

150-314.258

Withholding on Real Property Interest Conveyances

(1) Definitions. For purposes of ORS 314.258 and this rule, the following definitions apply:

(a) "Authorized agent" means an agent who provides closing and settlement services as part of a conveyance. The term "authorized agent" includes but is not limited to an escrow agent, title company, real estate agent, broker, attorney, and a qualified intermediary (QI) under IRC section 1031. Although the QI is an agent for this purpose, a QI is not an agent for purposes of IRC section 1031. See Treasury Regulation section 1.1031(k)-1(g)(8). An "authorized agent" does not include an employee of a transferee who merely makes payments to a transferor in connection with a conveyance.

(b) "Closing and settlement services" means services provided for the benefit of a transferor or transferee in connection with a conveyance by an authorized agent who receives or disburses moneys in accordance with instructions given by the parties to the conveyance. "Closing and settlement services" does not include services such as inspections, appraisals, drafting services, and recording services performed for the benefit of a transferor or transferee in a conveyance.

(c) "Consideration" is the amount of money and other value given to a transferor for the transferor's conveyance of a real property interest. "Consideration" includes:

(A) The amount of cash given to the transferor for the real property interest;

(B) The amount of any lien, mortgage, contract, indebtedness, or other encumbrance existing against the property interest to which the property interest remains subject or which the transferee agrees to pay or assume;

(C) The fair market value of any property conveyed or transferred to a transferor; and

(D) The fair market value of any service provided to a transferor.

(d) "Conveyance" means a sale, lease, encumbrance, mortgage, or creation of a secured interest in real property, including the conveyance of a real property interest that is described under IRC section 897(c) and located in Oregon. A conveyance does not include the sale of stock or other interest in a corporation described in IRC 897(c)(1)(A)(ii) unless such stock or interest has a business situs in Oregon or is otherwise located in Oregon for purposes of ORS chapter 316, 317, or 318.

(e) "Transferee" means a person who acquires ownership of a transferor's real property interest or who is a lessee of real property located in Oregon.

(f) "Transferor" means a person who transfers, sells, deeds or otherwise conveys one's real property interest to another person as part of a conveyance.

(2) Withholding requirements. Except as provided in section (2)(a) of this rule, an authorized agent must withhold tax as income is recognized for Oregon tax purposes and remit the tax withheld to the department.

(a) Withholding is not required if the transferor:

(A) Claims exemption from withholding as provided in section (4) of this rule;

(B) Is an estate, trust, S corporation, general partnership, limited partnership, or non-profit corporation, or a limited liability company that for purposes of Treasury Regulation section 301.7701-3 has not elected to be classified as an association taxable as

a corporation and is not a disregarded entity the sole member of which is a transferor within the meaning of subsection (2)(b), section 4, chapter 864, Oregon Laws 2007; or (C) Is an agency or instrumentality of the United States or the State of Oregon or is a city, county, or other municipal or public corporation.

(b) The authorized agent must send the tax withheld to the department within 20 days of the date the proceeds from the conveyance are disbursed to the transferor.

(c) If there is more than one transferor in a single transaction, the authorized agent must withhold tax on each non-exempt transferor's share of the real property interest as if all transferors had equal ownership in the real property interest unless the transferor establishes the actual ownership percentage in the real property interest, such as through recorded documents, tenancy-in-common agreements, or other documents. If the transferor establishes other than equal ownership, the authorized agent must withhold in proportion to each non-exempt transferor's actual ownership percentage in the real property interest.

(d) A transferor may claim the amount withheld by an authorized agent as a credit on the transferor's corresponding personal income tax return or corporate income or excise tax return.

(e) If the transferor is a limited liability company the sole member of which is a transferor within the meaning of subsection 2(b), section 4, chapter 864, Oregon Laws 2007, the transferor is the single member for purposes of this rule.

(3) Calculation of amount to be withheld.

(a) An authorized agent is required to withhold and remit to the department the least of:

(A) Four percent of the consideration for the real property interest;

(B) Four percent of the net proceeds from the conveyance; or

(C) Ten percent of the amount of gain on the conveyance that is includable in the transferor's Oregon taxable income.

(b) "Net proceeds" is the amount shown on the settlement statement (before reducing for withholding) related to the conveyance that is being disbursed to the seller, or any amount related to the conveyance that is disbursed to the seller.

(c) A transferor subject to withholding must deliver to an authorized agent at or before conveyance of the real property interest a signed statement identifying the amount of withholding required by subsection (3)(a) of this rule. If the transferor enters into a deferred exchange under section 1031, the transferor must also provide such a certificate to the authorized agent accommodating the exchange at or before the transferor acquires the replacement property. If the transferor fails to timely deliver the form, the authorized agent must withhold four percent of the amount of consideration, or if less, all the net proceeds.

(d) Example 1: Anne sold her rental property for \$300,000. Her federal and Oregon adjusted basis in the property is \$250,000. She has an outstanding mortgage against the property of \$157,000 and closing costs are \$3,350. At closing, she determines she is not exempt from withholding so her escrow officer must withhold tax based on the least of

four percent of the consideration, four percent of the net proceeds, or 10 percent of the gain includable in Oregon taxable income.

Step 1) Determine four percent of the consideration. In this case, it is \$12,000 ($\$300,000 \times 0.04 = \$12,000$).

Step 2) Determine four percent of the “net proceeds” as follows:

\$139,650 Net amount disbursed to seller. ($\$300,000$ consideration - $\$157,000$ mortgage - $3,350$ closing costs = $\$139,650$)

\$139,650 is the “net proceeds” from this conveyance. Four percent of the net proceeds is \$5,586.

Step 3) Determine ten percent of the gain includable in Oregon taxable income as follows:

\$300,000 Consideration

\$250,000 Federal and Oregon adjusted basis

\$50,000 Gain

Ten percent of the entire gain is \$5,000. This is the lowest of the amounts calculated in steps one, two, or three. Anne’s escrow officer would withhold and remit \$5,000.

(e) Installment sales. If a transferor elects to recognize income from the conveyance using the installment method under IRC section 453, the transferor may reduce his gain by the amount of the installment that will be recognized in future years. The withholding calculation is based on the entire consideration and net proceeds, or the modified gain to determine the lowest of the three methods provided in subsection (3)(a) of this rule.

(f) Example 2: Assume the same facts as Example 1 except that Anne is selling the property on an installment basis and recognizing the income from the sale using the installment method under IRC section 453 over five years in equal installments. Because Anne is selling the property over time, the amount of gain includable in Oregon taxable income is \$10,000 for the year of the conveyance ($\$50,000 \div 5 \text{ years} = \$10,000$) and \$10,000 in each year thereafter. Ten percent of the amount included in Oregon taxable income is \$1,000. Anne’s escrow officer would withhold and remit \$1,000 for the year of the conveyance because it is the least of the three amounts.

(g) Deferred exchanges. If a transferor enters into a like-kind exchange under IRC section 1031, withholding is not necessary at the time the transferor relinquishes the property to a Qualified Intermediary (QI) unless part of the proceeds from the sale are disbursed to the transferor. If the exchange later fails or the transferor receives from the QI any part of the proceeds from the sale, the QI is required to withhold on the proceeds disbursed to the transferor. The transferor must provide the certificate of exemption or the calculation of withholding to the authorized agent handling the exchange at or before the transferor acquires the replacement property.

(h) Example 3: Robert entered into an exchange under IRC section 1031 to defer tax on the gain from the sale of his rental property. The consideration for the property was \$500,000. Robert’s federal and Oregon adjusted basis in the property is \$150,000. He holds a first mortgage of \$190,000 and he incurred \$10,000 in costs related to the conveyance. Robert requested \$50,000 from the consideration directly. Robert’s escrow

officer transferred title of the property and \$250,000 of the consideration to a QI and the escrow officer disbursed \$50,000 directly to Robert as requested. The escrow officer is required to withhold on the amount disbursed to Robert as follows:

Step 1) Determine four percent of the consideration. In this case, it is \$20,000 ($\$500,000 \times 0.04 = \$20,000$).

Step 2) Determine four percent of the "net proceeds" as follows:

\$50,000 Net amount disbursed to seller shown on the settlement statement before reducing for withholding. In this case, four percent of the net proceeds is \$2,000.

Step 3) Determine ten percent of the gain includable in Oregon taxable income as follows:

\$500,000 Consideration

\$150,000 Federal and Oregon adjusted basis

\$350,000 Gain

\$300,000 Gain eligible for deferral under IRC section 1031

\$50,000 gain includable in Oregon taxable income.

Ten percent of the entire gain is \$5,000. The lowest of the amounts calculated in steps one, two, or three is \$2,000 (4 percent of the net proceeds). Robert's escrow officer would withhold and remit \$2,000.

(j) Example 4: Assume the same facts as in Example 3. Robert identified replacement property within the appropriate period but failed to complete financing on time so the exchange failed. The QI disbursed the remaining proceeds from the sale of the rental property to Robert. Robert's QI is required to withhold as follows:

Step 1) Determine four percent of the consideration. In this case, it is \$20,000 ($\$500,000 \times 0.04 = \$20,000$).

Step 2) Determine four percent of the "net proceeds" as follows:

\$250,000 Net amount disbursed to seller before reducing for withholding. In this case, four percent of the net proceeds is \$10,000.

Step 3) Determine ten percent of the gain includable in Oregon taxable income as follows:

\$500,000 Consideration

\$200,000 Adjusted basis (\$150,000 basis + \$50,000 of proceeds on which tax already was withheld)

\$300,000 Gain includable in Oregon taxable income.

Ten percent of the gain includable in Oregon taxable income is \$30,000. The lowest of the amounts calculated in steps one, two, or three is \$10,000 (4 percent of the net proceeds). Robert's QI would withhold and remit \$10,000 from the disbursement due to the failed exchange. Robert has total withholding of \$12,000.

(k) Leases. Withholding is required on the transfer of an entire leasehold interest if the total amount of consideration for the leasehold interest exceeds \$100,000. If withholding is required, it is required on the entire amount, not just the amount that exceeds \$100,000. The authorized agent must remit tax withheld to the department within 20 days of the disbursement of the proceeds to the transferor. Withholding must be calculated

based on the least of four percent of the consideration, four percent of the net proceeds received, or ten percent of the gain.

(4) Exemption from withholding requirements. A transferor may claim an exemption from the withholding requirements if:

(a) The consideration for the conveyance does not exceed \$100,000;

(b) The transferee is acquiring the real property interest through foreclosure; or

(c) The transferor:

(A) Is an individual who is a resident of Oregon under ORS 316.027;

(B) Is a C-corporation that has a permanent place of business in Oregon; or

(C) Has professionally competent knowledge or advice that the conveyance qualifies for nonrecognition under IRC section 1031 or 1033 or is otherwise nontaxable to the transferor under Oregon law during the tax year of the transferor in which the conveyance occurs. "Professionally competent knowledge or advice" includes oral or written advice from a tax professional (i.e., public accountant, certified public accountant, licensed tax consultant, licensed tax preparer, enrolled agent, or attorney) regarding the conveyance in which that professional advises there likely will be no recognition of gain in connection with the conveyance. Examples of such transactions include but are not limited to a conveyance that constitutes or is accomplished as part of:

(i) The sale of a principal residence in which the entire gain qualifies for exclusion under IRC section 121;

(ii) A transfer to a corporation controlled by the transferor for purposes of IRC section 351;

(iii) A transfer pursuant to a tax-free reorganization under IRC section 361;

(iv) A transfer by a tax-exempt entity that does not give rise to unrelated business taxable income to the transferor under IRC section 512;

(v) A transfer to a partnership in exchange for an interest in the partnership such that no gain or loss is recognized under IRC section 721;

(vi) A transfer between spouses or incident to divorce for purposes of IRC section 1041;

(vii) A transfer where the transferor is conveying the property subject to a mortgage, trust deed or land sale contract to a mortgagee, trust deed beneficiary, or land sale contract vendor as part of a foreclosure action, a non-judicial foreclosure, or forfeiture proceeding, or a transfer by a mortgagor, trust deed grantor or land sales contract vendee in lieu of a foreclosure, with no additional consideration; or

(viii) Any other transaction in which there is no recognition of gain for purposes of ORS chapters 316, 317, and 318, as explained to the department in writing at the time the transaction is completed.

(5) Certificate of exemption.

(a) To claim exemption under section (4) of this rule, the transferor must complete and sign under penalty of perjury, that the transferor is exempt from withholding before the funds related to the transaction are disbursed. The transferor must provide the completed certificate of exemption to the authorized agent providing closing and settlement services.

(b) In addition to retaining the certificate of exemption in the authorized agent's records, the authorized agent must send a copy of the certification to the department within 20 days of the date of the conveyance if:

(A) The transferor claims exemption as an Oregon resident and has a non-Oregon address; or

(B) The transferor intends the conveyance to qualify for nonrecognition under IRC section 1031 or 1033.

(c) The authorized agent is required to provide the certification to the department upon written request of the department without a subpoena unless a subpoena is required by law.

(d) A transferor described in paragraphs (B) or (C) of section (2)(a) of this rule is not required to submit a claim for exemption.

(6) Failure to withhold. An authorized agent who relies on the representation made by the transferor that the transferor is exempt from withholding, is not liable for amounts required to be withheld under ORS 314.258. An authorized agent who relies on the calculation shown on the certificate provided by the transferor is not liable for the amount that was required to be withheld in excess of that shown on the certificate. The transferor is liable for the tax and may be subject to interest charged on the underpayment of estimated tax.

(7) Failure to remit. If an authorized agent withholds tax from the transferor's disbursement and fails to remit the same amount to the department timely, the authorized agent is liable to the State of Oregon for unremitted amounts and the department may collect such amounts from the authorized agent in the manner provided in ORS 316.162 to 316.221.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.258

Hist.: REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.280-(I)

Modified Factors for Carriers of Freight or Passengers: Special Rules – Airlines

(1) In General. Where an airline has income from sources both within and without this state, the amount of business income from sources within this state is determined pursuant to ORS 314.610 to 314.665 except as modified by this rule.

(2) Apportionment of Business Income. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.(a) General Definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.

(A) "Value" of owned real and tangible personal property means its original cost. (ORS 314.655 and OAR 150-314.655(2)-(A))

(B) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(C) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it is assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.

(D) "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income year, but the department may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (ORS 314.655 and OAR 150-314.655(3))

(E) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (ORS 314.655 and OAR 150-314.655(2)-(B))

(F) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(G) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(H) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(I) "Revenue service" means the use of aircraft ready for flight for the production of revenue.

(J) "Transportation sales" means sales from transporting passengers, freight and mail as well as liquor sales, pet crate rentals, etc.

(K) "Departures" means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

(b) Property Factor

(A) Property valuation. Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with ORS 314.655 and OAR 150-314.655(2)-(B). The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier does not constitute a rental of such aircraft by the airline to the other participating airline. Such aircraft are accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, are valued at cost.

(B) The denominator and numerator of the property factor. The denominator of the property factor is the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor is the average value of the tangible personal property owned or rented and used in this state during the income year.

In determining the numerator of the property factor, all property except aircraft ready for flight are included in the numerator of the property factor in accordance with ORS

314.655 and OAR 150-314.655(1)-(D). Aircraft ready for flight are included in the numerator of the property factor in the ratio calculated as follows:

Departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(c) Payroll Factor.

The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees is included in the ratio that departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type, compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(d) Sales (Transportation Sales) Factor.

The transportation sales derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the sales factor. (ORS 314.665 and OAR 150-314.665(1)-(A)) Passive income items such as interest, rental income, dividends, etc., are not included in either the numerator or the denominator nor are the proceeds or net gains or losses from the sale of aircraft included. The numerator of the sales factor is the total sales of the taxpayer in this state during the income year. The total sales of the taxpayer in this state during the income year is the result of the following calculation:

The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departure similarly weighted, multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight sales directly attributable to this state.

(3) Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these rules. Such records are to be subject to review by the state of Oregon or their agents.

Example 1: Assume the following facts for an airline for the 2004 tax year:

1. It has ten 747's ready for flight and in revenue service at an average per unit cost of \$40,000,000 for nine (9) of the aircraft. It rents the remaining 747 from another airline for \$9,000,000 per year. At eight times rents, the latter is valued at \$72,000,000 for apportionment purposes. Total 747 valuation is, therefore, \$432,000,000 for property factor denominator purposes.

2. It has twenty 727's ready for flight and in revenue service at an average per unit cost of \$20,000,000. Total 727 valuation is, therefore, \$400,000,000 for property factor denominator purposes.

3. It has nonflight tangible property (n.t.p.) valued at original cost of \$200,000,000.

4. It has the following annual payroll: flight personnel \$ 60,000,000

nonflight personnel 40,000,000
 Total \$100,000,000

5. From its operations, it has total sales of \$50,000,000, business net income of \$1,000,000 and no nonbusiness income.

6. It has the following within Oregon:

- a. 10% of its 747 flight departures (\$43,200,000);
- b. 20% of its 727 flight departures (\$80,000,000);
- c. 5% of its nonflight tangible property (n.t.p.) (\$10,000,000); and
- d. 15% of its nonflight personnel payroll (6,000,000).

Oregon has a corporate tax rate of 6.6%. The airline's tax liability to Oregon would be determined as follows:

Property Factor:

$$\begin{aligned} &43,200,000 (747s) + 80,000,000 (727s) + 10,000,000 (n.t.p.) &= &133,200,000 \\ &= &12.9070\% \\ &432,000,000 (747s) + 400,000,000 (727s) + 200,000,000 &1,032,000,000 \end{aligned}$$

Sales Factor:

$$\begin{aligned} &43,200,000 (747s) + 80,000,000 (727s) &= &123,200,000 &= &14.8077\% \\ &432,000,000 (747s) + 400,000,000 (727s) &&832,000,000 \end{aligned}$$

Payroll Factor:

$$\begin{aligned} &6,000,000 (nonflight) + 8,884,620 (.148077 \times 60,000,000)(flight) &= &14,884,620 \\ &= &14.8846\% \\ &100,000,000 &100,000,000 \end{aligned}$$

Average ratio - (Property, sales, and payroll factors) =

$$\frac{12.9070 + (2 \times 14.8077) + 14.8846}{4} = \frac{57.4070}{4} = 14.3518$$

Taxable Income in Oregon: .143578 x \$1,000,000 = 143,518

Tax Liability to Oregon: .066 x \$143,518 = \$9,472

Example 2: Same facts except that paragraph 6 is changed to read:

6. It has the following within Oregon:

- a. 6% of its 747 flight departures (\$25,920,000)
- b. 31% of its 727 flight departures (\$124,000,000)
- c. 3% of its nonflight tangible property (\$6,000,000)
- d. 7% of its nonflight personnel payroll (\$2,800,000)

The airline's tax liability to Oregon would be determined as follows:

Property Factor:

$$\begin{aligned} &25,920,000 (747s) + 124,000,000 (727s) + 6,000,000 (n.t.p.) &= &155,920,000 \\ &= &15.1085\% \\ &432,000,000 &+ &400,000,000 &+ &200,000,000 &1,032,000,000 \end{aligned}$$

Sales Factor:

$$\begin{aligned} &25,920,000 (747s) + 124,000,000 (727s) &= &149,920,000 &= &18.0192\% \\ &432,000,000 + 400,000,000 &&832,000,000 \end{aligned}$$

Payroll Factor:

$$\begin{aligned} & 2,800,000 \text{ (nonflight)} + 10,811,520 \text{ (.180192} \times 60,000,000\text{)(flight)} & = \\ & 13,611,520 & = 13.6115\% \\ & 1,000,000,000 & 100,000,000 \end{aligned}$$

Average Ratio:

$$\frac{15.1085 + (2 \times 18.0192) + 13.6115}{4} = \frac{64.7584}{4} = 16.1896\%$$

Taxable Income in Oregon: $.161896 \times \$1,000,000 = \$161,896$

Tax Liability to Oregon: $.066 \times 161,896 = \$10,685$

Stat. Auth.: ORS 305.100, 305.280

Stats. Implemented: ORS 314.280

150-314.280-(K)

Modified Factors for Companies Engaged in Sea Transportation Service

(1) Sea transportation services within this rule include the activities of steamship companies substantially engaged in interstate or international commerce which derive income within and partly from sources without the state. They do not include the activities of water transportation carriers operating mainly on the Columbia and Willamette Rivers or water transportation carriers operating primarily within Oregon waters.

(2) The Oregon income of a taxpayer carrying on the business of sea transportation services must be determined pursuant to ORS 314.610 to 314.665 except as modified by this rule. Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(a) Property factor. The property factor is a fraction, the denominator of which includes the value of all real and tangible personal property, including ships, owned, rented or leased by the taxpayer and used in the business. The numerator of this factor includes all real and personal property owned, rented or leased by the taxpayer and used in the business, except ships, to the extent such assets are located in the state, and so much of the value of ships used in the business as is determined by applying the ratio that the voyage time which the ship was within this state during the tax period bears to the total voyage time of the ship during the tax period.

(A) The value of ships used in the business but not owned by the user, such as bareboat chartered vessels, is the same as their value for insurance purposes. There are generally three types of charters.

(i) "Bareboat" charters. The owner-charterer places the tanker at the complete use and control of the user. All operating costs are borne by the user, and the charter fee is purely for the use of the vessel. Bareboat charters are included in the property factor.

(ii) "Time and Demise" (long-term) charters. The owner-charterer provides, in addition to the vessel, all operational costs at the instruction of the user. Time and demise charter fees include a component for operating costs borne by the owner-charterer, such as insurance, port and docking fees, crew and master wages, fuel and repairs. Time and

demise charters are considered the purchase of transportation and are not included in the property factor.

(iii) "Single Voyage" charters. These are actually purchased transportation services that take the form of a charter. The owner-charterer has complete use and control of the vessel and merely contracts to deliver product between one or more ports of loading and discharge. Single voyages may be arranged on a consecutive voyage basis. Single voyage charters are not included in the property factor.

(B) Other rented or leased property is valued in the manner set out in ORS 314.655 and OAR 150-314.655(2)-(B).

(C) The term "voyage time" means the time that a ship is in operation for the purpose of transporting cargo, freight, mail, passengers, etc. The time that a ship is in operation includes all sailing time, even though a ship is returning empty or is en route to a port of call to load passengers or cargo, all time in port while loading and unloading, all time awaiting cargo, and all time that the ship is laid up for ordinary repairs, refueling, or provisioning. A ship is not in operation when out of service or during the time that it is laid up for extensive repairs, overhaul, modification or is in dry dock.

(D) The voyage time spent traveling on the Columbia River below mile post 309 is divided equally between Oregon and Washington. For purposes of this rule a vessel is not considered traveling on the Columbia River while remaining at a port even though the vessel moves from one terminal or dock to another within that port.

Example: Taxpayer A uses minutes to measure voyage time. The following table shows the vessel's actions and the time attributable to Oregon between actions.

Date	Time	Action	Oregon Time (Minutes)
Aug. 16	12:00 noon	Enters mouth of Columbia River	
Aug. 17	4:30 p.m.	Docks at Vancouver, Washington	855
Aug. 20	1:00 p.m.	Leaves Vancouver dock	-0-
Aug. 20	4:00 p.m.	Leaves Columbia River and enters mouth of Willamette River	90
Aug. 20	6:00 p.m.	Docks at Portland, Oregon	120
Aug. 23	6:00 a.m.	Leaves Portland dock	3,600
Aug. 23	8:00 a.m.	Leaves mouth of Willamette and enters Columbia River	120
Aug. 24	11:00 a.m.	Leaves mouth of Columbia River	810
Total time attributed to Oregon			5,595

(b) Payroll factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the tax period for the production of business income. (ORS 314.660 and OAR 150-314.660(1)) The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. With respect to all personnel except ocean going personnel, compensation paid to such employees is included in the numerator as provided in ORS 314.660 and OAR 150-314.660(2). The numerator contains so much of the compensation of oceangoing personnel as is determined by applying a fraction, the numerator being

the voyage time the ship spent within this state during the tax period and the denominator being the total voyage time of the ship during the tax period.

(c) Sales factor. The sales factor is a fraction, the denominator of which includes all sales derived from carrying cargo, i.e., passengers, freight, mail, etc., and the sales incidental thereto. In calculating the numerator of the factor, such sales are assigned to this state in the proportion that the voyage time the ship spent within this state during the tax period bears to the total voyage time of the ship during the tax period. Sales from activities incidental to the transportation service, such as income from restaurants, locker rentals, etc., are assigned to the state or country in which the activity is carried on.

Stat. Auth.: ORS 305.100, 315.280

Stats. Implemented: ORS 314.280

150-314.280-(L)

Modified Factors for Companies Involved in Interstate River Transportation Service

A taxpayer involved in interstate river transportation shall calculate its Oregon income under the provisions of ORS 314.610 to 314.665 except as modified by this rule. Business income is apportioned to this state by the formula provided in ORS 314.650 as it applies to the tax year involved. For tax years beginning on or after July 1, 2005, ORS 314.650 provides for apportionment using only the sales factor.

(2) Sales factor. The denominator of this factor include all sales. The numerator of this factor includes all sales not derived from interstate river transportation, assigned to this state in accordance with ORS 314.665. The numerator also includes all sales derived from vessels engaged in river transportation between Oregon and other states as is determined by applying the Oregon Interstate Mobile Allocation Formula (IMAF).

(3) Payroll factor. The payroll factor is a fraction. The denominator is the amount of all compensation paid to officers and employees, including personnel engaged in river transportation. The numerator of this factor includes all compensation paid to officers and employees not engaged in interstate river transportation, assigned to this state in accordance with ORS 314.660. The numerator also includes so much of the compensation to personnel engaged in river transportation between Oregon and other states as is determined by applying the Oregon IMAF.

(4) Property factor. The property factor is a fraction. The denominator includes the value of all real and tangible personal property, including vessels, owned, rented or leased by the taxpayer and used in the business. The numerator of this factor includes all real and personal property owned, rented or leased by the taxpayer and used in the business to the extent such assets are located in the state. The numerator also includes so much of the value of vessels engaged in river transportation between Oregon and other states and used in the business as is determined by applying the Oregon IMAF. The value of vessels used in the business but not owned by the user is the same as their value for insurance purposes. Property rented by the taxpayer is valued at eight times its net annual rental rate as set out in ORS 314.655 and OAR 150-314.655(2)-(B).

(5) For purposes of this rule, the Oregon IMAF is the average of two factors. The two factors are the originating and terminating tons factor and the ton-miles factor. For purposes of computing both factors, only mileage and tonnage from those vessels that operate on some portion of a river that constitutes the border between Oregon and other states is included in the computation. For example: The ton-miles generated by vessels operating on the Mississippi River or exclusively on the Willamette River would not be included in the computation.

(a) The originating and terminating tons factor is a fraction. The denominator is the total number of tons handled by the vessels engaged in river transportation between Oregon and other states. The numerator is the number of tons assigned to Oregon. The tons attributed to a voyage from one Oregon port to another Oregon port are credited wholly to Oregon. The tons attributed to a voyage between ports in different states are credited equally to the two states. For this purpose each trip between two ports of call is treated as a separate voyage even though the cargo may be scheduled for later movement to one or more ports.

(b) The ton-miles factor is a fraction. The denominator is the total number of ton-miles generated by the vessels engaged in river transportation between Oregon and other states. The numerator of the fraction consists of those ton-miles assignable to Oregon. Ton-miles generated on the Willamette are credited wholly to Oregon. Ton-miles generated on that part of the Columbia above mile 309 are credited wholly to Washington. One-half of those ton-miles generated on the portion of a river that forms the boundary between Oregon and another state are credited to Oregon. Ton-miles are figured by multiplying tons carried for each movement by miles traveled.

Example:

Derivation of Interstate Mobile Allocation Factors, Typical Water Transportation Company

Line	Movements		Tons Carried (3)	** Originating & Terminating Tons Assigned to States			Miles				Total Ton Miles (11)	** Ton Miles Assigned to States		
	From (1)	To (2)		Idaho (4)	Oregon (5)	Wash. (6)	Ore. (7)	Common (8)	Wash. (9)	Id. (10)		Idaho (12)	Oregon (13)	Wash. (14)
1	Biggs, OR	Portland, OR	300	0	300	0	8	106			34,200	0	18,300	15,900
2	Central Ferry, WA	Vancouver, WA	400	0	0	400		204	98.0		120,800	0	40,800	80,000
3	Portland, OR	Longview, WA	600	0	300	300	8	34			25,200	0	15,000	10,200
4	Lewiston, ID	Astoria, OR	1200	600	600	0		295	155.6	0.4	541,200	480	177,000	363,720
5	Portland, OR	Lake Oswego, OR	800	0	800	0	12				9,600	0	9,600	0
6	Lewiston, ID	Pasco, WA	400	200	0	200			142.6	0.4	57,200	160	0	57,040
7	Pasco, WA	Portland, OR	500	0	250	250	8	208	19.0		117,500	0	56,000	61,500
8	TOTALS		4200	800	2250	1150					905,700	640	316,700	588,360
9	PERCENTAGE		100.00	19.05	53.57	27.38					100.00	0.07	34.97	64.96

	Idaho	Oregon	Washington
10 Ton Mile Factor	0.07 x 50% = 0.03	34.97 x 50% = 17.48	64.96 x 50% = 32.48
11 Tons Factor	19.05 x 50% = 9.53	53.57 x 50% = 26.79	27.38 x 50% = 13.69
12 State Allocation Factors Totals	9.56%	44.27%	46.17%

Col. (3) is the reported tonnage of Commodities in past year between ports or terminals.

Col. (7) is Miles traveled on Oregon waters, i.e., Willamette River, etc.

Col. (8) is Miles traveled along interstate boundary portion of Columbia River.

Col. (9) is Miles traveled above mp 309 on Columbia River and other Washington waters, i.e., Snake River, etc.

Col. (10) is Miles traveled on Idaho waters, i.e., Snake River.

Col. (11) is (Sum of Cols. (7), (8), (9) and (10) x Col. (3)).

NOTES:* Amounts in Col. (4), (5) and (6) result from assignment of tons in Col. (3) as follows:

(a) Tonnage both originated and terminated in a state: 100% to that state

(b) Tonnage originated or terminated in a state: 50% to that state

(c) Tonnage originated and terminated outside a state: 0% to subject state

** Amounts in Col. (12), (13) and (14) result from multiplying Tons Carried in Col. (3) for each movement by the sum of intrastate miles plus half of any common boundary miles for each state.

Stat. Auth.: ORS 305.100, 314.280

Stats. Implemented: ORS 314.280

150-314.302

Interest on Deferred Oregon Tax Liability with Respect to Installment Obligations

(1) Corporations with income from business activity taxable both within and without this state shall compute interest on deferred Oregon tax liability with respect to installment obligations using the relevant apportionment and allocation provisions of ORS Chapter 314.

(2) Interest on deferred Oregon tax liability with respect to business income from installment obligations shall be computed using the Oregon apportionment factor for the year of the installment sale.

(3) Interest on deferred Oregon tax liability with respect to nonbusiness income from installment obligations shall be computed using the allocation provisions that apply to the income from the installment sale.

Example 1: C Corp is a toy manufacturer doing business in Oregon and Washington. In 1990, C Corp sells a factory in Washington. The sales price is \$11,000,000, the basis for Oregon tax purposes is \$5,500,000 and the gross profit percentage is 50 percent. Under the terms of the sale, C Corp receives \$1,000,000 in 1990 and a note for \$10,000,000 (including \$5,000,000 of unrecognized gain) to be paid in five equal annual installments. C Corp's Oregon apportionment percentage for its 1990 calendar year return is 25 percent. The interest rules under IRC 453A and ORS 314.302 apply because the face amount

of installment obligations remaining unpaid at the end of 1990 is greater than \$5,000,000. The interest to report as tax on the 1990 Oregon return is computed as follows:

Unrecognized gain for state purposes		\$5,000,000
Applicable percentage:		
Aggregate face amount of installment obligations outstanding at the end of the tax year in excess of \$5,000,000	\$ 5,000,000	
Divided by the aggregate face amount of installment obligations outstanding at the end of the tax year	÷ <u>10,000,000</u>	
Applicable percentage		x _____ 50 %
Unrecognized gain subject to interest charge on deferred tax		\$2,500,000
1990 Oregon apportionment percentage		x _____ 25 %
Unrecognized gain apportioned to Oregon		\$ 625,000
Oregon tax rate		x _____ 6.6 %
Deferred Oregon tax liability		\$ 41,250
Interest rate in effect for Oregon for month in which tax year ends		x _____ 11 %
Interest to report as tax on 1990 Oregon return		<u>\$ 4,538</u>

Example 2: Assume the same facts as Example 1. In addition, during 1991, C Corp receives a payment of \$2,000,000 on the 1990 installment obligation. This leaves an unpaid balance of \$8,000,000 at the end of 1991, including unrecognized gain of \$4,000,000. C Corp's Oregon apportionment percentage for 1991 is 34 percent. The interest to report as tax on C Corp's 1991 Oregon return is computed as follows:

Unrecognized gain at end of year		\$4,000,000
Applicable percentage:		
Aggregate face amount of installment obligations outstanding at the end of the tax year in excess of \$5,000,000	\$3,000,000	
Divided by the aggregate face amount of installment obligations outstanding at the end of the tax year	÷ <u>8,000,000</u>	
Applicable percentage		x _____ 37.5 %
Unrecognized gain subject to interest charge on deferred tax		\$1,500,000
1990 Oregon apportionment percentage		x _____ 25 %
Unrecognized gain apportioned to Oregon		\$ 375,000
Oregon tax rate		x _____ 6.6 %
Deferred Oregon tax liability		\$ 24,750
Interest rate in effect for Oregon for month in which tax year ends		x _____ 11 %

Interest to report as tax on
1991 Oregon return \$ 2,723

Example 3: Assume the same facts as in Examples 1 and 2, except that the property sold by C Corp in 1990 is nonbusiness property located in Washington. No interest on deferred Oregon tax liability shall be reported to Oregon in either 1990 or 1991.

Example 4: Assume the same facts as in Example 3, except that the nonbusiness property sold is located in Oregon. The amount of interest to report as tax on the 1990 and 1991 Oregon tax returns is calculated as follows:

Unrecognized gain subject to interest charge on deferred tax in 1990:		\$2,500,000
Oregon tax rate	x	<u>6.6 %</u>
Deferred Oregon tax liability		\$ 165,000
Oregon interest rate for month in which tax year ends	x	<u>11 %</u>
Interest to report as tax on the 1990 Oregon return		\$ <u>18,150</u>
Unrecognized gain subject to interest charge on deferred tax in 1991:		\$1,500,000
Oregon tax rate	x	<u>6.6 %</u>
Deferred Oregon tax liability		\$ <u>99,000</u>
Oregon interest rate for month in which tax year ends	x	<u>11 %</u>
Interest to report as tax on the 1991 Oregon return		\$ <u>10,890</u>

Hist: Filed 10/14/92 and Eff. 12/31/92

150-314.306

Reduction of Tax Attributes after Discharge of Debt

(1) A taxpayer who has excluded income from the discharge of indebtedness for federal tax purposes under IRC 108 shall also exclude the income for Oregon purposes. Separate rules apply depending on whether the discharge is related to insolvency or qualified farm indebtedness, or to bankruptcy. The taxpayer shall reduce Oregon tax attributes independently of the reduction made at the federal level.

Example 1: Henry realized income from the discharge of debt in the amount of \$100,000. Henry may elect to exclude the income to the extent he is insolvent as defined under IRC 108. Henry determines that of the \$100,000 of income, he may exclude \$90,000 due to insolvency. The remaining \$10,000 is included in Henry's federal adjusted gross income. Henry is required to reduce certain tax attributes to the extent he has excluded the debt discharge from income. The election to exclude the income under IRC 108 is also effective for Oregon tax purposes.

Assume Henry has the following tax attributes:

Tax Attribute	Federal	Oregon
Net operating loss	\$10,000	\$10,000
Business credits	5,000	2,000
Capital loss carryforward	5,000	5,000
Basis of property	64,000	76,000
Passive loss carryforward	25,000	26,000

For federal purposes, Henry shall absorb the excluded income by making the following reductions to federal tax attributes, as prescribed by IRC 108:

Attribute	Remaining	Excluded Income
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Tax Attribute	Federal	Reduction	Basis	Absorbed
Net operating loss	\$10,000	(\$10,000)	\$ 0	(\$10,000)
Business credits (*)	5,000	(5,000)	0	(15,000)
Capital loss carryforward	5,000	(5,000)	0	(5,000)
Basis of property	64,000	(60,000)	4,000	(60,000)
Passive loss carryforward	25,000	(0)	25,000	<u>0</u>
Total income exclusion				<u>\$90,000</u>

(*) Credits offset excluded income in a 3:1 ratio.

For Oregon tax purposes, Henry shall absorb the excluded income by making the following reductions to Oregon tax attributes:

Tax Attribute	Oregon	Oregon Attribute Reduction	Remaining Oregon Basis	Excluded Income Absorbed
Net operating loss	\$10,000	(\$10,000)	\$ 0	(\$10,000)
Business credits (**)	2,000	0	2,000	0
Capital loss carryforward	5,000	(5,000)	0	(5,000)
Basis of property	76,000	(75,000)	1,000	(75,000)
Passive loss carryforward	26,000	(0)	26,000	<u>0</u>
Total income exclusion				<u>\$90,000</u>

(**) Oregon tax credits are not subject to reduction in the case of discharge of indebtedness.

(2)(a) If an insolvent taxpayer or a taxpayer with discharged qualified farm indebtedness elects under IRC 108(b)(5) to reduce the basis of depreciable property first, the election is also effective for Oregon tax purposes.

Example 2: Tom realized income from the discharge of debt equal to \$40,000. The entire amount may be excluded from his income due to insolvency. For federal purposes, Tom has a net operating loss of \$5,000 and a rental property with a basis in the land of \$50,000 and a basis in the building of \$30,000. Tom elects to reduce the basis of his depreciable assets first under IRC 108(b)(5). For federal purposes, Tom absorbs the excluded income by reducing federal tax attributes as follows:

Tax Attribute	Federal	Attribute Reduction	Remaining Basis	Excluded Income Absorbed
Depreciable property	\$30,000	(\$30,000)	\$ 0	(\$30,000)
Net operating loss	5,000	(5,000)	0	(5,000)
Nondepreciable property	50,000	(5,000)	45,000	<u>(5,000)</u>
Total income exclusion				<u>\$40,000</u>

For Oregon purposes, Tom has a net operating loss of \$5,000, a basis in the land of \$50,000 and basis in the building of \$36,000. Tom absorbs the excluded income by making the following reductions in Oregon tax attributes:

Tax Attribute	Oregon	Oregon Attribute Reduction	Remaining Oregon Basis	Excluded Income Absorbed
Depreciable property	\$36,000	(\$36,000)	\$ 0	(\$36,000)
Net operating loss	5,000	(4,000)	1,000	(4,000)
Nondepreciable property	50,000	0	50,000	<u>0</u>
Total income exclusion				<u>\$40,000</u>

(b) A bankrupt taxpayer cannot elect to reduce the basis of depreciable property first for Oregon tax purposes. Bankrupt taxpayers are required to reduce Oregon tax attributes in the following order:

(A) net operating loss for the current taxable year and any net operating loss carryover to such taxable year.

(B) capital loss for the current year and any capital loss carryforwards.

(C) basis of property.

(3) *Taxpayers required to apportion income.* The amount of debt discharged and excluded from the federal taxable income of a multi-state taxpayer subject to the apportionment provisions of ORS Chapter 314 is also excluded from Oregon taxable income. Oregon tax attributes of a multi-state taxpayer shall be reduced until all of the excluded income is absorbed. Oregon tax attributes are reduced in the following manner:

(a) Oregon net losses and net loss carryforward amounts are reduced first. Excluded income is absorbed proportionally, using the Oregon apportionment percentage for the year of debt forgiveness.

(b) Oregon capital losses and capital loss carryforward amounts are reduced next. Again, excluded income is absorbed proportionally, using the Oregon apportionment percentage for the year of debt forgiveness.

(c) Any excluded income that remains unabsorbed is used to reduce the taxpayer's basis of property. Unlike net losses and capital losses, reductions in basis absorb excluded income *dollar-for-dollar*, since basis of property is not subject to apportionment.

Example 3: XYZ Corporation is bankrupt and under the supervision of the bankruptcy court. The corporation realized income from discharge of debt in the amount of \$10,000,000. XYZ elects to exclude the income for federal purposes under the provisions of IRC 108. XYZ's Oregon apportionment percentage is 10% in the year of debt discharge.

Assume XYZ has the following tax attributes:

Tax Attribute	Federal	Oregon
Net operating loss	\$ 4,000,000	\$ 500,000
Capital loss carryforward	1,500,000	300,000
Basis of property	25,000,000	15,000,000

For federal purposes, XYZ absorbs the excluded income by making the following reductions in federal tax attributes:

Tax Attribute	Federal	Attribute Reduction	Remaining Basis	Excluded Income Absorbed
Net operating loss	\$ 4,000,000	(\$4,000,000)	\$ 0	(\$ 4,000,000)
Capital loss carryforward	1,500,000	(1,500,000)	0	(1,500,000)
Basis of property	25,000,000	(4,500,000)	20,500,000	<u>(4,500,000)</u>
Total income exclusion				<u>\$10,000,000</u>

XYZ absorbs the excluded income by making the following reductions to Oregon tax attributes:

Tax Attribute	Oregon	Oregon Attribute Reduction	Remaining Oregon Basis	Excluded Income Absorbed
Net operating loss	\$ 500,000	\$ 500,000	\$ 0	(\$ 5,000,000) *
Capital loss carryforward	300,000	300,000	0	(3,000,000) *
Basis of property	15,000,000	2,000,000	\$13,000,000	<u>(2,000,000)**</u>
Total:				<u>\$10,000,000</u>

*\$5,000,000 x 10% (Oregon apportionment percentage) = \$500,000

\$3,000,000 x 10% (Oregon apportionment percentage) = \$300,000

**\$10,000,000 – 8,000,000 (previously absorbed) = \$2,000,000

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Filed 10/13/95 and Eff. 12/31/95

150-314.402(1)

Computation of Penalty for Substantial Understatement of Taxable Income

(1) A penalty shall be assessed if a substantial understatement of taxable income exists for any taxable year. A substantial understatement exists only if incurred on the return of the individual, corporation, or reporting entity required to file a return and pay tax.

Example: A partnership return is adjusted for a \$50,000 increase in unreported income. The penalty is assessed on the individual partners only if the partnership adjustment results in a substantial understatement of over \$15,000 on each partner's individual return.

(2) Substantial Understatement.

(a) An understatement is substantial if the understatement exceeds \$25,000 for corporations (other than S corporations or personal holding companies) or exceeds \$15,000 for all other taxable entities.

(b) The penalty is equal to 20 percent of the amount of any underpayment of *tax attributable to the understatement* of taxable income.

(3) Understatement Computation.

(a) The *understatement* is the excess of the *taxable income required to be shown* on the return over the *taxable income shown on the return*.

(b) *Taxable income required to be shown* is the amount of taxable income determined for the taxable year without regard to:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(c) *Taxable income shown* is the amount of taxable income determined as if the items with substantial authority or adequate disclosure (in addition to the items that were properly reported on the return) had received the proper tax treatment. Items not included in this computation are:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(C) Items without substantial authority or adequate disclosure as defined in OAR 150-314.402(4)(b). Items not adequately disclosed to the department before the taxpayer was first notified by the department concerning their tax liability shall not be considered adequately disclosed on any subsequent filing by the taxpayer.

(D) Items attributable to an abusive tax shelter as defined in ORS 314.402(4)(a), regardless of whether such items have substantial authority or adequate disclosure.

(4) Penalty Computation.

(a) The penalty is equal to 20 percent of the amount of any underpayment of *tax attributable to the understatement* of taxable income. The underpayment of *tax attributable to the understatement* is computed by applying an allocation percentage to the total underpayment of tax. The percentage to apply is computed by dividing the understatement of taxable income by total adjustments made. The total underpayment of tax is the excess of tax required to be shown on the return over the *tax shown* on the return for the taxable year.

(b) *Tax required to be shown* is the tax computed on the *taxable income required to be shown*, as determined in subsection (3)(b) of this rule, without regard to:

(A) Withholdings and payments of tax or estimated tax by the taxpayer.

(B) The state surplus refund pursuant to ORS 291.349.

(c) *Tax shown* on the return is the amount of tax determined for the taxable year before the taxpayer was first notified by the department concerning their tax liability. If no return was filed for the taxable year or if the return shows no net income tax, the amount of tax shown on the return is considered to be zero. In all cases *tax shown* shall be computed without regard to:

(A) Withholdings and payments of tax or estimated tax by the taxpayer.

(B) The state surplus refund pursuant to ORS 291.349.

(5) A net operating loss carryover, tax credit carryover, or capital loss carryover shall be treated for the purposes of ORS 314.402 as a credit or deduction in the year in which the carryover is taken into account.

(6) The penalty under ORS 314.402 shall not be imposed unless a return has been filed.

Example 1: Joe, a single taxpayer, files his 1986 Oregon Income Tax return on April 15, 1987 with a taxable income of \$5,000. In January, 1990, it is determined that \$17,000 of Schedule C income had not been reported. Another income adjustment of \$15,000, was made to allow additional depreciation expense on a business vehicle, which was adequately disclosed in the return. The 20 percent substantial understatement penalty is assessed on 100 percent of the underpayment of tax determined as follows:

Understatement Computation:

<i>Taxable income required to be shown</i> (\$5,000 + \$17,000 – \$15,000)	\$7,000
Less: Taxable income shown on return ((\$5,000 – \$15,000))	-(10,000)
Understatement	\$ <u>17,000</u>

Because the understatement exceeds \$15,000, a penalty is assessed.

Penalty Computation:

<i>Taxable income required to be shown</i> (\$5,000 + \$17,000 – \$15,000)	\$ 7,000
Tax on \$7,000	545
Less: exemption credit	<u>(85)</u>
<i>Tax required to be shown</i>	\$460
Tax reported on taxpayer's return (Tax on \$5,000)	\$ 345
Less: exemption credit	<u>(85)</u>
<i>Tax shown on the return</i>	<u>260</u>
Underpayment of tax	\$200
Allocation percentage (not to exceed 100%)	x <u>100%</u>
Tax attributable to the understatement	\$200
Times penalty percentage	x <u>20%</u>
Penalty	<u>\$ 40</u>

The allocation percentage is 100% computed as follows: \$17,000/(\$17,000 – \$15,000). Because the percentage cannot exceed 100%, the underpayment of tax attributable to the understatement of income is \$200 (\$200 x 100%).

Example 2: Assume the same facts as in *Example 1* except that the depreciation expense is decreased on the business vehicle. The 20 percent understatement penalty is assessed on 53 percent of the underpayment of tax determined as follows:

Understatement Computation:

<i>Taxable income required to be shown</i> (\$5,000 + \$17,000 + \$15,000)	\$37,000
Less: <i>Taxable income shown on return</i> (\$5,000 + \$15,000)	- <u>20,000</u>
Understatement	<u>\$17,000</u>

Because the understatement exceeds \$15,000, a penalty is assessed.

Penalty Computation:

<i>Taxable income required to be shown</i> (\$5,000 + \$17,000 + \$15,000)	\$ 37,000
Tax on \$37,000	3,545
Less: exemption credit	<u>(85)</u>
<i>Tax required to be shown</i>	\$ 3,460

Tax reported on taxpayer's return (Tax on \$5,000)	\$ 345	
Less: exemption credit	<u>(85)</u>	
<i>Tax shown on the return</i>		260
Underpayment of tax		\$ 3,200
Allocation percentage		<u>x 53%</u>
<i>Tax attributable to the understatement</i>		\$ 1,700
Penalty percentage		<u>x 20%</u>
Penalty		<u>\$ 340</u>

The allocation percentage is 53% computed as follows: $\$17,000 / (\$17,000 + \$15,000)$. The underpayment of tax attributable to the understatement of income is \$1,700 ($\$3,200 \times 53\%$).

Example 3: Assume the same facts as in *Example 1* except that the taxable income per return (\$5,000) consists of \$11,000 of business income less \$6,000 balance of a net operating loss carryback from a 1988 net operating loss deduction first applied to 1985 and the balance fully absorbed in 1986. The net operating loss carryback applied to 1986 is added back to taxable income to determine the understatement and penalty computations. The 20 percent understatement penalty is assessed on 100 percent of the understatement of tax determined as follows:

Understatement Computation:

<i>Taxable income required to be shown</i> (\$5,000 + \$6,000 + \$17,000 – \$15,000)	\$13,000
Less: <i>Taxable income shown</i> on return (\$5,000 + \$6,000 – \$15,000)	– <u>(4,000)</u>
Understatement	<u>\$17,000</u>

Because the understatement exceeds \$15,000, a penalty is assessed.

Penalty Computation:

<i>Taxable income required to be shown</i> (\$5,000 + \$6,000 + \$17,000 – \$15,000)	\$ 13,000	
Tax on \$13,000	1,145	
Less: exemption credit	<u>(85)</u>	
<i>Tax required to be shown</i>		\$ 1,060
Tax reported on taxpayer's return (Tax on \$5,000 + \$6,000)	\$ 945	
Less: exemption credit	<u>(85)</u>	
<i>Tax shown on the return</i>		<u>860</u>
Underpayment of tax		\$ 200
Allocation percentage (not to exceed 100%)		<u>x 100%</u>
<i>Tax attributable to the understatement</i>		\$ 200
Times penalty percentage		<u>x 20%</u>
Penalty		<u>\$ 40</u>

The allocation percentage is 100% computed as follows: $\$17,000 / (\$17,000 - \$15,000)$. Because the percentage cannot exceed 100%, the underpayment of tax attributable to the understatement of income is \$200 ($\$200 \times 100\%$).

Example 4: ABC corporation files its 1986 Oregon Corporation Excise Tax return, reporting taxable income of \$25,000. Upon audit it's determined that gross receipts were understated by \$36,000, and depreciation of \$10,000 was not claimed on a new building. The 20% substantial understatement penalty is assessed on 100% of the underpayment of tax determined as follows:

Understatement Computation:

<i>Taxable income required to be shown</i> (\$25,000 + \$36,000 – \$10,000)	\$51,000
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Less: <i>Taxable income</i> shown on return (\$25,000 – \$10,000)	– 15,000
Understatement	<u>\$36,000</u>

Because the understatement exceeds \$25,000, a penalty is assessed.

Penalty Computation:

<i>Taxable income required to be shown</i> (\$25,000 + \$36,000 – \$10,000)	\$ 51,000
<i>Tax required to be shown</i> (\$51,000 x 7.5%)	3,825
<i>Tax shown</i> on return (\$25,000 x 7.5%)	– 1,875
Underpayment of tax	<u>\$ 1,950</u>
Allocation percentage (\$36,000/(\$36,000 – \$10,000))	x 100%
<i>Tax attributable to the understatement</i>	\$ 1,950
Times penalty percentage	x 20%
Penalty	<u>\$ 390</u>

Example 5: Assume same facts as in Example 4 except that the return is subject to the apportionment provisions of ORS 314.650 to 314.670, and the Oregon apportionment factor is 75%.

Penalty Computation:

<i>Taxable income required to be shown</i> (\$51,000 x 75%)	\$38,250
Less: <i>Taxable income</i> shown on return (\$25,000 – \$10,000 x 75%)	– 11,250
Understatement	<u>\$27,000</u>

Because the understatement exceeds \$25,000, a penalty is assessed.

Penalty Computation:

<i>Taxable income required to be shown</i> (\$25,000 + \$36,000 – \$10,000 x 75%)	\$ 38,250
<i>Tax required to be shown</i> (\$38,250 x 7.5%)	\$ 2,869
<i>Tax shown</i> on return (\$25,000 x 75% x 7.5%)	– 1,406
Underpayment of tax	\$ 1,463
Allocation percentage (\$36,000/(\$36,000 – \$10,000))	x 100%
<i>Tax attributable to the understatement</i>	\$ 1,463
Times penalty percentage	20%
Penalty	<u>\$ 293</u>

Example 6: Assume the same facts as in Example 5 except that the Oregon apportionment factor is 35%.

<i>Taxable income required to be shown</i> (\$51,000 x 35%)	\$17,850
<i>Taxable income</i> shown on return (\$25,000 – \$10,000 x 35%)	– 5,250
Understatement	<u>\$12,600</u>

The understatement of income does not exceed \$25,000, therefore, no penalty is assessed.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Filed 9/20/88 and Eff. 12/31/88

150-314.415(2)(f)-(A)

Interest Computation—Offset

(1) An overpayment of any tax imposed and interest on the overpayment, if any, shall be offset against any tax, penalty, or interest then due from the taxpayer. "Tax, penalty or interest then due from the taxpayer" means any amount of tax that has been assessed before the date the refund is applied or proposed to be applied and any penalty or interest incurred in connection with the tax.

(2) If a Notice of Assessment is issued, the department shall make the offset on the date the refund is issued.

(3) If a Notice of Deficiency is issued, the department may offset upon receiving written authorization from the taxpayer. If the taxpayer submits a written authorization to offset, the authorization shall include the taxpayer's name, social security number or other identifying number, current address, accounts (if known), and the signature of the taxpayer. The date on which the offset shall be made is the date that either a net billing or a refund is issued, or the date a payment is received, whichever is earlier.

Example 1. On February 15, 1985 it was determined that a taxpayer had overpaid the 1982 tax by \$500 and underpaid the 1983 tax by \$800. Assume the underpaid account had not yet been assessed and on March 15, 1985 the department received a written authorization allowing the department to offset the refund to the nonassessed account. The net amount due from the taxpayer on April 15, 1985, the date the net billing is issued, is calculated as follows:

Tax Year	1982	1983
(Refund) tax due	(\$500)	\$800
Interest		
8-16-83 to 4-15-85 20 mo. @ 1-1/2%	(150)	
4-16-84 to 4-15-85 12 mo. @ 1-1/2%	_____	<u>144</u>
Total	<u>(\$650)</u>	<u>\$944</u>

Net tax due on 4-15-85 \$294

Example 2. On February 1, 1985, it was determined that a taxpayer underpaid the 1983 tax by \$800. On May 15, 1985, the account was assessed and a 5 percent failure-to-pay penalty was imposed. On June 15, 1985, it was determined that the taxpayer overpaid the 1982 tax by \$500. Since the 1983 account is an assessed account, the department may offset the total refund (including interest) to the assessed account on June 15, 1985. The net amount due from the taxpayer on June 15, 1985, the date the refund is offset to the assessed account, is calculated as follows:

Tax Year	1982	1983
(Refund) tax due	(\$500)	\$ 800
Penalty (5%)		40
Interest		
8-16-83 to 6-15-85 22 mo. @ 1-1/2%	(165)	
4-16-84 to 6-15-85 14 mo. @ 1-1/2%	_____	<u>168</u>
Total	<u>(\$665)</u>	<u>\$1,008</u>

Net tax due on 6-15-85 \$343

Example 3. On February 15, 1986 it was determined by a field audit that a taxpayer underpaid the 1984 tax by \$1,000 and overpaid the 1983 tax by \$500. On that date, the taxpayer signed an authorization to offset and paid \$515. In this example, the offset is made at the date of payment, which is earlier than the date the net billing is issued. The amount due on February 15, 1986 is calculated as follows:

Tax Year	1984	1983
Tax due (refund)	\$1,000	(\$500)
Interest		
4-16-85 to 2-15-86 10 mo. @ 1-1/2%	150	
8-16-84 to 2-15-86 18 mo. @ 1-1/2%	_____	<u>(135)</u>
Total	<u>\$1,150</u>	<u>(\$635)</u>

Net tax due on 2-15-86	\$515
Payment on 2-15-86	<u>(515)</u>
Balance due after 2-15-86	<u>\$ 0</u>

Note: Interest is calculated through the date of payment. If a balance of tax remains after the offset, interest will accrue on such balance until paid.

(4) For deficiencies on refunds issued under ORS 310.630 to ORS 310.690, the department shall refund any penalty and interest, due to an offset of a refund, when it has been determined that the deficiency was not legally due. Interest shall be computed on the amount that was offset. This includes penalty and interest not legally due. The interest starting date is the date the offset was made.

Example 1. An individual files a Homeowner and Renter Refund claim and a check is issued. Six months later, the department audits the refund claim and issues a Notice of Deficiency. The individual files an income tax return for which a refund is issued. The individual requests the department to offset the income tax refund to pay the deficiency plus interest. The deficiency is later determined to be erroneous. The amount of total offset shall be refunded. Interest is computed on the entire amount beginning on the date the deficiency was offset.

Example 2. Assume the same facts in Example 1 except that the Notice of Deficiency is assessed and a 5 percent penalty is imposed. The amount of the refund, penalty and interest offset shall be refunded and interest is computed on the entire amount beginning on the date the assessed account was offset.

(5) *Special Cases.* Offsets applied to deficiencies issued for tax years beginning after December 31, 1984, and prior to January 1, 1986 for which the taxpayer has made the election as prescribed under OAR 150-316.021(1)(b) shall be applied in the following order:

- (a) First, to penalty and interest due on such return;
- (b) Second, the amount of tax due as prescribed under OAR 150-316.021(1)(b).
- (c) Third, to the balance of tax due for the tax year.

When the combined report method is required, penalty and interest under ORS 314.395 to ORS 314.415 will be computed on the separate tax liability, or overpayment of each taxpayer included in the unitary group. There shall be no offsets of overpayments and deficiencies between taxpayers in the group prior to computing penalty and interest. After computation of penalty and interest, an offset may be made by the department upon receiving written authorization from the taxpayers, given the statute of limitations has not expired.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

150-314.415(2)(f)-(B)

Refund Offset Priority

(1) Definitions for purposes of this rule.

(a) Unrestricted accounts. An account assigned by a state agency which is collected by use of all Department of Revenue resources available.

(b) Appropriation accounts. An account that is established by an appropriation of the state legislature.

(c) Nonassessed accounts. The deficiency tax account amount by which the tax as correctly computed exceeds the tax, if any, reported by the taxpayer.

(d) Assessed accounts. The tax account that has not been appealed or paid and a written notice of assessment stating the amount so assessed has been sent to the taxpayer.

(e) Oldest account. The oldest account is an account with the earliest set-up date. If more than one account has the same set-up date, the earliest tax year is the oldest account. "Set-up date" means the date the account was established or created.

(2) The department will offset a refund to assessed accounts. The department may also offset a refund to nonassessed accounts when the taxpayer sends the department a written authorization to offset the refund. Offsets will be made using the following guidelines:

(a) First, offset to the oldest account within the program that has the refund.

(b) Second, offset to other programs, oldest account first, following the priorities shown in section (4) below.

(3) A taxpayer's refund will be offset only to accounts owed by that taxpayer. An individual refund will not be offset to a corporate account nor a corporate refund offset to accounts of a subsidiary. (4) The priority criteria is:

(a) Funds due the general fund excluding funds due other state of Oregon agencies. This includes all revenue from the cigarette and amusement device tax which is allocated part to the general fund and part to local governments.

(b) Funds due an appropriation account which will revert to the general fund.

(c) Funds due a state of Oregon tax program for distribution to local governments.

(d) Funds due other state of Oregon agencies.

(e) Funds due local jurisdictions for which the department collects under ORS 293.250.

(f) Funds due entities which serve a garnishment or levy on the Department of Revenue.

(g) Funds due charitable check-off programs designated by the taxpayer in lieu of receiving a refund check.

(5) If the refund balance as adjusted by the department in processing and after offset is insufficient to pay the designated charitable check-off contributions in full, payment will be prorated. The proration will be the ratio of the designated contribution to a specific fund divided by the total contribution to all funds.

(6) State tax refunds will not be offset to accounts for TriMet Transportation District or the Lane Transit District without the written permission of the taxpayer. Refunds from these programs will be offset to accounts within the same program but not to an account for a different local tax program.

(7) Delinquent senior citizen deferral accounts are part of the offset program. This includes the property tax and special assessment deferrals.

Example: A taxpayer has a personal income tax refund due for the year. The amount of the refund owed is \$200. The taxpayer also has two liability accounts. The taxpayer owes \$100 to the Department of Revenue on an assessed personal income tax account for the previous year. The Taxpayer also owes \$300 to the Department of Education.

This is how the offset to the refund would look:

	\$200.00	Refund
Less	<\$100.00>	Personal Tax liability on assessed account
Less	<\$100.00>	Department of Education
Refund=	-0-	

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 10-5-83, 12-31-83; 12-31-85, Renumbered from 150-314.415(1)(d)-(B); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; REV 2-2003, f. & cert. ef. 7-31-03; Renumbered from 150-314.415(1)(e)-(B), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06

150-314.415(7)

Separate Refunds When a Joint Return Has Been Filed

(1) The department may, as a convenience to taxpayers, issue separate refunds when either spouse submits a signed request. To issue separate refunds when a joint refund

check has already been issued, the check must be returned uncashed. If either spouse has an amount owing to the state of Oregon, any refund due that person will be applied to the liability and the balance, if any, issued in a separate refund check.

(2) For purposes of this rule, the separate adjusted gross income (AGI) of each spouse is equal to each spouse’s share of Oregon adjusted gross income.

Example 1: Ann and her husband Ian, both Idaho residents, filed a joint Oregon return claiming a \$600. He owes a \$500 debt to an Oregon city for unpaid parking tickets so the department withheld part of the joint \$600 refund to pay the \$500 debt to an Oregon city and issued a \$100 refund for the difference. Before they cashed the \$100 refund, Ann sent it back requesting her share of the amount paid to the city in Oregon because she did not owe the debt. Ian reported \$25,000 of wages of which he earned \$10,000 in Oregon. Ann reported \$15,000 of wages of which \$5,000 she earned in Oregon. They had no other income to report. The department will apportion her refund based on her share of Oregon AGI as follows:

	Federal column	Oregon Column
Ian’s wages	\$25,000	\$10,000
Ann’s wages	\$15,000	\$5,000
Federal AGI	\$40,000	\$15,000 (Oregon AGI)
$\$5,000 \div \$15,000 = 1/3$		
$\$600 \times 1/3 = \200		

The department will apportion the \$600 refund and issue a \$200 refund to Ann. Ian’s portion of the refund was \$400 thus he still owes the City of Portland \$100.

(3) For purposes of this rule, items of income and deduction, separate adjusted gross income, and any refund claimed are determined without regard to community property law.

Example 2: Ethan and his wife Ava, both Washington residents, filed a joint Oregon return claiming a \$1,500 refund. She owes a \$1,200 debt to an Oregon university so the department withheld part of the joint refund and sent a \$300 check for the difference. Before they cashed the \$300 refund, Ethan sent it back requesting his share of the joint refund because he did not owe the debt and he claimed he owned half of the refund because he lives in a community property state. Ethan reported \$50,000 of wages all of which he earned in Washington. Ava reported \$25,000 of wages all of which she earned in Oregon. They had no other income to report. The department will apportion his refund based on his share of Oregon AGI without regard to community property law as follows:

	Federal column	Oregon Column
Ethan’s wages	\$50,000	\$0
Ava’s wages	\$25,000	\$25,000
Federal AGI	\$75,000	\$25,000 (Oregon AGI)

Because Ethan does not have any share of the Oregon AGI and community property law is disregarded for this purpose, the entire refund belongs to Ava and the department will not apportion any of it to Ethan.

(4) If the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Adjustment and/or Distribution. Separate refunds will not be made if the request is not received timely.

(5) Pursuant to ORS 18.655(2), the department cannot issue separate refunds when a garnishment or levy has been served on the department for one or both spouses.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 1-69; 11-71; 12-19-75; 1-1-77, Renumbered from 150-316.192(2)-(A); 12-31-85; RD 13-1987, f. 12-18-87, cert. ef. 12-31-87; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-314.415(6), REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2007, f. 12-28-07, cert. ef. 1-1-08

150-314.525(1)-(A)

Corporation Estimated Tax: Delinquent or Underestimated Payment or Both, Constitutes Underpayment

(1) An underpayment of corporation estimated tax exists when the payments received on or before a payment due date are less than the required payment due as determined under section (3) of this rule.

(2) *For returns processed on or after January 1, 2001.* If none of the exceptions as provided in section (3) of this rule are met, interest on underpayment of estimated tax is computed on the difference between the lowest amount determined under section (3) of this rule and the total estimated tax payments for the installment period made on or before the due date.

Example: Interest on underpayment of first installment

1999 tax liability on return filed April 15, 2001	\$2,000	
1998 tax liability		1,600
Amount determined under subsection (3)(a) of this rule (\$2,000 x 25%)	500	
Amount determined under subsection (3)(b) of this rule (\$1,600 x 25%)	400	
Amount determined under subsection (3)(c) of this rule	375	
Amount determined under subsection (3)(d) of this rule	350	
First quarter payment received by the first quarter installment due date	100	
Interest for the first quarter is calculated on \$250, the difference between \$350, the lowest amount determined under section (3) of this rule, and \$100, the total payments received before the first quarter installment due date.		

(3) *Exceptions.* Underpayment charges will not be imposed if each estimated tax payment is equal to or more than 25 percent (or the appropriate percentage of tax for short periods provided in OAR 150-314.515) of any one of the following:

(a) One hundred percent of the tax for tax years beginning on or after January 1, 1996.

(b) One hundred percent of the tax shown on the return for the preceding tax year (after credits and any state surplus refund) provided that the preceding tax year was a period of twelve months and an Oregon return showing a liability was filed for such tax year.

(A) When applying this subsection to a current taxable year of less than 12 months, the tax for the preceding tax year is reduced by multiplying it by the number of months in the short tax year and dividing the resulting amount by 12.

(B) This subsection applies only to the first required estimated tax payment due for a tax year by a large corporation. When a large corporation's first required payment is reduced under this subsection, the second required payment must be increased by the amount of the reduction. A large corporation is a corporation with federal taxable income, prior to net operating loss or capital loss deductions, of \$1 million or more in any of the three prior tax years.

(c) An amount equal to 100 percent of the tax computed on annualized taxable income. Annualized taxable income is computed as provided in ORS 314.525(2)(c)(A) or using the same annualization periods as used for federal tax purposes. Tax credits available on the date of the payment may be deducted from the annualized tax. An estimated or anticipated tax credit may not be used.

(d) An amount equal to 100 percent of the amount obtained by applying Section 6655(e)(3)(C) of the Internal Revenue Code to Oregon taxable income for any corporation with seasonal income.

Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Eff. 9/74; Amended 1/1/77, 12/31/81, 12/31/83, 12/31/84; Amended and Renumbered from OAR 150-314.525(1) to OAR 150-314.525(1)-(A), 12/31/85; Amended 12/31/87, 12/31/88, 12/31/89, 12/31/90, 12/31/93, 12/31/95, 12/31/02

150-314.525(1)-(B)

Estimated Tax: Consolidated Return Underpayments

(1) If a consolidated state return is filed, any underpayment shall be computed on a consolidated basis. In computing the underpayment on a consolidated basis, the tax and facts shown on the returns for the preceding year shall be aggregated regardless of whether consolidated or separate returns were filed.

Example 1: Corporation A and B file a consolidated state return in 1995. They filed separate state returns in 1994 and for 1995 made separate estimated tax payments.

		Consolidated Tax
1)	Actual consolidated tax paid 1995	30,000
2)	97% of actual 1995 tax	29,100
3)	1994 net income (per returns) x 1995 tax rates	
	Corporation A	160,000
	Corporation B	<u>70,000</u>
	Total	230,000x 6.6% = 15,180
4)	Estimated payment to avoid underpayment: 25% x lesser of line 2 or 3	3,795

(2) If separate returns are filed and estimated tax is paid on a consolidated basis, then the payments and prior year's tax may be divided between the various corporation's liabilities in any manner designated by the Oregon taxpayers.

Example 2: In 1995, Corporations A and B are required to file separate state returns. They had filed consolidated in 1994 and made consolidated estimated tax payments for 1995.

		Corporation A	Corporation B
1)	Actual 1995 tax	3,000	40,000
2)	97% of actual tax	2,910	38,800
3)	1994 net income (per return) x 6.6% 400,000 x 6.6% = 26,400 (Allocated by Corporations A and B)	2,376	24,024
4)	Estimated payment to avoid underpayment: 25% x lesser of line 2 or line 3	594	6,006

Hist: Filed 10/7/85 and Eff. 12/31/85; Amended 12/31/90, 12/31/95

150-314.525(5)

Underpayment of Estimated Tax; First and Second Installment for Large Corporations

(1) The first required installment is the lowest payment computed under ORS 314.525(2)(a) through (2)(d).

(2) If a large corporation qualifies for the exception to paying interest on underpayment of estimated tax for the first installment under ORS 314.525(2)(b), the second required installment is calculated by adding:

- (a) The reduction to the first installment from using the amount determined under ORS 314.525(2)(b), and
- (b) The required second installment determined without regard to ORS 314.525(2)(b).
- (3) The reduction to the first installment from using the amount determined under ORS 314.525(2)(b) is:
 - (a) The lowest first installment determined under ORS 314.525(2) without regard to ORS 314.525(2)(b), less
 - (b) The first installment determined under ORS 314.525(2)(b).

Example: Big, Inc. (Big) qualifies as a “large corporation” under ORS 314.525(5) and had tax, payments, and required payments under ORS 314.525(2) as follows:

2001 tax: \$2,000,000
 2002 tax: \$4,000,000

	<u>First Installment</u>	<u>Second Installment</u>
2002 timely payments	\$ 500,000	\$ 250,000
Required payments under ORS 314.525(2)(a)	1,000,000	1,000,000
Required payment under ORS 314.525(2)(b) of one-quarter of 2001 tax	500,000	not applicable*
Required payment under ORS 314.525(2)(c)**	600,000	375,000
Big must compute its second installment for 2002 as follows:		
Reduction to required first installment from using the amount determined under ORS 314.525(2):		
Required first installment under ORS 314.525(2)(c)		\$600,000
Less: Required first installment under ORS 314.525(2)(b)		<u>- 500,000</u>
Reduction to required first installment under ORS 314.525(2)		\$100,000
Required second installment without regard to ORS 314.525(2)(b)		<u>+ 375,000</u>
Total required second installment		<u>\$475,000</u>

*Per ORS 314.525(5), this provision does not apply to the second installment for a large corporation.

** Assume annualized tax for the first three months is \$2,400,000 and annualized tax for the first five months is \$1,500,000.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.525

Hist: Filed 7/31/03 and Eff. 7/31/03

150-314.615-(F)

Apportionment for Long-Term Construction Contracts

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and 314.605 to 314.670. If a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from sources within this state, including income from such long-term contracts, is determined pursuant to this rule. In such cases, the first step is to determine what portion of the taxpayer’s income constitutes “business income” and “nonbusiness income” under ORS 314.610 and the rules thereunder. Nonbusiness income is directly allocated to specific states pursuant to the provisions of ORS 314.625 to 314.645. The business income of the taxpayer is divided between or among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state, constitutes the taxpayer’s entire net income that is subject to tax.

For definitions, rules and examples for determining business and nonbusiness income, see ORS 314.610 and the rules thereunder.

(1) *Apportionment of Business Income.*

(a) *In General.* Business income is apportioned to this state by use of the formula provided in ORS 314.650 as it applies to the tax year involved.

(b) *Percentage of Completion Method.* Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price that has been completed during the taxable year exceeds all expenditures made during the taxable year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the taxable year for use in each such contract.

Example 1: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for \$9,000,000. The contract allowed three years for completion and, as of the end of the second taxable year, the taxpayer's books of account, kept on the accrual method, disclosed the following:

	Receipts	Expenditures
End of 1st taxable year	\$2,500,000	\$2,400,000
End of 2nd taxable year	4,500,000	4,100,000
	<u>\$7,000,000</u>	<u>\$6,500,000</u>

In computing the above expenditures, consideration was given to material and supplies on hand at the beginning and end of each taxable year.

It was estimated that the contract was 30 percent completed at the end of the first taxable year and 80 percent completed at the end of the second taxable year. The amount to be included as business income for the first taxable year is \$300,000 (30 percent of \$9,000,000 equals \$2,700,000 less expenditures of \$2,400,000). The amount to be included as business income for the second taxable year is \$400,000 (50 percent of \$9,000,000 equals \$4,500,000 less expenditures of \$4,100,000).

(c) *Completed Contract Method.* Under this method of accounting, business income derived from long-term contracts is reported for the taxable year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract (see section (2) below). Thus, all receipts and expenditures applicable to such contracts, whether completed or not as of the end of the taxable year, are excluded from business income derived from other sources. For example, income from short-term contracts, interest, rents, royalties, etc., is apportioned by the regular three-factor formula of property, payroll, and sales.

(d) *Property Factor.* In general, the numerator and denominator of the property factor is determined as set forth in ORS 314.655 and the rules thereunder. However, the following special rules are also applicable:

(A) The average value of the taxpayer's costs (including materials and labor) of construction in progress, to the extent such costs exceed progress billings (accrued or received depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) is included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state are included in the numerator of the property factor.

Example 2: The taxpayer commenced a long-term construction project in this state as of the beginning of a given year. By the end of its

second taxable year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows:

	1st Year		2nd Year	
	Beginning	Ending	Beginning	Ending
Construction Costs	0	\$1,000,000		
Progress billings		<u>600,000</u>		
Balance 12/31-(1/1)		<u>\$ 400,000</u>	<u>\$400,000</u>	
Construction Costs				
Total from beginning of project				<u>\$5,000,000</u>
Progress Billings				
Total from beginning of project				<u>4,000,000</u>
Balance 12/31				1,000,000
Balance beginning of year				<u>400,000</u>
Total				<u>\$1,400,000</u>
Average (1/2)-Value (*) used in property factor				\$ 700,000

(*) It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity. See ORS 314.655(3) and the rules thereunder.

Example 3: Same facts as in Example 2, except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor.

(B) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though such rental expense may be included in the cost of construction.

(C) The property factor is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately (see section (2) below).

(e) *Payroll Factor.* In general the numerator and denominator of the payroll factor is determined as set forth in ORS 314.660 and the rules thereunder. However, the following special rules are also applicable:

(A) Compensation paid employees that is attributable to a particular construction project is included in the payroll factor, even though it is included in the cost of construction.

(B) Compensation paid to employees engaged in performing services at a construction site are attributed to the state in which the services are performed. Compensation paid all other employees is governed by ORS 314.660(2).

Example 4: A taxpayer engaged in a long-term contract in state X assigns several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to state Y where the main office is maintained and where the employees reside. For payroll factor purposes, such compensation is assigned to the numerator of state X.

(C) The payroll factor is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately (see section (2) below).

(f) *Sales Factor.* In general, the numerator and denominator of the sales factor is determined as set forth in ORS 314.665 and the rules thereunder. However, the following special rules are also applicable:

(A) Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio that construction costs for the project in this state bear to the total of such construction costs for the entire project during the taxable year. Any other method, such as engineering cost estimates, may be used if it provides a reasonable apportionment.

Example 5: A construction project was undertaken in this state by a calendar-year taxpayer that had elected one of the methods of accounting for long-term contracts. The following gross receipts (progress billings) were derived from the contract during the three taxable years the contract was in progress.

	1st Year	2nd Year	3rd Year
Gross Receipts	<u>\$1,000,000</u>	<u>\$4,000,000</u>	<u>\$3,000,000</u>

The gross receipts to be reflected in both the numerator and the denominator of the sales factor for each of the three years are the amounts shown.

Example 6: A taxpayer contracts to build a dam on a river at a point that lies half within this state and half within state X. During the taxpayer's first taxable year, construction costs in this state were \$2,000,000. Total construction costs for the project during the taxable year were \$3,000,000. Gross receipts (progress billings) for the year were \$2,400,000. Accordingly, gross receipts of \$1,600,000 ($\$2,000,000 \div \$3,000,000 = 66\frac{2}{3}\% \times \$2,400,000$) are included in the numerator of the sales factor.

(B) If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price that corresponds to the percentage of the entire contract completed during the taxable year.

Example 7: A taxpayer that elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current taxable year (the first since starting the project) it estimated that the project was 30 percent completed. The bid price for the project was \$9,000,000 and it had received \$2,500,000 from progress billings as of the end of its current taxable year. The amount of gross receipts to be included in the sales factor for the current taxable year is \$2,700,000 (30 percent of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method for accounting for receipts and disbursements.

(C) If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the taxable year attributable to each contract.

Example 8: A taxpayer that entered into a long-term construction contract elected the completed contract method of accounting. By the end of its current taxable year (the second since starting the project) it had billed and accrued on its books a total of \$5,000,000. Of that amount, \$2,000,000 accrued in the first year the contract was undertaken, and \$3,000,000 accrued in the current year. The amount of gross receipts to be included in the sales factor for the current taxable year is \$3,000,000.

Example 9: Same facts as in Example 8 except that the taxpayer keeps its books on the cash basis and, as of the end of its current taxable year, had received only \$2,500,000 of the \$3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current taxable year is \$2,500,000.

(D) The sales factor, except as noted above in paragraphs (B) and (C), is computed in the same manner regardless of which method of accounting for long-term contracts the taxpayer has elected and is computed for each taxable year, even though under the completed contract method of accounting, business income is computed separately.

(g) *Apportionment Percentage*. The apportionment percentage provided in ORS 314.650 is applied to business income to establish the amount apportioned to Oregon.

(2) *Completed Contract Method—Special Computation*. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year the construction project is completed and accepted. Accordingly, a separate computation is made for each such contract completed during the taxable year regardless of whether the project is located within or without this state in order to determine the amount of income attributable to sources within this state. The amount of income apportioned to this state from each contract completed during the taxable year, plus other business income (such as interest income, rents, royalties, income from short-term contracts, etc.) apportioned to this state by the regular three factor formula, plus all nonbusiness income allocated to this state, is the measure of tax for the taxable year.

The amount of income (or loss) from each contract derived from sources within this state using the completed contract method of accounting is computed as follows:

(a) In the taxable year the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined in (a) is apportioned to this state by the following method:

(A) A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator is the total of all such construction costs for the project.

(B) Each percentage determined in (A) is multiplied by the apportionment formula percentage for that particular year as determined in section (1)(g) of this rule.

(C) The products determined at (B) for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract determined in (a) is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from such contract derived from sources within this state.

Example 10: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts: Contract L in this state, Contract M in state X, and Contract N in state Y. In addition, it has other business income (less expenses) during the taxable year 1986 from interest, rents, and short-term contracts amounting to \$500,000, and nonbusiness income allocable to this state of \$8,000. During 1986, it completed Contract M in state X at a profit of \$900,000. Contracts L in this state and N in state Y were not completed during the taxable year. The apportionment percentages of the taxpayer as determined in subsection (g) of this rule and the percentages of contract costs as determined in subsection (b) above for each year Contract M in state X was in progress are as follows:

	1984	1985	1986
Apportionment percentages for this state	30%	20%	40%
Percentage of construction costs of Contract M each year to total construction costs — (100%)	20%	50%	30%

The corporation's net income subject to tax in this state for 1986 is computed as follows:

Business Income (excluding income from Contract M)	<u>\$500,000</u>
Apportion 40% to this state	200,000
Add: Income from Contract M*	<u>252,000</u>
Total business income derived from sources within this state	452,000
Add: Nonbusiness income allocated to this state	<u>8,000</u>
Net income subject to tax	<u>\$460,000</u>

*Income from Contract M apportioned to this state:

	1984	1985	1986	Total
Apportionment percentage for this state	30%	20%	40%	
Percent of construction costs	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	6%	10%	12%	28%

28% of \$900,000 = \$252,000.

Example 11: Same facts as in Example 10 except that Contract L was started in 1986 in this state, the first year the taxpayer was subject to tax in this state. Contract L in this state and Contract N in state Y are incomplete in 1986. The corporation's net income subject to tax in this state for 1986 is computed as follows:

Business Income (excluding income from Contract M)	<u>\$500,000</u>
Apportion 40% to this state	200,000
Add: Income from Contract M*	<u>108,000</u>
Total business income derived from sources within this state	\$308,000
Add: Nonbusiness income allocated to this state	<u>8,000</u>
Net income subject to tax	<u>\$316,000</u>

*Income from Contract M apportioned to this state:

	1984	1985	1986	Total
Apportionment percentages for this state	0	0	40%	
Percent of construction costs	20%	50%	30%	100%
Product	0	0	12%	12%

12% of \$900,000 = \$108,000

Note: Only 12 percent is used to determine the income derived from sources within this state because the corporation was not subject to tax in this state prior to 1986.

Example 12: Same facts as in Example 10 except that the figures relate to Contract L in this state, and 1986 is the first year the corporation was taxable in another state (see ORS 314.615 and 314.620 and the rules thereunder). Contracts M and N in states X and Y were started in 1986 and are incomplete.

The corporation's net income subject to tax in this state for 1986 is computed as follows:

Business Income (excluding income from Contract L)	\$500,000
Apportion 40% to this state	200,000
Add: Income from Contract L*	738,000
Total business income derived from sources within this state	\$938,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	\$946,000

*Income from Contract L apportioned to this state:

	1984	1985	1986	Total
Apportionment percentages for this state	100%	100%	40%	
Percent of construction costs	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	20%	50%	12%	82%

82% of \$900,000 = \$738,000.

(3) *Computation for Year of Withdrawal, Dissolution or Cessation of Business - Completed Contract Method.* Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution, or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state.

The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in section (2)(b) of this rule must be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which that portion of the gross contract price of each such contract that corresponds to the percentage of the entire contract that has been completed as the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made in connection with each such contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

Example 13: A construction contractor qualified to do business in this state elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L was started in Oregon in 1981 and completed at a profit of \$900,000 on December 16, 1983. The taxpayer withdrew on December 31, 1983. Contract M was started in state X in 1982 and was incomplete on December 31, 1983. The apportionment percentages of the taxpayer as determined in section (1) of this rule, and percentages of construction costs as determined in section (2)(b) of this rule for each year during which Contract M in state X was in progress are as follows:

<>	1984	1985	1986	Total
Apportionment %	30%	20%	40%	
% of Construction Costs:				
Contract L, Oregon	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Contract M, state X	0	10%	25%	35%

The corporation had other business income (net of expenses) of \$500,000 during 1982 and \$300,000 during 1983. The gross contract price of Contract M (state X) was \$1,000,000, and it was estimated to be 35% completed on December 31, 1983. Total expenditures to date for Contract M (state X) were \$300,000 for the period ended December 31, 1983.

The measure of tax for the taxable year ended 12/31/83 is computed as follows:

	Taxable Year 1983	
	Income Year 1982	Income Year 1983
Business Income	\$500,000	\$300,000
Apportionment % to this state		20%
40%		
Amount Apportioned to this state	\$100,000	\$120,000
Add: Income from contracts:		
L* (Oregon)		\$252,000

M**(state X) 6,000
 Total business income derived
 From sources within this state \$100,000
 \$378,000

*Income from Contract L apportioned to this state:

	1984	1985	1986	Total
Apportionment %	30%	20%	40%	
% of Construction Costs	20%	50%	30%	100%
Product	6%	10%	12%	28%

28% of \$900,000 = \$252,000

** Income from Contract M apportioned to this state:

	1981	1982	1983	Total
Apportionment %		0	20%	40%
% of Construction Costs		0	10%	25%
Product	0		2%	10%
			12%	12%

12% of 50,000*** = \$6,000

***Computation of apportionable income from Contract M based on percentage of completion method:

Total Contract Price	\$1,000,000
Estimated to be 35% completed	350,000
Less: total expenditures to date	300,000
Apportionable income	\$50,000

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.615

Hist: Filed 12/6/82 and Eff. 12/31/82, Renumbered from OAR 150-314.670-(D) to OAR 150-314.615-(F), 12/31/85; Amended 12/31/88, 12/31/94, 8/01/01, 12/31/03.

150-314.615-(G)

Special Rules: Installment Sales

Income from installment sales is reported at least in part in a year other than the year in which the sale took place. Apportionment of installment sale income on the basis of the factors in the years other than the year of sale would result in such income being apportioned by activities which had no connection with the earning of the income.

This rule applies to taxpayers who use the installment method of reporting income from the sale of property and whose Oregon apportionment percentage for the year of the sale is different than that for any year in which proceeds from that sale are received by the taxpayer. A taxpayer shall apportion the income from the installment sale using the Oregon apportionment percentage of the year of sale.

Example: X is doing business in States A, B and C. During Year 1, the taxpayer sold a plant in State A and realized a \$500,000 gain on the sale. The taxpayer elected to report the sale under the installment basis since two equal payments (\$250,000 each) are to be received in years 2 and 3. The taxpayer's apportionment factors were as follows:

Year	Apportionment Factor
1	11%
2	1%
3	32%

State A would realize a taxable gain of \$55,000 (\$500,000 x 11%) if the sale was not reported under the installment method. Since the apportionment factors have changed to 1 percent and 32 percent in years 2 and 3 respectively, a taxable gain of \$2,500 is reported to State A in year 2 and \$80,000 in year 3.

Use of the year of sale factor results in \$27,500 gain being reported to State A in years 2 and 3 (total: \$55,000).

Hist: Filed 10/5/84 and Eff. 12/31/84, Amended and Renumbered from OAR 150-314.670-(E) to OAR 150-314.615-(G), 12/31/85

150-314.640

Allocation of Interest and Dividends

(1) Where it appears to the Department that a corporation using the apportionment method is improperly using interest deductions to avoid Oregon tax, the corporation will be required to include in apportionable income interest received to the extent of the deduction claimed for interest paid. See *U.P.R.R. Co. et al v. Oregon State Tax Comm.*, 240 Or 628, 402 P2d 519 (June 3, 1965).

(2) Nonbusiness dividends are subtracted from modified federal income to compute apportionable business income. The subtraction shall be net of the Oregon dividend deduction claimed for such dividends under ORS 317.267. Nonbusiness dividends allocated to Oregon, net of the Oregon dividend deduction, shall be added to business income apportioned to Oregon.

Example: In 1991, Corporation D received \$30,000 in dividends, \$10,000 of which were nonbusiness dividends allocable to Oregon. Corporation D owned less than 20 percent of the stock in the corporations paying the dividends, so a 70 percent dividend received deduction is allowed on the Oregon return. In the computation of Oregon taxable income, \$3,000 of nonbusiness dividends (net of the dividend deduction) are subtracted from net income before apportionment and then added to income apportioned to Oregon. The \$3,000 is computed as follows:

Total dividends	\$30,000
Less dividend received deduction (70%)	(21,000)
Net dividends	<u>\$ 9,000</u>
Business dividends (\$20,000 – \$14,000)	\$ 6,000
Nonbusiness dividends allocated to	
Oregon (\$10,000 – \$7,000)	\$ 3,000

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Hist: Eff. 1/65, Amended 6/68, 12/31/92

150-314.655(3)

Property Factor; Averaging Property Value

As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Department may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer’s property for the tax period.

Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Example: The monthly value of the taxpayer’s property was as follows:

January	\$ 2,000	July	\$ 15,000
February	2,000	August	17,000
March	3,000	September	23,000
April	3,500	October	25,000
May	4,500	November	13,000
June	<u>10,000</u>	December	<u>2,000</u>
	\$25,000		\$ 95,000
TOTAL			<u>\$120,000</u>

The average value of the taxpayer’s property includable in the property factor for the income year is determined as follows:

$$\$120,000 \div 12 = \$10,000$$

Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in OAR 150-314.655(2)-(B).

Hist: Eff. 12/70, Amended 8/73

150-314.675

Apportionment of Net Loss

(1) When a corporation or consolidated group of corporations is taxable both within and without this state, their Oregon net loss must be computed using the apportionment provisions in ORS 314.280, or 314.610 through 314.670.

(2) If a corporation filed a combined return (prior to 1986) or a separate (not consolidated) return in the year of the loss, and files a consolidated return in the year to which the loss is carried, the net loss deduction may be limited. The allowable net loss deduction cannot exceed the Oregon net income attributed to the corporation with the net loss carryover. For the purpose of determining the net loss deduction allowable, the consolidated Oregon net income must be attributed to the corporation based on its share of the Oregon apportionment percentage. The following example demonstrates the application of this section:

Example: Corporations A and B file a consolidated Oregon return in 2000. They filed separate Oregon returns in 1999.

Additional facts are as follows:

1999 Oregon net income or (loss):

Corporation A	\$ (5,000)
Corporation B	\$ 3,000

Therefore, Corporation A has a net loss carryover of \$5,000.

2000 consolidated net income

before apportionment \$10,000

Each corporation's share of the consolidated Oregon net income is computed as follows:

	Corporation A	Corporation B	Consolidated
Oregon Property	5,000	7,500	12,500
Everywhere Property			50,000
Property Factor	10%	15%	25%
Oregon Payroll	8,000	14,000	22,000
Everywhere Payroll			40,000
Payroll Factor	20%	35%	55%
Oregon Sales	25,000	35,000	60,000
Everywhere sales			100,000
Sales Factor	25%	35%	60%
Sales Factor (double-weighted)	25%	35%	60%
Sum of Factors	80%	120%	200%
Average Factor (Sum ÷ 4)	20%	30%	50%

Consolidated Oregon net income:

Corporation A's share (\$10,000 x 20%) \$2,000

Corporation B's share (\$10,000 x 30%) \$3,000

Consolidated Total (\$10,000 x 50%) \$5,000

Corporation A has an available net loss carryover of \$5,000. However, the allowable deduction is limited to \$2,000, (the amount computed above). Therefore, the balance (\$3,000) cannot be deducted in 2000 but can be carried over into 2001.

(3) If a corporation was included in a consolidated return in the year of the net loss and now files a separate return, or is included in a different consolidated return in the year to which the net loss is carried, the consolidated Oregon net loss must be apportioned to the corporations included in the net loss return for purposes of determining the allowable net loss carryover. The consolidated Oregon net loss must be apportioned to the corporations with taxable activities in Oregon, based upon their Oregon apportionment percentages. The net losses computed can be carried forward and deducted in subsequent

years' returns (subject to the carryover limitations specified in OAR 150-317.476(4)). The following example demonstrates the application of this section:

Example: Corporations C and D file separate returns in 1999. They filed a consolidated Oregon return in 1998. Additional facts are as follows:

1998 consolidated net loss

before apportionment (\$4,000)

Each corporation's share of the consolidated Oregon net loss is computed as follows:

Average Factor	Corporation C 10%	Corporation D 15%	Consolidated 25%
Consolidated Oregon net loss:			
Corporation C's share (((\$4,000) x 10%)((\$400)		
Corporation D's share (((\$4,000) x 15%)		(\$600)	
Consolidated Total (((\$4,000) x 25%)			(\$1,000)

	Corporation C	Corporation D
1999 separate Oregon net income or (loss)	\$1,000	\$ 300
Allowable net loss deduction	(400)	(300)
Oregon net loss carryover to 2000	-0-	(300)

(4) Net losses that are attributed to corporations which continue to be included in the same consolidated Oregon return can be deducted fully against the Oregon consolidated net income.

Example:

	Parent	Sub 1	Sub 2	Consolidated Total
1999 Taxable Loss	100,000	(200,000)	(300,000)	(400,000)
2000 Taxable Income	150,000	100,000	(50,000)	200,000
1999 Oregon Apportionment Percentage	20%	10%	1%	31%
2000 Oregon Apportionment Percentage	5%	15%	5%	35%

Assume a federal consolidated return is filed in 1999 and 2000 and that the corporations are "unitary" for Oregon tax purposes.

The 1999 Oregon net loss carryover to 2000 is computed as follows:

1999 Consolidated Loss	(400,000)
Consolidated Apportionment Percentage	<u>31%</u>
1999 Consolidated net loss carryover	<u>(124,000)</u>
2000 Consolidated Income	200,000
Consolidated Apportionment Percentage	<u>35%</u>
Income before net loss carryover	70,000
2000 Consolidated net loss carryover	<u>(124,000)</u>
Remaining 1999 Consolidated net loss carryover	<u>(54,000)</u>

(5) Paragraphs (2), (3), and (4) of this rule apply to Oregon net losses carried forward and deducted in tax years beginning on or after January 1, 1986.

(6) The net loss carryover to a consolidated return when the loss is from a separate return of a prior year in which the taxpayer should have filed a combined or consolidated return must be recalculated as if the taxpayer had filed a combined or consolidated return.

Example: Corporation A reported a loss in 1999 on a separate return. Corporation A should have filed a consolidated return with Corporation B in 1999. A 1999 consolidated return would have resulted in net income. The net loss carryover for Corporation A from 1999 is zero.

Hist: Filed 10/15/99 and Eff. 12/31/99; Amended 8/3/00

150-314.724(3)

Partnership Penalty

(1) A penalty is assessable against a partnership that transacts business in Oregon, but fails to timely file a partnership return (including extensions) or fails to show the required information as defined in ORS 314.724. Under ORS 305.229, a penalty will not be imposed unless the partnership fails to file or to supply required filing information after requested in writing by the department to do so.

(2) The penalty is \$50 per month or part of a month that the partnership return is late or incomplete up to a maximum of five months. The penalty amount is multiplied by the total number of partners in the partnership during any part of the tax year for which the return is due. Although the penalty is assessed against the partnership each partner is individually liable for the penalty to the extent that the partner is liable for partnership debts generally.

Example 1: A partnership return for 2006 is due April 17, 2007. However, the return is not filed until July 3, 2007. No penalty will be assessed even though the partnership return is filed late.

Example 2: A partnership return for 2006 is due April 17, 2007. After written requests to file by the department, the partnership still does not file a return. The partnership has one general partner and three limited partners. Penalty will be assessed for failure to file a return. The penalty computation is shown below:

$\$50 \times 5 \text{ months} \times 4 \text{ partners} = \$1,000 \text{ penalty}$

(3) The penalty described above is in addition to any other penalty provided by law. Any partnership assessed with this penalty may appeal to the director as provided in ORS 305.275.

(4) The department may waive all or any part of the penalty if the partnership can show that there was a circumstance beyond the partnership's control that caused the failure to file a complete or timely return. See OAR 150-305.145(4).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.724

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-316.467; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 6-2007, f. 7-30-07, cert. ef. 7-31-07