapter is intended to supersede any conflicting provisions of law in effect on August 22, 1969, to the extent of such conflict. [Formerly 316.802]

316.990 [1953 c.304 §115; repealed by 1957 c.632 §1 (314.991 enacted in lieu of 316.990 and 317.990)]

## PENALTIES

**316.992 Penalty for filing incorrect return that is based on frivolous position or is intended to delay or impede admin-**

**istration; appeal.** (1) The department shall assess a penalty of \$250 against any individual who files what purports to be a return of the tax imposed by this chapter but which:

(a) Does not contain information on which the substantial correctness of the self-assessment may be judged; or

(b) Contains information that on its face indicates that the self-assessment is substantially incorrect.

(2) A penalty may be imposed under subsection (1) of this section only if the conduct referred to in subsection (1) of this section is due to:

(a) A position which is frivolous; or

(b) An intention, apparent on the face of the purported return, to delay or impede the administration of the income tax laws of this state.

(3) The penalty imposed under this section is in addition to any other penalty imposed by law. Any person against whom 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 order of the department 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.

(4) If an assessment of tax due for the taxable year with respect to which a penalty is imposed under this section is under appeal at the same time that an appeal is filed under this subsection, the department may consolidate the appeals into a single proceeding.

(5) As used in this section, "a position which is frivolous" includes, but is not limited to:

(a) Reference to a spurious constitutional argument;

(b) Reliance on a "gold standard" or "war tax" deduction;

(c) An argument that wages or salary are not includable in taxable income;

(d) An argument that the Sixteenth Amendment to the United States Constitution was not properly adopted; or

(e) An argument that "unenfranchised, sovereign, freemen or natural persons" are not subject to the tax laws. [1987 c.843 §11]