

Appendix C

77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

Enrolled House Bill 2460

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

CHAPTER

AN ACT

Relating to tax compliance; creating new provisions; amending ORS 317.267 and 317.715; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. No later than February 1, 2014, the Department of Revenue shall make a report on the use of out-of-state tax shelters to the Seventy-seventh Legislative Assembly. The department shall use all data available to the department to prepare the report, which shall:

(1) Describe methods by which taxpayers shift income otherwise taxable by this state to outside the state; and

(2) Make recommendations for addressing noncompliance attributable to out-of-state tax shelters.

SECTION 2. ORS 317.715 is amended to read:

317.715. (1) If a corporation required to make a return under this chapter is a member of an affiliated group of corporations making a consolidated federal return under sections 1501 to 1505 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined beginning with federal consolidated taxable income of the affiliated group as provided in this section.

(2)(a) For purposes of determining Oregon taxable income, the taxable income or loss of any corporation that is a member of a unitary group and that is incorporated in any of the following jurisdictions shall be added to federal consolidated taxable income:

(b) Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.

[(2)] (3) If the affiliated group, of which the corporation subject to taxation under this chapter is a member, consists of more than one unitary group, before the additions, subtractions, adjustments and modifications to federal taxable income provided for in this chapter are made, and before allocation and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated taxable income shall be computed. Modified federal consolidated taxable income shall be determined by eliminating from the federal consolidated taxable income of the affiliated group the separate taxable income, as determined under Treasury Regulations adopted under section 1502 of the Inter-

nal Revenue Code, and any deductions or additions or items of income, expense, gain or loss for which consolidated treatment is prescribed under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, attributable to the member or members of any unitary group of which the corporation is not a member.

~~[(3)(a)]~~ **(4)(a)** After modified federal consolidated taxable income is determined under subsection ~~[(2)]~~ **(3)** of this section, the additions, subtractions, adjustments and modifications prescribed by this chapter shall be made to the modified federal consolidated taxable income of the remaining members of the affiliated group, where applicable, as if all such members were subject to taxation under this chapter. After those modifications are made, Oregon taxable income or loss shall be determined as provided in ORS 317.010 (10)(a) to (c), if necessary.

(b) In the computation of the Oregon apportionment percentage for a corporation that is a member of an affiliated group filing a consolidated federal return, there shall be taken into consideration only the property, payroll, sales or other factors of those members of the affiliated group, **and of those corporations described in subsection (2) of this section**, whose items of income, expense, gain or loss remain in modified federal consolidated taxable income after the eliminations required under subsection ~~[(2)]~~ **(3)** of this section. Those members of an affiliated group making a consolidated federal return or a consolidated state return ~~[shall]~~ **may** not be treated as one taxpayer for purposes of determining whether any member of the group is taxable in this state or any other state with respect to questions of jurisdiction to tax or the composition of the apportionment factors used to attribute income to this state under ORS 314.280 or 314.605 to 314.675.

(5) The Department of Revenue shall adopt rules:

(a) To determine the computation of income or loss for a corporation that is a member of a unitary group and that is not otherwise required to file a consolidated federal return.

(b) To prevent double taxation or double deduction of any amount included in the computation of income under this section.

SECTION 3. ORS 317.267 is amended to read:

317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income amounts received as dividends from corporations deducted for federal purposes pursuant to section 243 or 245 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code, amounts paid as dividends by a public utility or telecommunications utility and deducted for federal purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by members of an affiliated group that are eliminated from a consolidated federal return pursuant to ORS 317.715 ~~[(2)]~~ **(3)**.

(2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of this section, there shall be subtracted from federal taxable income an amount equal to 70 percent of dividends (determined without regard to section 78 of the Internal Revenue Code) received or deemed received from corporations if such dividends are included in federal taxable income. However:

(a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the same conditions and in same amount as the dividends received deduction otherwise allowable for federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

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

(c) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for purposes of this subsection.

(d) If a dividends received deduction is not allowed for federal tax purposes because of section 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

(3) There shall be excluded from the sales factor of any apportionment formula employed to attribute income to this state any amount subtracted from federal taxable income under subsection (2) of this section.

SECTION 4. On or before January 1 of each odd-numbered year, the Department of Revenue shall submit a report to the Legislative Assembly in the manner provided by ORS 192.245. The report shall include recommendations for legislation related to jurisdictions listed in ORS 317.715 (2)(b), including recommendations for additions to or subtractions from the list of jurisdictions in ORS 317.715 (2)(b).

SECTION 5. The amendments to ORS 317.267 and 317.715 by sections 2 and 3 of this 2013 Act apply to tax years beginning on or after January 1, 2014.

SECTION 6. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.