Oregon Net Operating Losses—Treatment Before 1985

150-316.007 (1) *Applicability of this Rule.*

(a) The provisions set forth in this rule shall apply to the computation of net operating losses occurring in loss years beginning before January 1, 1985; net operating loss deductions allowed in tax years beginning before January 1, 1985, from losses that originated in loss years beginning before January 1, 1985; and net operating loss carrybacks and carryovers applied in tax years beginning before January 1, 1985, that originated in loss years beginning before January 1, 1985.

(b) For the computation and application of Oregon net operating losses; net operating loss deductions with regard to loss years and net operating loss carrybacks and net operating loss carryovers originating after December 31, 1984, see OAR 150-316.014.

(2) *Negative Oregon Taxable Income Defined.* For purposes of this rule, negative Oregon taxable income means federal taxable income as defined in the laws of the United States, with the modifications, additions and subtractions provided in ORS Chapter 316, which is less than zero.

(3) *The Computation of a Net Operating Loss for Loss Years Beginning before January 1, 1985.*

(a) For purposes of this rule, "loss years" means those tax years in which a net operating loss occurs. The computation of a net operating loss for Oregon purposes begins with negative Oregon taxable income. Internal Revenue Code Section 172 is generally applied to items of income, deduction and modification on the Oregon return in both the year of the loss and in the year or years to which the loss deduction is carried.

(b) There are five items that may reduce negative Oregon taxable income. These are: net operating loss deduction from other years; exemption deductions, if applicable; the nonbusiness deductions less nonbusiness income modification required by IRC Section 172; Oregon capital gains deduction; and the net Oregon capital loss deduction. The amount of negative Oregon taxable income remaining after the above items have been taken into account, shall be considered the amount of the taxpayer's Oregon net operating loss deduction.

Example: Sandy and Joe filed federal and Oregon tax returns for 1984. On their federal return they reported wages of $12,000, a business loss of $40,000 (a part of which was attributable to depreciation), a gain on the sale of stock of $400 (net of $600 capital gains deduction), interest income of $800, and a taxable pension from the U.S. Government of $2,000. They paid no federal or state taxes in 1984 and reported total itemized deductions of $6,800. These deductions were considered nonbusiness.

On their Oregon return Sandy and Joe also reported $500 municipal bond interest from California that was exempt from federal income tax, they were allowed to deduct $1,000 more depreciation for Oregon purposes than for federal purposes, and, they were allowed to deduct the entire pension income on their Oregon return as a U.S. Public Retirement subtraction. Their allowable Oregon net operating loss is computed as follows:

Federal Tax Return		
Wages		$12,000
Interest income		800
Schedule C income (loss)		(40,000)
Schedule D income (sale of stock)		400
U.S. Government pension		2,000
Federal Adjusted Gross Income (AGI)		($24,800)
Oregon Tax Return		
Federal AGI		($24,800)
Oregon "Changes"		-0-
Oregon Additions (California bond interest)		500
Oregon Subtractions		
Depreciation adjustment	$1,000	
Interest and dividend exclusion	400	
U.S. Government Pension	2,000	
Total subtractions		(3,400)
Oregon deductions		
Itemized deductions on federal Schedule A	$6,800	
Oregon tax claimed as an		

itemized deduction	-0-		
Oregon net itemized deduction		(6,800)	
Negative Oregon taxable income		($34,500)	

Computation of the Oregon Net Operating Loss Deduction

Negative Oregon taxable income		($34,500)
Add: Excess nonbusiness deductions		
Nonbusiness deductions		
A. Nonbusiness losses on the federal return	$ -0-	
B. Nonbusiness adjustments to federal income	-0-	
C. Oregon "Changes" that decrease income	-0-	
D. Nonbusiness Oregon Subtractions ($2,000 + $400)	2,400	
E. Nonbusiness Oregon itemized deductions	6,800	
Total nonbusiness deductions	$9,200	
Nonbusiness income		
A. Nonbusiness income included in federal income ($800 + $2,000)	2,800	
B. Nonbusiness Oregon "Changes" increasing income	-0-	
C. Nonbusiness Oregon Additions	500	
Total nonbusiness income	$3,300	
Excess nonbusiness deductions over nonbusiness income ($9,200 – $3,300)		$ 5,900
Net operating loss deduction from prior years		-0-
Exemption deductions (if applicable)		-0-
Capital gains deduction		600
Total Reduction to Negative Oregon Taxable Income		6,500
Allowable Oregon Net Operating Loss Deduction		($28,000)

(4) *Oregon Net Operating Losses-Reduction Due to the Net Oregon Capital Loss Deduction.* Oregon net operating losses shall be reduced by the amount of net Oregon capital loss deduction claimed on the Oregon return. The net capital loss deduction is generally the same as the amount deducted on the federal return. However, there are modifications that are required under Oregon law which cause the capital loss deduction to be different for Oregon purposes. These modifications must be taken into account in determining the amount of capital loss deduction that is part of negative Oregon taxable income. This difference may be due to depreciation differences upon the sale of a capital asset.

Example: Gary sells a capital asset to Helen for $10,000. The federal adjusted basis is $9,000 and the Oregon adjusted basis is $12,000. For federal purposes Gary has a gain of $1,000. However, Gary has a capital loss for Oregon purposes of $2,000 ($10,000 – $12,000). For purposes of this example, assume the loss is a short-term capital loss. Gary's negative Oregon taxable income is reduced by $2,000, the amount of the capital loss deduction for Oregon purposes.

(5) *Oregon Net Operating Losses-Reduction Due to Nonbusiness Deductions in Excess of Nonbusiness Income.* In order to compute an Oregon net operating loss, the taxpayer's negative Oregon taxable income is reduced by the amount of excess nonbusiness deductions over nonbusiness income. Oregon modifications, additions, and subtractions used in computing negative Oregon taxable income may reduce the allowable Oregon net operating loss. Use the following list to help determine which of the more common Oregon modifications, additions or subtractions are considered business or nonbusiness. The list is not complete. It is intended to be a guide.

	Business	**Nonbusiness**
Adoption expenses		X
All-Saver Certificate Interest Exclusion		X
Depletion in excess of basis	X	
Depreciation adjustment for Oregon purposes	X	

Federal deduction for married couple when both work		X
Federal income tax refunds added to Oregon		
Oregon taxable income	*	*
Federal jobs tax credit and WIN wages	X	
Federal tax subtraction	*	*
Gain/loss on sale of depreciable assets	X	
Interest and dividend exclusion		X
Interest from U.S. government obligations		X
Interest on local government bonds of other states		X
Itemized deductions		
Medical expenses		X
Taxes (state and local)	*	*
Interest		X
Contributions		X
Casualty losses	X	
LIFO inventory adjustment	X	
Loggers and construction workers commuting expenses	X	
Lump-sum distributions		X
Military active duty pay	X	
Oregon income tax refund included in federal income	*	*
Oregon Public Retirement Income		X
Oregon standard deduction		X
Public utility reinvestment dividends		X
Sale of public utility stock		X
Social security income included in federal income		X
U.S. public retirement income subtraction		X

*The items above that are marked with an asterisk are to be allocated between their business and nonbusiness components.

(6) *Part-year residents and Nonresidents.*

(a) Tax years beginning before January 1, 1983. The base for computing an Oregon net operating loss for a part-year resident or a nonresident shall be negative Oregon taxable income. To compute an Oregon net operating loss, negative Oregon taxable income shall be modified as provided in (3) above by those modifications which relate to items of Oregon income or deduction only.

(b) Tax years beginning after December 31, 1982 and before January 1, 1984. A part-year resident or nonresident shall be allowed an Oregon net operating loss deduction only if the taxpayer had negative Oregon taxable income as defined in (2) of this rule, in the year of the loss.

(c) *Tax years beginning after December 31, 1983 and before January 1, 1985.* In computing an Oregon net operating loss, for part-year residents, negative Oregon taxable income shall be modified as provided in (3) above by those modifications which relate to items of Oregon income or deduction only. Nonresidents shall calculate their Oregon net operating loss as provided in (6)(a) above.

(7) *Non-Oregon Source Net Operating Losses.* If a non-Oregon source net operating loss arises while the taxpayer is a nonresident, the resulting net operating loss deduction shall not be allowed when computing Oregon taxable income.

(8) *Oregon Source Net Operating Losses.*

(a) Taxpayers shall be allowed a deduction for Oregon source net operating losses as determined in section (3) of this rule. Taxpayers may also carryover the Oregon net operating loss deduction in a manner consistent with IRC Section 172.

(b) Generally, if a taxpayer carries a net operating loss deduction back for federal purposes, the taxpayer shall carry the Oregon net operating loss back for Oregon purposes also. The same principle applies to net operating loss carryovers and carryforwards.

(c) An exception to this rule arises if the taxpayer is not required to file an Oregon return for all the years to which the federal net operating loss deduction is applied. In this case, the following rule applies:

In the case of a net operating loss carryback, if the taxpayer was not required to file an Oregon return for the third year prior to the Oregon net operating loss, the Oregon net operating loss deduction shall be carried over to the year succeeding the carried back year. If the taxpayer was not required to file an Oregon tax return in that year, the Oregon net operating loss deduction shall be carried over to that year in which the loss may be first applied. The total number of years to which a net operating loss deduction may be carried back or forward shall be the same for Oregon and federal net operating losses. The number of years allowed is determined by IRC Section 172(b).

Example: Jane computed her allowable Oregon source net operating loss deduction for tax year 1984. For federal purposes, she carried back her federal net operating loss deduction back to tax year 1981. Since she carried her loss back for federal purposes, she shall carry her loss back for Oregon purposes to her 1981 Oregon tax return. If she was not required to file an Oregon tax return for 1981, she may carry her Oregon net operating loss deduction to her 1982 Oregon tax return.

(9) *Filing Status.*

(a) Oregon net operating losses may be split among spouses. Taxpayers who change their filing status, for example, generally need to identify their separate items of income, deductions, Oregon modifications, etc., to compute their separate Oregon net operating loss deduction.

(b) Items of income are split between the spouses in a manner consistent with Treasury Regulation Section 1.172.7. Modifications to federal adjusted gross income (AGI), as required under Chapter 316, are allocated between the spouses. Each spouse is entitled to those modifications that belong only to him or her. For those modifications which are not clearly attributable to any one spouse, multiply the dollar amount by the following percentage:

$$\text{Percentage} = \frac{\text{Spouse's share of federal AGI}}{\text{Total federal AGI}}$$

(c) Other deductions, such as itemized deductions, are treated in the same manner as modifications described in the preceding paragraph. Those deductions that specifically belong to a spouse are used in computing that spouse's separate itemized deductions. All other itemized deductions shall be allocated each spouse based on the percentage described above. State taxes are to be allocated in a manner consistent with Revenue Rulings 80-6 and 80-7.

(10) For Oregon's exemption deduction and/or credit, each spouse may claim his or her own personal exemption. Each spouse may also claim dependents based on provision of support or a spousal agreement.

[**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 10/7/84 and Eff. 12/31/84, Amended 12/31/85, Amended 7/29/86 (Temp.), (Perm.) 12/31/86, 12/31/89

150-316.014

Oregon Net Operating Losses-Treatment After 1984

(1) *Applicability of this Rule.*

(a) This rule applies to the computation of net operating losses occurring in loss years beginning after December 31, 1984; and net operating loss deductions allowed or allowable in tax years beginning after December 31, 1984.

(b) For the computation and application of Oregon net operating losses for loss years beginning before January 1, 1985; net operating loss deductions with regard to loss years beginning before January 1, 1985; and net operating loss carrybacks and net operating loss carryovers applied in tax years beginning before January 1, 1985 that also originated in tax years beginning before January 1, 1985, see OAR 150-316.007.

(2) *Definitions for Purposes of this rule.*

(a) *Prohibited amounts.* "Prohibited amounts" means those amounts that the state of Oregon is prohibited from taxing, such as all stocks, bonds, Treasury notes, and other obligations of the United States as provided in 31 United States Code Section 3124. Prohibited amounts do not include such items as federally taxable social security benefits since Oregon is not prohibited from indirectly taxing such types of income.

(b) *Oregon Adjusted Gross Income (Oregon AGI).* For a full-year resident, Oregon AGI is generally the same as federal AGI. For a nonresident, "Oregon AGI" means the items included in federal adjusted gross income as defined in IRC Section 62 that relate to Oregon sources without modifications.
(c) *Modified Oregon Taxable Income.* "Modified Oregon taxable income" means Oregon AGI reduced by the sum of the following:
(A) Oregon itemized deductions. For a resident, Oregon itemized deductions are generally the same amount as federal. For part-year and nonresident taxpayers, Oregon itemized deductions are the Oregon percentage of federal itemized deductions; or
(B) Oregon standard deduction. For part-year and nonresident taxpayers, only the Oregon percentage of the standard deductions can be used;
(C) Federal personal exemption(s); and
(D) Prohibited amounts included in Oregon AGI.
(3) *Computation of an NOL for a Resident.*
(a) For Oregon purposes, a resident's net operating loss is computed in the same manner as for federal purposes without Oregon modifications. Generally, the Oregon NOL is the same as the federal NOL. The only modification necessary is to subtract prohibited amounts.
(b) The computation of the Oregon NOL begins with the Oregon adjusted gross income (AGI) to arrive at modified Oregon taxable income. Then the modified Oregon taxable income is adjusted as required by IRC Section 172(d).
Example 1. Susan and Joe filed joint 2003 federal and Oregon tax returns. On their federal return, they reported wages of $16,000, a business loss of $40,000, a gain on the sale of stock of $400, and interest income of $800 from a bank. They also reported total itemized deductions of $10,800 which were all nonbusiness and claimed personal exemptions of $6,100.
On their Oregon return, Susan and Joe also reported $500 municipal bond interest from California that was exempt from federal income tax. Their allowable Oregon NOL is computed as follows:

Federal tax return		
Wages		$16,000
Interest income		800
Schedule C loss		(40,000)
Schedule D stock gain		400
Federal AGI		($22,800)
Personal exemptions		(6,100)
Schedule A deductions		(10,800)
Federal taxable income		($39,700)
Computation of Oregon NOL		
Oregon AGI		($22,800)
Personal exemptions		(6,100)
Schedule A deductions		(10,800)
Modified Oregon taxable income		($39,700)
Adjustments:		
Personal exemptions		6,100
Nonbusiness deductions	10,800	
Nonbusiness income	(1,200)	
Nonbusiness deductions in excess of nonbusiness income		9,600
Oregon NOL		($24,000)

Note: Except for prohibited amounts, the Oregon NOL is computed based on the federal NOL method and definitions without Oregon modifications.

Example 2. The facts are the same as in Example 1, except that the interest of $800 is from U.S. government securities (prohibited amounts). The Oregon NOL for Susan and Joe is $(24,800) computed as follows:

Federal tax return		
Wages		$ 16,000
Interest from U.S. government securities		800
Schedule C loss		(40,000)
Schedule D stock gain		400
Federal AGI		($22,800)
Personal exemptions		(6,100)
Schedule A deductions		(10,800)
Federal taxable income		($39,700)
Computation of Oregon NOL		
Oregon AGI		($22,800)
U.S. government interest		(800)
Personal exemptions		(6,100)
Schedule A deductions		(10,800)
Modified Oregon taxable income		($40,500)
Adjustments:		
Personal exemptions		6,100
Nonbusiness deductions	10,800	
Nonbusiness income	1200	
Excess nonbusiness deduction		9,600
Oregon NOL		($24,800)

Note: The U.S. government interest (prohibited amounts) is not used in computing Oregon NOL.

(4) *Computation of an NOL for a Part-year Resident and a Nonresident*

(a) A nonresident is allowed an Oregon NOL for any loss year when the NOL is attributable to Oregon sources. A taxpayer is not allowed an NOL or carryover on the Oregon return if the loss was incurred while the taxpayer was a nonresident and the loss was not attributable to Oregon. The computation of the allowable net operating loss for Oregon purposes begins with Oregon adjusted gross income as defined in this rule. Any modifications provided in IRC Section 172(d) apply to all items of income and deduction as they apply to modified Oregon taxable income with the exception of prohibited amounts.

(b) The IRC Section 172(d) modifications attributable to Oregon sources are the following:

(A) Oregon NOL deduction from prior years included in Oregon income after adjustments.

(B) Net Oregon capital loss deduction.

(C) Federal personal exemption amount.

(D) Excess of nonbusiness deductions over nonbusiness income included in modified Oregon taxable income.

Example 3. Herb and Sallie are married nonresidents and file a joint 2003 return. On their federal return, they have itemized deductions of $12,400 (all nonbusiness) and claimed personal exemptions of $9,150. They also had a business loss of $25,000 from Oregon sources and $1,000 non-Oregon source corporate bond interest. On their Oregon nonresident return, the Oregon percentage is zero (0). They compute their Oregon NOL as follows:

Oregon adjusted gross income	($25,000)
Personal exemptions	(9,150)
Schedule A deductions	-0-
Modified Oregon taxable income	($34,150)

Adjustments:		
Personal exemptions		9,150
Nonbusiness deductions	-0-	
Nonbusiness income	-0-	
Excess nonbusiness deduction		-0-
Oregon NOL		($25,000)

Note: The Schedule A itemized deductions are -0- for Oregon purposes because their Oregon percentage is zero.

(5) *Application of an NOL.*

(a) General rule. An Oregon net operating loss for any loss years is applied in the same manner as the federal net operating loss as provided in IRC Section 172(b). If the loss was not attributable to Oregon sources and was incurred while the taxpayer was a nonresident, there is no Oregon NOL to carry over even if the taxpayer later becomes an Oregon resident. In such cases, the amount of the NOL carryover that is not attributable to Oregon sources is added back on the Oregon resident tax return.

If a taxpayer carries back a federal NOL, the taxpayer is treated as carrying the loss back for Oregon purposes as well. If a taxpayer makes an election to carry over the federal NOL, the taxpayer is treated as making the same irrevocable election for Oregon purposes as well.

(b) *Exceptions.*

(A) If a taxpayer has an Oregon NOL but does not have a federal NOL, the taxpayer may elect to carry the Oregon NOL over to the next succeeding year, if the taxpayer makes an irrevocable election on the timely filed Oregon loss year return (including extensions). If no such election is made, then the taxpayer may only carry the Oregon loss back in the same manner as provided in IRC Section 172(b).

(B) If a taxpayer is not required to file an Oregon return for all years to which the federal NOL deduction (NOLD) is applied, the following applies:

In the case of an NOL carryback, if a taxpayer was not required to file an Oregon return for a carryback year prior to the Oregon loss year, the Oregon NOL is carried back to the year in which the loss may be first applied.

(C) The total number of years to which an NOL may be carried back or forward is the same for Oregon and federal, and is determined as follows:

(i) For net operating losses incurred in tax years beginning on or after January 1, 2003, the carry back period is two years with a twenty year carryover period.

(ii) For net operating losses incurred in tax years beginning on or after January 1, 2001 and before January 1, 2003, the carryback period is five years with a twenty year carryover period.

(iii) For net operating losses incurred in tax years beginning on or after August 5, 1997 and before January 1, 2001, the carryback period is two years with a twenty year carry over period.

(iv) For net operating losses incurred in tax years beginning prior to August 6, 1997, the carryback period is three years with a fifteen year carryover period**.**

See IRC 172 and the regulations thereunder for exceptions to the general carryback periods for net operating losses attributable to certain casualty losses, disaster areas and farming losses.

Example 4. Joe has a net operating loss for federal and Oregon for tax year 2003. For federal purposes, Joe carried his federal NOL back to 2001. Since he carried back his loss for federal purposes, he must carry back the loss for Oregon purposes to his 2001 Oregon tax return. If he is not required to file an Oregon tax return for 2001, he may carry his Oregon NOL to his 2002 Oregon tax return.

Example 5. Assume the same facts as in Example 4. However, Joe was not required to file an Oregon tax return prior to tax year 2003. Joe may carry his Oregon NOL over to his 2004 Oregon tax return even if the loss was carried back for federal purposes.

Example 6. Devin, a Washington resident, incurs a $25,000 NOL in 2003 from his Washington area business and elects to carry the loss forward. Devin moves to Oregon on January 1, 2004. Since the

loss was incurred while Devin was a nonresident of Oregon and the loss is not from an Oregon source, there is no Oregon NOL and Devin must make an addition on his 2004 Oregon return to add back the $25,000 NOL included in federal adjusted gross income.

(6) *A Net Operating Loss Deduction, Carryback and Carryover Amount.*

(a) A taxpayer's net operating loss deduction (NOLD), carryback and carryover amount is computed in the same manner as for federal purposes. The method to compute the carryback and carryover amount is not modified for Oregon purposes.

(b) For a full-year resident, generally an NOLD, carryback and carryover amount is the same as for federal purposes except that prohibited amounts as defined in section (2)(a) of this rule are not taken into consideration.

Example 7. John and Joyce incurred losses in 2002 from partnerships and S corporations. They compute an NOL of $12,000 and elect to carry the loss back. The 2000 return shows negative taxable income, so the 2002 NOL is first applied to 2001 where the loss is completely absorbed. John and Joyce have a federal AGI in 2001 of $32,000. The fully absorbed 2002 NOL is applied as follows:

Federal AGI on the Oregon return to which the loss is carried		$32,000
Less: Net operating loss deduction		(12,000)
Federal AGI for Oregon as revised		20,000
"Additions" per Oregon return		3,000
"Subtractions" per Oregon return	($5,000)	
Standard or itemized deductions recomputed for revised federal AGI	(10,000)	
Total Deductions		(15,000)
Oregon taxable income as revised		$8,000

Example 8. Assume the same facts in Example 7, except that John and Joyce elect to carry forward the 2002 NOL for federal and Oregon purposes. In 2003, John and Joyce have federal AGI of $15,000 and have reported additions of $8,000 and subtractions of $3,000. John and Joyce will apply the NOL to 2003 and compute the amount carried over to 2004 as follows:

Net operating loss deduction carryover				($12,000)
Federal AGI on Oregon return to which the loss is carried			$15,000	
Add: Capital loss deductions or	-0-			
Capital gain deduction	-0-			
Federal AGI for Oregon AGI as revised		$15,000		
Less: Prohibited amounts		-0-		
Standard or itemized deductions recomputed for revised federal AGI		(9,500)		
Modified Oregon taxable income (NOLD for 2003)				5,500
Carryover net operating loss available for 2004				($6,500)

John and Joyce's 2003 Oregon taxable income is recomputed as follows:

Federal AGI on Oregon return to which the loss is carried		$15,000
Less net operating loss deduction	(5,500)	
Federal AGI including net operating loss deduction		9,500
Add: "Additions" per Oregon return	8,000	
Less: "Subtractions" per Oregon return	(3,000)	
Standard or itemized deductions	(9,500)	
2003 Oregon taxable income as revised	$5,000	

(c) A part-year resident and a nonresident use the federal method without modifications, except that prohibited amounts are not taken into consideration, and the NOLD, carryback and carryover are based only upon amounts attributable to Oregon sources.

Example 9. In 2002, while residents of California, Ron and Valerie incurred losses from an Oregon partnership creating an Oregon only NOL in the amount of $85,000. Prior to 2002, neither Ron nor Valerie needed to file Oregon returns. In 2003, Ron and Valerie moved to Oregon and filed a part-year Oregon return. They reported federal income after adjustments of $385,000, Oregon income after adjustments of $235,000, and itemized deductions of $10,000. Ron and Valerie calculate their 2003 Oregon taxable income as follows:

	Federal	Oregon
Income after adjustments	$385,000	$235,000
Less net operating loss deduction	(85,000)	(85,000)
Modified income after adjustments	300,000	150,000
Plus: "Additions" per Oregon return	7,000	7,000
Less: "Subtractions" per Oregon return	(4,500)	(4,500)
Modified income after subtractions	$302,500	$152,500
Oregon Percentage: 152,500/302,500 = 50.4%		
Less: itemized deductions		
recomputed for revised federal AGI	(10,000)	
Federal tax subtraction	(3,500)	
Taxable income as revised	$298,000	

Example 10. Scott and Jill live in Vancouver, Washington and Scott operates a business in Oregon. In 2002, Scott and Jill filed a nonresident Oregon return reporting an Oregon only NOL of $6,000. Scott and Jill elected to carry the NOL forward. In 2003, Scott and Jill reported Oregon income after adjustments of $1,600, federal income after adjustments of $32,000, and federal itemized deductions of $9,200. Their Oregon itemized deductions are $460 [($1,600/$32,000) x $9,200]. Scott and Jill calculate their net operating loss deduction for 2003 and the carryover to 2004 as follows:

Net operating loss carryover			($6,000)
Oregon income after adjustments on return in year to which loss is carried	$1,600		
Add: Oregon capital loss deduction	-0-		
Oregon capital gain deduction	-0-		
Modified Oregon AGI as revised		$1,600	
Less: Prohibited amounts		-0-	
Oregon percentage of itemized deductions recomputed for revised federal AGI		(460)	
Modified Oregon taxable income (NOLD for 2003)			1,140
Carryover of NOLD available for 2004			(4,860)

[**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 316.014

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Taxable Income of Resident

150-316.048

(1) *Definition.* The taxable income of a resident of this state is taxable income as defined in the laws of the United States, modified and adjusted by ORS Chapter 316 and other laws of this state applicable to personal income taxation. Such laws have the general effect of incorporating all the provisions of the federal Internal Revenue Code with regard to the measurement of personal taxable income except as otherwise specifically provided by Oregon law. For example, the Oregon standard deduction is not deductible in the same amount as the federal standard deduction amount.

(2) *Oregon Adjusted Gross Income Defined.*

(a) For tax years beginning prior to January 1, 1985, Oregon adjusted gross income is federal adjusted gross income as defined under IRC Section 62 as of the dates specified in ORS 316.012. Oregon adjusted gross income incorporates any differences between the federal definition of adjusted gross income and the Oregon definition of adjusted gross income for any given year.

(b) For tax years beginning after December 31, 1984, Oregon adjusted gross income is federal adjusted gross income without any of the modifications, additions, or subtractions required under ORS Chapter 316.

(3) *Transfers of property between spouses or incident to divorce.* The transfer of property from one spouse to another incident to a divorce property settlement is considered a nontaxable event for Oregon purposes. The basis of the property transferred in the hands of the transferor shall carry over and become the basis of the property in the hands of the transferee.

(4) *Community property income.* An Oregon resident whose spouse resides in a community property state is taxable upon the share of the spouse's community property income that is considered earned by the Oregon resident according to the laws of the community property state. Credit for taxes paid to another state under ORS 316.082 is allowed to Oregon residents whose share of community property income is taxed by Oregon and another state. See ORS 316.082 and the rules thereunder for computation of the credit.

Example 1: Van and Lisa are married. Lisa lives and works in Salem, Oregon. Van lives and works in Seattle, Washington. Van and Lisa each deposit their separate paychecks into a joint Oregon checking account that is used to pay living expenses for both of them. They visit each other frequently. They are not permanently separated by a legal decree and have no intention of filing for divorce. Under Washington law, all property acquired after marriage by either husband or wife or both, other than by gift, bequest or inheritance, is community property. Because Van's wages are community property under Washington law, and Van and Lisa are not permanently separated, Lisa must include one-half of Van's Washington earnings in Oregon income. Lisa may not claim a credit for taxes paid to another state because there is no state income tax imposed on the earnings by both Oregon and Washington.

Example 2: Juan and Maria are married. Juan receives a promotion and moves to Boise, Idaho, to live and work until retirement. Maria stays in Medford, Oregon, and continues her job until she can retire in five years. They are not permanently separated by a legal decree and have no intention of filing for divorce. Under Idaho law, earnings of spouses domiciled in Idaho are community property absent a written agreement that provides otherwise. Since Juan and Maria are not permanently separated and have not agreed to treat their earnings as separate income, Maria must include one-half of Juan's Idaho wages in her Oregon income. Maria would be entitled to claim credit for taxes paid to another state based on the income that is taxed by both Oregon and Idaho.

(5) *Distribution of a trust's income accumulation.*

See ORS 316.737 and OAR 150-316.737 for the treatment of trust income accumulation distributions.

(6) *Retirement benefit plans.*

(a) Resident taxpayers must include in Oregon taxable income all amounts received from retirement benefit plans. For tax years beginning on or after January 1, 1996, and before January 1, 2000, nonresidents are not taxed by Oregon on retirement income. For tax years beginning after December 31, 1999, nonresidents who retain their Oregon domicile are taxable on Oregon source retirement income. See ORS 316.127(a).

(b) Conversion of a traditional IRA to a Roth IRA under IRC Section 408A is deemed a distribution for federal tax purposes. The amount included in federal taxable income is taxable to an Oregon resident. A taxpayer who is an Oregon resident for a part of tax year 1998 and who elects to recognize the conversion amount over four years, must include a prorated amount in Oregon income. If the election to recognize income over four years is not made, the converted amount must be included in income if the taxpayer is an Oregon resident at the date of conversion.

Example 1: Sam was a resident of Nevada at the time he converted his traditional IRA to a Roth IRA in 1998. The total amount of the 1998 distribution was $2,000. Sam will recognize the IRA distribution over the four-year period beginning with 1998. In Oct. 1, 1999, Sam established permanent residency in Oregon. The 1998 IRA distribution will be recognized in taxable income as follows:

Year	Federal	Oregon
1998	$500	$0

1999	$500	$125	(prorated for Oregon residency period)
2000	$500	$500	
2001	$500	$500	

(c) Conversion of traditional IRAs to Roth IRAs after 1998. For tax years after 1998, converted amounts must be included in Oregon taxable income if, at the time the conversion is made, the taxpayer is an Oregon resident.

[**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. 1/69, Amended 12/70, 11/73., 12/19/75, 1/1/77, 12/31/78, 12/31/84, 12/31/85, 12/31/86, 12/31/87, 12/31/89, 12/31/91, 12/31/92, 12/31/98, 12/31/99, 8/01/01

Oregon Child Care Credit

150-316.078 (1) For tax years beginning on or after December 31, 1988, the credit allowed under ORS 316.078 shall be based on a percentage of the qualifying employment related expenses allowed by Section 21 of the Internal Revenue Code. The percentage is determined by federal taxable income, as shown in the table under ORS 316.078.

When calculating the Oregon child care credit, taxpayers must use the same employment related expenses used for calculating the federal credit, subject to the same limitations and eligibility requirements outlined in the IRC Section 21. However, it is not necessary to claim the federal child care credit in order to claim the credit for Oregon.

Any credit allowable under ORS 316.078 that is not used may be carried forward for up to five years.

Example 1: Bill and Martha are married and file a joint return. They have federal taxable income of $12,000 in 1989. Using IRC Section 21 guidelines, they determine they have $1,500 qualifying employment related expenses. Using the table in ORS 316.078, Bill and Martha compute an allowable Oregon child care credit in the amount of $120 (8 percent of $1,500). Bill and Martha have a 1989 tax liability of $105. Since their Oregon child care credit exceeds their tax liability, they may carryforward the $15 excess to 1990. They must use the carryforward credit by tax year 1994.

(2) For tax years beginning after December 31, 1986, and before January 1, 1989, the Oregon credit is equal to 40 percent of the "allowable federal credit." The allowable federal credit is the credit computed under Section 21 of the Internal Revenue Code, not the amount actually used to reduce the federal tax liability. The allowable federal credit may be greater than the amount actually claimed on the federal return.

(3) For tax years beginning after December 31, 1984, and before January 1, 1987, the Oregon credit is limited to 40 percent of the "allowed federal credit." The allowed federal credit is the amount actually claimed on the federal return which reduces the federal tax liability (but not below zero). The allowed federal credit may be less than the allowable federal credit. "Federal tax liability" has the same meaning as under Section 26 of the Internal Revenue Code.

(4) For tax years beginning after December 31, 1984 and before January 1, 1987, if the taxpayer would be allowed to claim a credit under ORS 316.078 and ORS 316.087, the taxpayer may choose whichever of the amounts allowable pursuant to these statutes is to be applied against the Oregon tax liability.

Example 2: Joan and Jerry are married and file a joint income tax return. They have a federal tax liability (before any federal credits) of $200 for their 1985 tax year. In addition, they compute that they are allowed a federal credit for the elderly of $175 and a federal child care credit of $250. Joan and Jerry would figure the maximum credit allowable of $80 to apply against their Oregon tax liability as follows. Their federal tax information is provided below.

Federal tax		$ 200
Federal child care credit	$250	
Federal elderly credit	175	
Total (but limited to federal tax)		– 200
Federal tax after all credits		$ -0-

They are allowed the greatest relief as provided under the following two options.

Option 1

Federal child care credit claimed on federal

return (but not more than federal tax) $200
Multiplied by the Oregon percentage x 40%
Allowable Oregon child care credit $ 80

Since the federal child care credit was great enough to reduce the federal tax to zero, no credit is available under ORS 316.087 (the Oregon credit for the elderly).

Option 2

Federal elderly credit claimed $175
Multiplied by the applicable Oregon percentage x 15%
Allowable Oregon credit for the elderly $ 26

Since only $175 of the federal tax was reduced by the elderly credit, the remaining $25 was reduced by the federal child care credit. The allowable Oregon child care credit is figured as follows:

Child care credit available to reduce federal
tax (but not below zero) $ 25
Multiplied by the applicable Oregon percentage x 40%
Allowable Oregon child care credit $ 10

Since the total credits allowed under Option 1 ($80) is greater than the total credits allowed under Option 2 ($36), Joan and Jerry will claim only the child care credit of $80 to be applied against their 1985 Oregon tax.

[**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 9/22/86 and Eff. 12/31/86; Amended 12/31/87, 12/31/89

Credit for the Gain on the Sale of a Residence Taxed by Another State
150-316.109

A credit will be allowed if the gain on the sale of a taxpayer's personal residence is taxed by both Oregon and another state or country. The credit is the lesser of:

(1) $\frac{\text{Mutually taxed gain}}{\text{Total income on Other state's return}} \times \text{Other state's tax after credits}$

or

(2) 8 percent of the gain taxed by the other state.

Mutually taxed gain is the total gain reduced by any allowable deductions or exclusions (i.e., capital gains deduction, differences in allowable depreciation due to business use of home, etc.).

Total income on other state's return is the other state's taxable income before subtractions for itemized deductions (or standard deduction) and exemptions.

To claim the credit, the taxpayer must send a copy of the other state or country's return and proof of payment.

A taxpayer may not claim both this credit and a credit under ORS 316.082 or ORS 316.131 for taxes paid on the same gain.

Hist: Filed and Eff. 12/31/79, Amended 12/31/84, 12/31/93, 12/31/01

Proration of Income and Deductions for Nonresidents and Part-Year Residents

150-316.117-(A) (1) For tax years beginning on or after January 1, 1983, the numerator of the fraction is the taxpayer's federal adjusted gross income from Oregon sources, with the Oregon modifications to that income, which relate to adjusted gross income.

(2) The denominator of the fraction is the taxpayer's federal adjusted gross income, from all sources, with the Oregon modifications to that income, which relate to adjusted gross income.

(3) For the fiduciary returns of estates and trusts, the numerator of the fraction is the federal taxable income of the fiduciary from Oregon sources, with the Oregon modifications to that income. The denominator of the fraction is the federal taxable income of the fiduciary, from all sources, with Oregon modifications to that income.

(4) Use the following list to help determine which Oregon modifications relate to adjusted gross income.

	Modification	Relate to Adjusted Gross Income? Yes	No
1.	Administration expense of trusts, estates, and conservatorships	X	
2.	Art object donation deduction		X
3.	Depletion in excess of basis	X	
4.	Depreciation difference for Oregon	X	
5.	Exemption for amounts received for condemnation of Indian tribal lands	X	
6.	Exemption for income derived from sources within a federally recognized American Indian reservation	X	
7.	Exemption for service in Vietnam on missing status	X	
8.	Exemption for service in Operation Desert Shield or Desert Storm	X	
9.	Expense of operating a business for profit	X	
10.	Federal estate tax deduction (except on capital gains)		X
11.	Federal estate tax deduction on capital gains	X	
12.	Federal income tax deduction		X
13.	Federal income tax refund		X
14.	Fiduciary adjustment		X
15.	Foreign tax subtraction		X
16.	Gain or loss due to involuntary conversion	X	
17.	Gain or loss on disposition of inherited farmland or forestland difference for Oregon	X	
18.	Gain or loss on the disposition of asset difference for Oregon	X	
19.	Gain or loss on disposition of public utility reinvestment stock	X	
20.	Interest on Oregon local bonds	X	
21.	Interest on municipal bonds of states other than Oregon	X	
22.	IRA and Keogh Contribution subtraction	X	
23.	Itemized nonbusiness deductions		X
24.	Jobs tax or WIN wages	X	
25.	Loggers and construction workers traveling expenses	X	
26.	Lottery winnings	X	
27.	Lump-sum distributions	X	
28.	Medical expense not claimed as an itemized deduction		X
29.	Military active duty pay	X	
30.	Mortgage interest subtraction		X
31.	Net operating loss deduction	X	
32.	Oregon tax refund subtraction	X	
33.	Passive loss difference	X	
34.	Railroad retirement	X	
35.	Remedial Action Cost subtraction	X	
36.	Social Security Benefits	X	
37.	Standard deduction		X
38.	Substitute fuels production deduction	X	
39.	U.S. Government interest	X	

(5) Under no circumstances may the percentage exceed 100 percent.

(6) If the taxpayer has positive modified Oregon income and negative or zero modified federal adjusted gross income, the allowable percentage is 100 percent. If the taxpayer's modified federal adjusted gross income from Oregon sources and modified federal adjusted gross income are both losses, the allowable percentage will be computed as follows:

(a) If the Oregon loss is smaller than the federal loss, 100 percent.

(b) If the Oregon loss is greater than the federal loss, divide the federal loss by the Oregon loss.

Example 1: A taxpayer has modified federal adjusted gross income from Oregon sources of ($100) and modified federal adjusted gross income of ($1,000). Since the Oregon loss is less than the federal loss, the percentage is 100 percent.

Example 2: A taxpayer has federal adjusted gross income from Oregon sources of ($1,000) and federal adjusted gross income of ($100). The percentage is 10 percent.

(7) If the taxpayer has negative or zero modified Oregon income and positive modified federal adjusted gross income, the allowable percentage is zero.

(8) Nonresident taxpayers shall prorate the following deductions and modifications not relating to adjusted gross income using the fraction provided in this rule:

(a) The greater of:

(A) Net Oregon itemized, or

(B) The standard deduction.

(b) Federal tax liability.

(c) Additional federal tax paid from a prior year.

(d) Gambling losses (itemized).

(e) Federal income tax refunds from amended or audited returns.

(9) Nonresident taxpayers shall not prorate the following deductions and modifications not relating to adjusted gross income.

(a) Art object donation deduction, and

(b) Fiduciary adjustment.

(10) Under no circumstances may the percentage used in computing the allowable portion of the deductions exceed 100 percent.

(11) For part-year residents Oregon source income is:

(a) For the portion of the year the taxpayer is a resident see OAR 150-316.048.

(b) For the portion of the year the taxpayer is a nonresident see ORS 316.127 and the rules pertaining thereto.

Hist: Eff. 12/70; Amended 11/73, 12/19/75, 12/31/78, 12/31/83, 12/31/84, 12/31/85, 12/31/86; Renumbered from OAR 150-316.117 to OAR 150-316.117-(A), 12/31/87, 12/31/89, 12/31/91, 12/31/93, 2/1/95

Nonresident Partners: Guaranteed Payments

150-316.124(2) (1) Guaranteed payments paid to nonresident partners of a partnership that has business activity in the state of Oregon are treated as a distributive share of partnership income for Oregon tax purposes. In order to determine the income attributable to Oregon sources, each nonresident partner's entire distributive share, including the guaranteed payments, is then subject to the allocation and apportionment provisions of ORS 314.605 to 314.675.

Example 1: Frank is a 25 percent partner in the law firm DC & H, Associates, a calendar year partnership. DC & H's main office is in Washington, but it also has a branch office in Oregon. Frank lives in Seattle and works in the Washington branch of the firm.

For tax year 1992, Frank received $100,000 in guaranteed payments from the partnership. Frank's 25 percent share of partnership profits after the deduction of guaranteed payments was $50,000. DC & H calculated an Oregon apportionment percentage of 20 percent. Frank's 1992 Oregon source income attributable to the law firm is calculated as follows:

Distributive share of partnership income	$ 50,000
Guaranteed payments	100,000
Adjusted distributive share	$150,000
Multiplied by Oregon apportionment percentage	.20
Frank's 1992 Oregon source income	$ 30,000

(2) The inclusion of guaranteed payments into a nonresident partner's share of apportionable income is irrespective of that partner's percentage interest in the profit or loss of the partnership.

Example 2: Assume the same facts as in Example 1, except that Frank does not share in the profits or loss of the partnership. Frank's 1992 Oregon source income attributable to the law firm is calculated as follows:

Distributive share of partnership income	$ 0
Guaranteed payments	100,000
Adjusted distributive share	$100,000
Multiplied by Oregon apportionment percentage	.20
Frank's 1992 Oregon source income	$ 20,000

(3) See ORS 314.610 and the Administrative Rules thereunder for a definition of Oregon business activity.

Hist: Filed 10/15/93 and Eff. 12/31/93

150-316.127-(A)
Gross Income of Nonresidents; Personal Services

(1) *Personal service.*

(a) Except as provided in section (2) of this rule, the gross income of a nonresident (who is not engaged in the conduct of a business, trade, profession or occupation on the nonresident's own account, but receives compensation for services in the status of employee) includes compensation for personal services only to the extent that the services were rendered in this state.

(b) Compensation for personal services rendered by a nonresident wholly outside this state and in no way connected with the management or conduct of a business in this state is excluded from gross income regardless of the fact that payment is made from a point within this state or that the employer is a resident individual, partnership or corporation.

(c) Compensation for personal services rendered by a nonresident wholly within this state is included in gross income although payment is received at a point outside this state or from a nonresident individual, partnership or corporation.

(2) *Exception:* Various federal laws affecting certain non-residents are explained separately. See OAR 150-316.127-(E).

(3) *Allocation of personal services.*

(a) Where compensation is received for personal services rendered partly within and partly without this state, that part of the income allocable to this state is included in gross income. In general, income is allocable to this state to the extent the employee is physically present in this state at the time the service is performed. Physical presence is determined by the location of the employee at the time services are rendered. Physical presence is not dependent on the location of the employer or the location from which payment of compensation is made. Employees who work in Oregon and at an alternate work site located outside of Oregon may allocate their compensation under the provisions of this rule.

Example 1: Dick, a nonresident, works as a medical transcriptionist for an Oregon employer. During the year, Dick spends about 80 percent of his time working from his home in Washington. Dick spends the remainder of his work time in the Portland office. Only the time Dick spends at the Portland office is considered time worked in Oregon.

(A) The gross income from commissions earned by a nonresident traveling salesperson, agent, or other employee for services performed or sales made, whose compensation is in the form of a specified commission on each sale made, or services rendered, includes the specific commissions earned on sales made, or services rendered, in this state; and allowable deductions must be computed on the same basis.

(B) If nonresident employees are employed in this state at intervals throughout the year, as would be the case if employed in operating boats, planes, etc., between this state and other states and foreign countries, and are paid on a daily, weekly or monthly basis, the gross income from sources within this state includes that portion of the total compensation for personal services which the total number of actual working days employed within the state bears to the total number of working days both within and without the state.

(C) If the employees are paid on a mileage basis, the gross income from sources within this state includes that portion of the total compensation for personal services which the number of miles traversed in Oregon bears to the total number of miles traversed within and without the state.

(D) If the employees are paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Oregon that portion of the total compensation which is reasonably attributable to personal services performed in this state.

(b) The gross income of all other nonresident employees, including corporate officers, includes that portion of the total compensation for services which the total number of actual working days employed within this state bears to the total number of actual working days employed both within and without this state during the taxable period.

Example 2: Jan is a nonresident of Oregon. She works for A-Corp. Jan manages offices in Oregon and Washington. A-Corp pays her a salary of $30,000 for the management of both offices. She worked in Oregon 132 days. She would figure her compensation subject to Oregon tax as follows:

Days actually worked in Oregon	132		
Total days actually worked in both states	220	x	$30,000 = $18,000

Her compensation subject to Oregon tax is $18,000.

An exception to this general rule is made when the compensation is received for performance of services that, by their nature, have an objective or an effect that takes place within this state. In the case of corporate officers and executives who spend only a portion of their time within this state, but whose compensation paid by a corporation operating in Oregon is exclusively for managerial services rendered by such officers and executives, the entire amount of compensation so earned is taxable without apportionment.

Example 3: John is a nonresident of Oregon. He works for B-Corp. John manages B-Corp's only office, which is located in Oregon. B-Corp pays him a salary exclusively for managerial services in the total amount of $30,000. Even though John may perform some administrative duties from his home, the compensation he receives is for managing the Oregon office. The entire $30,000 is taxable to Oregon.

(c) Total compensation for personal services includes sick leave pay, holiday pay, and vacation pay. Sick leave days, holidays, and vacation days are not considered actual working days either in or out of this state and are to be excluded from the calculation of the portion of total compensation for personal services taxable to this state.

Example 4: Joan is a nonresident of Oregon. She actually worked a total of 220 days during the year and was paid for 40 non-working days (holidays, sick days and vacation days). She worked 110 days in Oregon. Her compensation (including compensation for holidays, sick leave and vacations) was $26,000. She would figure her compensation subject to Oregon tax as follows:

Days actually worked in Oregon	110		
Total days actually worked everywhere	220	x $26,000 =	$13,000

Her compensation subject to Oregon tax is $13,000.

(d) *Payment in forms other than money.* Total compensation for personal services includes amounts paid in a form other than money. To the extent the payments are recognized as compensation income for federal income tax purposes, the payments will be recognized as compensation income for Oregon tax purposes and must be apportioned as provided in section (3) of this rule. Examples include but are not limited to, nonstatutory stock options, taxable fringe benefits such as personal use of a business asset, and employer-paid membership fees.

(A) *Nonstatutory stock options with a readily ascertainable fair market value.* Compensation income will be allocated to Oregon in the year an option is required to be reported on the federal return if a nonresident taxpayer performed services in connection with the grant of such option in Oregon during the year in which the option was granted and:

(i) Is required to report under IRC section 83(a) as compensation income the value of a nonstatutory stock option granted in connection with the performance of services that has a "readily ascertainable fair market value", as described in Treasury Regulation 1.83-(7)(b), as of the date the option was granted; or

(ii) Elects under IRC 83(b) to report the value of such an option as of the date the option was granted.

If a nonresident taxpayer performed personal services partly within and partly without Oregon in the year in which the option was granted, the taxpayer must use the allocation applied to the taxpayer's other compensation under section (3) of this rule for the tax year in which the option was granted and apply that ratio to the compensation income required to be reported on the federal return. For example, if the taxpayer allocates his income under subsection (3)(a) of this rule and worked 25 percent of his time in Oregon during the year the option was granted, he must include in Oregon income 25 percent of the compensation income related to the option included in federal taxable income. Generally, Oregon will not tax the subsequent gain or loss on the sale of the stock unless the stock has acquired a business situs in Oregon. See OAR 150-316.127-(D).

(B) *Nonstatutory stock options without a readily ascertainable fair market value that are taxable at exercise, or in a pre-exercise dispositio*n. If a nonstatutory stock option granted in connection with performance of services that does not have a readily ascertainable fair market value at the date of the grant is recognized as compensation income for federal tax purposes and the taxpayer worked in Oregon during the year the option was granted, the taxpayer must allocate the compensation related to the option to Oregon in the same year it is taxable for federal purposes. The income that is recognized for federal purposes must be allocated to Oregon if the taxpayer worked in Oregon during the tax year the option was granted. The amount of compensation includable in Oregon source income is computed using the following formula:

$$\frac{\text{Total Days worked in Oregon from date of grant to date of federal recognition}}{\text{Total Days worked everywhere from date of grant to federal recognition}} \times \text{Compensation Related to Option Exercise} = \text{Amount taxable by Oregon}$$

Any further appreciation or depreciation in the value of the stock after the date of exercise represents investment income or loss and is not includable in the Oregon source income of a nonresident unless the stock acquired a business situs in Oregon (see OAR 150-316.127(D)).

(C) *Treatment of taxable fringe benefits.* Income recognized for federal purposes must be allocated to Oregon if the nonresident worked in Oregon during the tax year the benefit was received. The nonresident must use the same allocation rules applicable to the taxpayer's other compensation under section (3) of this rule to the taxable fringe benefits. For example, if the taxpayer allocates his income under subsection (3)(a) of this rule and worked 55 percent of his time in Oregon, 55 percent of the amount of the taxable fringe benefit that is included in federal taxable income is included in Oregon taxable income.

(e) *Unemployment compensation.* Total compensation includes unemployment compensation benefits to the extent the benefits pertain to the individual's employment in Oregon. If unemployment compensation benefits are received for employment in Oregon and in one or more other states, the unemployment compensation benefits must be apportioned to Oregon using any method that reasonably reflects the services performed in Oregon.

Example 5: Gary, a nonresident, worked in Oregon and Washington for the last 5 years. On January 1, 2005, he was laid off by his employer and received unemployment compensation of $2,000. Gary may use the Oregon wages as a percentage of total wages reported on his nonresident tax return for the prior year (2004) to determine the percentage of unemployment benefits to be included in Oregon income for 2005. In 2004, Gary earned a total of $45,000 of which $30,000 was earned in Oregon. The unemployment compensation taxable to Oregon is $1,334, computed as follows:

$$\frac{\$30{,}000\ \text{(Oregon wages)}}{\$45{,}000\ \text{(Total wages)}} \times \$2{,}000\ \text{(Total 2005 unemployment compensation)} = \$1{,}334$$

Oregon will tax Gary's unemployment compensation even though he received it in a tax year when he did not work in Oregon because the unemployment compensation is based on Oregon employment.

(f) *Severance pay.* Compensation includes severance pay to the extent the pay is attributable to services performed in Oregon. For purposes of this rule, "severance pay" means compensation payable on voluntary termination or involuntary termination of employment based on length of service, a percentage of final salary, a contract between the employer and the employee, or some other method but does not include "retirement income" as defined in ORS 316.127(9). If severance pay is received for employment within and without

Oregon, the severance pay is allocated to Oregon using any method that reasonably reflects the services performed in Oregon. Severance pay is taxable to Oregon even though a taxpayer received it in a tax year when the taxpayer did not work in Oregon if the severance pay is based on Oregon employment.

Example 6: JT, a nonresident, worked for Plumbing Inc. for twenty years: eight years in Idaho and twelve years in Oregon. At the end of his 20th year, Plumbing Inc. reorganized and eliminated JTs position. Because of JTs loyalty to the company for his twenty years of service, the company gave JT a lump-sum payment of $36,000. This lump-sum was based on 3% of his final annual salary ($60,000 x 3% = $1,800) multiplied by his number of years of service (20). The lump-sum payment was made because of prior services, thus it is allocable to Oregon to the extent the services were performed in Oregon. JT will include $36,000 in federal taxable income and $21,600 in the Oregon taxable income, computed as follows:

$$\frac{12 \text{ (years worked in Oregon for company)}}{20 \text{ (Total years worked for company)}} \times \$36{,}000 = \$21{,}600$$

Example 7: Shawn, a nonresident, worked for Lincoln Foods, Inc. for six years before resigning from the company. Lincoln Foods, Inc. and Shawn entered into a termination agreement that provided $25,000 for Shawn to release a specific claim he may have against the company for wrongful termination or other potential claims. The termination agreement also provided $10,000 to require that Shawn not work for any other food chain within a 100 mile radius of Lincoln Foods, Inc. for a period of 36 months. No employment agreement, benefit plan, or any facts or circumstances indicate that Shawn is entitled to a payment for services he rendered prior to resigning from the company. The payment that Shawn receives pursuant to the termination agreement is in exchange for the release of the wrongful termination claim and the covenant not to compete and is not allocable to Oregon because it is not based on services performed in Oregon.

Example 8: Assume the same facts in Example 7 except that the termination agreement also provided for a lump-sum payment of one month's salary per year worked ($42,000) in addition to a $25,000 payment for release of a wrongful termination claim and $10,000 payment for the covenant not to compete. No employment agreement, benefit plan, or other agreement indicates that Shawn is entitled to a payment for services he rendered prior to resigning from the company. The $25,000 payment for the release of the wrongful termination claim and the $10,000 payment for the covenant not to compete are not allocable to Oregon because neither is based on services performed in Oregon. The $42,000 lump-sum cash payment based on Shawn's salary and years of service associates the payment with the employer-employee relationship. It is allocable to Oregon because the facts and circumstances indicate that it is paid because of prior performance of services and no other reason.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.127
Hist.: 1-69; 11-73; 12-19-75; 1-1-77; 12-31-81; 12-31-84, Renumbered from 150-316.127(1) to 150-316.127; 12-31-85; 12-31-87, Renumbered from 150-316.127 to 150-316.127-(A); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 1-2006, f. & cert. ef. 1-20-06

Alimony Deduction—for Part-year and Nonresidents

150-316.130(2)(c)-(A) A nonresidents alimony deduction must be prorated for the portion of the year that they are a nonresident of Oregon if they have income from other than Oregon sources.

The alimony paid while a nonresident is to be prorated based on the ratio of their Oregon source income while a nonresident to their total income while a nonresident without deduction for alimony.

Alimony paid is deductible in full once residency is established.

Example: Douglas lives in Washington. From January 1 to May 1 he earns $28,000 in Washington wages and pays $12,000 in alimony. From May 1 to June 1 he earns $7,000 in Oregon wages and pays $3,000 in alimony.

On June 1 Douglas moves to Oregon and establishes residency. Between June 1 and November 1 he earns $50,000 in Oregon wages and pays $15,000 in alimony.

In November, Douglas goes back to work for his former Washington-based employer but continues to live in Oregon. From November 1 through December 31 he earns $24,000 in Washington wages and pays $6,000 in alimony.

Summary: During the time he was a nonresident, and without regard to his alimony deductions, Douglas earned $7,000 in Oregon source income and $35,000 in total income.

Douglas made $15,000 in alimony payments while a nonresident and $21,000 in alimony payments after establishing Oregon residency.

Douglas' Oregon alimony deduction is $24,000, consisting of $3,000 for the nonresident period and $21,000 for the resident period. The $3,000 is computed as follows:

$ 7,000 / $35,000	x	$15,000=	$3,000
Nonresident period			3,000
Resident period			21,000
Total Oregon deduction			24,000

Douglas' federal alimony deduction is $36,000.

Hist: Filed 9/14/90 and Eff. 12/31/90

150-316.193

Voluntary Withholding for Retired Members of the Uniformed Services

(1) Upon written request to the appropriate retired pay office of uniformed service, a member may request voluntary state withholding tax. This request shall include the following information:

(a) Member's full name,

(b) Social Security number,

(c) Amount of monthly withholding being requested,

(d) The state to receive withheld monies,

(e) Member's current address,

(f) Signature of member, or in the case of incompetence, the signature of his or her guardian or trustee.

(2) Retired members of uniformed service should send their requests for with-holding to the appropriate retired pay office. Their addresses follow:

(a) *Army:*
Retired Pay Operations USA FAC
U. S. Army Finance and Accounting Center (Dept. 90)
Indianapolis, IN 46249

(b) *Navy:*
Defense Finance and Accounting Service
Cleveland Center, Accounting and Finance Division
Anthony J. Celebrezze Federal Bldg.
Cleveland, OH 44199

(c) *Air Force:*
Commander
U. S. Air Force Accounting and Finance Center
Directorate of Retired Pay
Denver Center-Defense Finance and Accounting Service
Denver, CO 80279

(d) *Marine Corps:*
Defense Finance and Accounting Service
Marine Corps Retired Pay
Kansas City Center, Accounting and Finance Division (AF-TA)
Kansas City, MO 64197

(e) *Coast Guard:*
Commanding Officer (Retired)
U. S. Coast Guard
Commanding Officer (F)

444 SE Quincy Street
Topeka, KS 66683
(f) *PHS:*
U.S. Public Health Service
Compensation Branch
5600 Fisher Lane (Rm. 4-50)
Rockville, MD 20857
(g) *NOAA:*
Commanding Officer
Navy Finance Center (Code 301)
Anthony J. Celebrezze Federal Bldg.
Cleveland, OH 44199

(3) The minimum amount of monthly withholding per retiree shall be no less than $10 and the amount of the request for state tax withholding shall be an even dollar amount.

(4) A permanent withholding tax account shall be established in the name of each branch of the uniformed service for deposit of monies withheld by the request of the retirees. An account number and appropriate reporting forms shall be issued to
each branch at the inception of its account.

(5) Reporting shall be done in a medium that complies with state reporting standards applicable to employers in general. For Oregon Department of Revenue purposes, reporting shall be required on the withholding portions of the Oregon Quarterly Combined Tax Report. This return shall be filed by the appropriate branch of service within 30 days after the end of each quarterly payroll period.

(6) Payment of withholding trust funds shall be made at the same time the quarterly return is filed. Payment shall be accompanied by appropriate identifying documentation, i.e., Form OTC (Oregon Tax Coupon).

Hist: Filed 10/7/85 and Eff. 12/31/85; Amended 12/31/91

Withholding: Payment Due Dates

150-316.197(1)(a)-(B) (1) Oregon withholding tax payment due dates are determined by corresponding federal due dates as outlined in the following rules:

Rule 1—If the federal tax due is less than $1,000 at the end of any calendar quarter the Oregon tax due must be paid by the end of the month following the end of the quarter.

Rule 2—If the federal tax liability is $50,000 or less in the lookback period, the Oregon tax due must be paid by the 15th of the month following, unless the employer meets the conditions under Rule 1 or Rule 4.

Rule 3—If the federal tax liability is more than $50,000 in the lookback period, the Oregon tax due must be paid on the following semi-weekly schedule, unless the employer meets the conditions under Rule 1 or Rule 4:

If the payday is on Wednesday, Thursday or Friday, the Oregon tax must be paid by the following Wednesday.

If the payday is on Saturday, Sunday, Monday or Tuesday, the Oregon tax must be paid by the following Friday.

Rule 4—If the federal tax due is $100,000 or more at the end of any pay period, the Oregon tax must be paid by the close of the next banking day.

Note: If at any time an employer becomes subject to Rule 4, they immediately become a semi-weekly payer for the remainder of the calendar year and for the following calendar year, except for payments due within one banking day.

(2) Lookback period is the twelve-month period ended the preceding June 30 for nonagricultural employers. For agricultural employers the lookback period is the calendar year preceding the calendar year just ended.

(3) A legal holiday that falls between the end of the pay period and the payment due date extends the due date by one banking day.

(4) A banking day is any day that is not a Saturday, Sunday or a legal holiday. A legal holiday is a holiday in the District of Columbia.

(5) Federal tax is the sum of the federal withholding plus FICA plus Medicare taxes.

(6) ORS 316.197 establishes payment due dates only and does not incorporate the federal "safe harbor" rule for deposit shortfalls. If the full amount of the state tax withheld is not paid when the federal deposit is due the unpaid balance is delinquent.

(7) Payment due date examples:

MONTHLY DEPOSITS

For employers whose total federal liability during the lookback period did not exceed $50,000. Lookback period is defined for 1998 as July 1, 1996 to June 30, 1997 (January 1, 1996 to December 31, 1996 for agricultural employers).

Payroll Date	Due Date for Oregon Payments and Federal Deposits
January 5, 1998	February 16, 1998
January 12, 1998	February 16, 1998
January 25, 1998	February 16, 1998
February 4, 1998	March 15, 1998
February 15, 1998	March 15, 1998
February 23, 1998	March 15, 1998
March 1, 1998	April 15, 1998
March 17, 1998	April 15, 1998
March 29, 1998	April 15, 1998

Note: If the federal tax liability for a payroll period exceeds $100,000, the federal and Oregon deposits are due the next banking day. Once an employer reaches $100,000 in federal tax during a payroll period, they are no longer considered to be a monthly depositor. For the rest of the calendar year and all of the following calendar years, all deposits are due semi-weekly, or within one banking day, if the federal tax is over $100,000.

SEMI-WEEKLY DEPOSITS

For employers whose total federal liability during the lookback period exceeds $50,000. Lookback period is defined for 1998 as July 1, 1996 to June 30, 1997 (January 1, 1996 to December 31, 1996 for agricultural employers).

Payroll Date	Due Date for Oregon Payments and Federal Deposits
January 5, 1998	January 8, 1998
January 15, 1998	January 22, 1998*
January 25, 1998	January 29, 1998
February 4, 1998	February 10, 1998
February 15, 1998	February 19, 1998
February 23, 1998	February 26, 1998
March 1, 1998	March 5, 1998
March 17, 1998	March 24, 1998
March 29, 1998	April 2, 1998

Note: If any federal tax liability for a payroll period exceeds $100,000, the federal and Oregon deposits are due the next banking day.

*An extra day is allowed due to a holiday during the period following the payroll date.

Hist: Filed 10/5/83 and Eff. 12/31/83, Amended 12/31/84; Amended and Renumbered from OAR 150-316.197(2) to OAR 150-316.197(1)(a)-(B), 12/31/91; Amended 12/31/93, 12/31/98

Accumulation Distribution Credit for Oregon Taxes Paid by Trust During Income Accumulation Years

150-316.298 (1) The accumulation distribution credit is determined by calculating the amount of tax that would have been paid by the trust if the distribution had been made in the year the income was earned, and

then subtracting that amount from the tax that the trust actually paid in that year. The total available credit is distributed to the beneficiaries pro rata.

(2) Trusts, whose Oregon taxable income in the year of income accumulation included capital gains that were not part of its distributable net income (DNI), must determine the amount of Oregon tax paid on ordinary income to arrive at the maximum Oregon tax credit available to the beneficiary. For purposes of this computation, the percentage of Oregon taxable income representing capital gains not included in DNI must be determined.

Example 1: This example is a continuation of the first example in OAR 150-316.737. A review of the facts in that example would be helpful. Based on the facts in the example in OAR 150-316.737, the maximum credit available to the beneficiary for the Oregon tax paid by the trust is calculated as follows:

(a) Calculate the Oregon fiduciary income tax paid on ordinary income.

Tax paid with 1987 return		$1,102
Percentage: Capital gains ÷ taxable income		
12,100 ÷ $13,800	87.68%	
Multiply tax paid by percent		(966)
Oregon fiduciary income tax on ordinary income		$ 136

(b) Calculate revised Oregon taxable income of fiduciary.

1987 federal taxable income of fiduciary		$18,036
Less: 1993 gross accumulation distribution amount		(2,937)
Revised federal taxable income		$15,099
Less: Revised fiduciary's share of fiduciary adjustment ($10,862 minus $8,690)		(2,172)
Revised Oregon taxable income of fiduciary		$12,927
Revised Oregon fiduciary income tax		$ 1,023
(c) Percentage: Capital gains ÷ revised taxable income		
$12,100 ÷ $12,927	93.60%	
Multiply revised tax by percentage		(958)
Revised Oregon fiduciary income tax on ordinary income		$ 65

(d) Subtract the revised tax on ordinary income from the tax on ordinary income actually paid by the fiduciary with the return.

Tax paid with 1987 return	$136
Less: Revised tax (from above)	(65)
Maximum calculated Oregon credit	$ 71

(2) The credit allowable to the beneficiary cannot reduce the beneficiary's tax below that which would have otherwise been due, without regard to the addition of the accumulation distribution.

Example 2: The beneficiary's total 1993 tax is $150. The total tax calculated without inclusion of the accumulation distribution in taxable income is $100. Although the maximum calculated credit is $71, the beneficiary can only claim a credit of $50 (the difference between $150 and $100).

Hist: Filed 10/14/92 and Eff. 12/31/92; Amended 12/31/94, 12/31/96

Oregon Multiple Funeral Trust Tax Return

150-316.362(1)(c) (1) *General Rule.* A trust established as a "funeral trust" and filing a fiduciary return under federal law as a grantor trust may join in filing an Oregon multiple funeral trust tax return.

(2) *Election.* The election provided in this rule is made each tax year. It is deemed to be made by the trustee of the funeral trust as of the date the multiple trust tax return is filed. The trustee of an individual funeral trust may elect not to join in filing an Oregon multiple funeral trust tax return by filing a separate Oregon fiduciary tax return under the trust name used for federal filing purposes.

(3) *Filing Requirements:*

(a) The Oregon multiple funeral trust return shall be made and filed on Oregon Form 41 (Oregon Fiduciary Income Tax Return) by the authorized fiduciary. If two or more fiduciaries are acting jointly, the return may be made by any one of them. If an Oregon multiple funeral trust tax return is not filed, the trustee

of each individual funeral trust must file an Oregon fiduciary return for such trust under the usual filing requirements of ORS 316.362.

(b) The Form 41 (Oregon Fiduciary Income Tax Return) filed for the Oregon multiple funeral trust shall include the trustee's name in the name of the trust.

Example: Name of trust: Serene Acres Funeral Home Trusts
Name of fiduciary (trustee): Serene Acres Funeral Home

(c) The Form 41 for the Oregon multiple funeral trust tax return shall include a statement on the face of the return to the effect that under the terms of the trust instruments, the trusts included in the multiple filing are grantor trusts and all income is taxable to the grantors under the Internal Revenue Code.

(d) The Oregon multiple funeral trust tax return will not require a Federal Identification Number. The Department of Revenue will assign a Business Identification Number (BIN) to the multiple return. The BIN will be made available to the fiduciary of the multiple funeral trust return on request for identification purposes.

(e) In addition to the Form 41 required to be filed by the multiple funeral trust, a schedule shall be attached to the return. The schedule shall report the following information for each trust included in the multiple funeral trust tax return: The name, address and social security number of the grantor, the name and address of the trustee, the name and address of the funeral home, the trust federal identification number, the trust taxable year, the beneficiary's social security number, and the amount and description of income earned by the trust during the taxable year.

(4) *Due Date:* The Oregon multiple funeral trust tax return is due the 15th day of the fourth month after the close of the tax year.

(5) *Estimated Payments:* Under ORS 316.559, trusts are not required to make estimated payments.

(6) *Effective Date:* The provisions of this rule shall apply to qualifying grantor funeral trusts that join in filing Oregon multiple funeral trust tax returns for tax years beginning on or after January 1, 1994.

Hist: Filed 9/15/94 and Eff. 12/31/94

Allocation of Joint Estimated Tax Payments

150-316.567 (1) Husband and wife may make joint estimated tax payments for any part of the tax year although they may elect to file separate tax returns. If separate returns are filed the joint estimated tax payments may be treated as the estimated tax of either the husband or wife or may be divided between the spouses in such manner as they agree.

(2) If the spouses do not agree on how to divide their joint estimated tax payments, the payments shall be allocated between them by the department. Spouses will be considered not to have agreed on a method for dividing their joint estimated payments when both spouses file separate returns claiming credit for estimated tax payments which when combined do not equal the amount of joint estimated tax payments received by the department during the tax year.

(3) The department shall divide the joint estimated tax payments by allocating to each spouse an amount of the payments in the proportion that the spouses' separate tax liability computed after credits, other than the credits for withholding and estimated tax payments, bears to the combined separate tax liabilities of both spouses.

The formula to be used is:

$$\frac{\text{Separate tax liability}}{\text{Combined separate tax liabilities}} \times \text{joint estimated tax payments}$$

During 19X5, Adam and Betty make joint estimated tax payments of $2,000, Betty also has tax withholding of $1,000. Adam and Betty decide to file separate returns for 19X5 but fail to agree on how to divide their 19X5 joint estimated tax payments. Adam has a separate tax liability after credits of $1,500. Betty has a separate tax liability of $1,100 before credit for withholding of $1,000. Using the formula stated above, Adam's share of the estimated tax payments is $1,154 ($1,500 ÷ $2,600 x $2,000). Betty's share of the estimated tax payments is $846 ($1,100 ÷ $2,600 x $2,000). Adam will owe a net amount of $346 ($1,154 – $1,500) and Betty will receive a refund of $746 ($846 + $1,000 – $1,100).

(4) If a husband and wife make joint estimated tax payments and the department issues a notice of assessment against either or both of the spouses under the provisions of ORS 305.265(10), the department shall

allocate the estimated tax payments between the spouses. The allocation of payments shall be made using the best information available to the department.

(5) In the event one of the spouses received credit for more than their allocable share of the joint estimated tax payments as determined by the department, the difference between their allocable share and the amount for which credit was received when the return was processed, shall be remitted to the department. This amount shall be remitted with the filing of an amended return or through payment of a notice of deficiency issued by the department.

Hist: Filed 10/5/85 and Eff. 12/31/85; Amended 12/31/87, 12/31/96

Estimated Tax: Joint Return to Single or Separate Return

150-316.587(8)-(B) For estimated tax payments due for tax years beginning on or after January 1, 1988, in computing the required instalment for the current year, the tax liability for the prior year may be used even though the current year is a single or separate return and the prior year's return is a joint return. The prior year's return must be filed timely including extensions, must have a tax liability, and must cover 12 months. The prior year's tax will be allocated in the following manner:

(a) Recompute the prior year's tax liability as if each spouse had filed a single or separate return; and

(b) Multiply the joint tax liability for the prior year by a ratio of each spouse's single or separate liability to the combined single or separate liabilities.

Example: George and Martha filed a joint return for the calendar year 1987 showing taxable income of $20,000 and a tax of $1,520. Of the $20,000 taxable income, $18,000 was attributable to George and $2,000 was attributable to Martha. George and Martha will file separate returns for 1988. The tax shown on the return for the preceding taxable year, for determining the required instalments for 1988, is determined as follows:

George's Taxable Income for 1987	$18,000
Tax on $18,000 (on basis of separate return)	$ 1,480
Martha's Taxable Income for 1987	$ 2,000
Tax on $2,000 (on basis of separate return)	$ 100
Aggregate Tax of George and Martha (on basis of separate returns)	$ 1,580
Portion of 1987 tax shown on joint return attributable to George $1,480/1,580 x $1,520	$ 1,429
Portion of 1987 tax shown on joint return attributable to Martha $100/1,580 x $1,520	$ 91

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

Oregon Lottery Winnings and Losses

150-316.680-(A) (1) For purposes of this rule:

(a) "Oregon lottery losses" means the amount of wagering losses defined in Internal Revenue Code Section 165(d) that is attributable to the Oregon State Lottery which was includable in federal taxable income.

(b) "Oregon lottery" means all games administered by the Oregon State Lottery Commission including those games jointly administered by Oregon and other states.

(c) "Other wagering earnings" means the amount of wagering earnings that is included in Oregon taxable income.

(2)(a) For purposes of Ch. 316, Oregon lottery winnings referred to in Ch. are not included in Oregon taxable income, if

(A) the ticket was purchased before January 1, 1998; or,

(B) the ticket was purchased on or after January 1, 1998 and the winnings from that ticket minus the purchase price are $600 or less.

(b) Oregon lottery losses and other wagering losses are allowable for Oregon purposes to the extent that total wagering losses do not exceed total wagering earnings included in Oregon taxable income.

Example: Angela is receiving lottery prize payments of $20,000 per year for the next 15 years from a Powerball ticket purchased before 1998. She also has winnings from three Oregon lottery tickets she bought after 1997. Those three tickets paid $300, $400 and $750, respectively. During the current year, Angela won

$800 in other gambling winnings. She spent $1,000 on Oregon lottery tickets and had $1,300 in other gambling losses. Angela determines her net Oregon adjustment to be a subtraction of $19,950, as follows:

Winnings:	Federal Income	Oregon Income	Oregon Adjustment
Lottery annuity payments	$20,000	$0	
Ticket 1	300		
Ticket 2	400	0	
Ticket 3	750	750	
Other gambling winnings	800	800	
Total winnings	$22,250	$1,550	($20,700)
Losses (limited to income taxed by Oregon):	$2,300	($1,550)	750
Net Oregon adjustment			($19,950)

[**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 10/7/85 and Eff. 12/31/85, Amended 12/31/90, 12/31/93, 12/31/98

U.S. Government Obligations

150-316.680(1)(a) (1) Interest and dividend income on obligations of the federal government which are exempt from state income taxation but not from federal income taxation shall be subtracted from federal taxable income in arriving at Oregon taxable income.

(2) Amounts that may not be subtracted include:

(a) Timely payments of interest by the insurer of obligations backed by the U.S. government;

(b) Interest received on federal tax refunds.

Example: Paul and Margaret filed a joint income tax return and received a federal tax refund from the U.S. Treasury Department for $1,200. This amount included $1,000 tax and $200 interest. The $200 interest amount does not qualify for the subtraction for interest or dividend income on U.S. government obligations as provided under ORS 316.680(1)(a).

(c) Interest received on obligations of territories and possessions of the United States. Interest on these obligations is not taxable for federal or state purposes and is not included in federal adjusted gross income so no subtraction is made on the Oregon return. Interest on the following obligations is not subtracted under ORS 316.680(1)(c):

(A) Territory of Guam

(B) Commonwealth of Puerto Rico

(C) Territory of Puerto Rico

(D) Territory of Samoa

(E) Territory of Virgin Islands

(d) Income received from repurchase agreements. These are agreements in which a seller other than the United States sells securities (which can be federal obligations), and agrees to repurchase the same or similar securities at a price that includes interest for the period of the sale. The seller, in this case, is the true owner; and, the buyer merely receives interest under a contract with the seller. It is not interest paid by the United States, but it is income (or the equivalent to interest) paid by the seller at the time of repurchase.

(3) For interest received from organizations that invest in U.S. government securities refer to OAR 150-316.680-(B).

(4) If expenses connected with U.S. government obligations are claimed as an itemized deduction, an adjustment is required. These expenses include interest on indebtedness incurred to carry the bonds or notes and expenses incurred in the production of income from the bonds or notes. Oregon doesn't allow a deduction for these expenses, since the income from the bonds or notes is exempt from Oregon tax. The subtraction allowable under ORS 316.680(1)(a) shall be reduced by the amount of the expenses deducted in arriving at federal taxable income.

Example: Charles reported $500 interest income from Series EE Bonds. He borrowed $6,000 to purchase the bonds. During the year he paid $200 interest on the amount he borrowed. He claimed the $200 interest expense as an itemized deduction. His allowable subtraction under ORS 316.680(1)(a) of $300 is computed as follows:

Series EE Bond interest	$500
Interest expense connected with the bonds	– 200
Allowable ORS 316.680(1)(a) subtraction	$300

(5) Below is a list of obligations that may or may not qualify for the subtraction permitted under ORS 316.680(1)(a).

Qualifies	Type of Bond
Yes	Banks for Cooperatives District of Columbia
Yes	Commodity Credit Corporation
No/Yes	Export-Import Bank: If Eximbank is acting as guarantor, the interest is nontaxable only if actually paid by Eximbank.
No	Farmers Home Administration
Yes	Federal Deposit Insurance Corporation
Yes	Federal Farm Credit Bank
Yes	Federal Financing Bank
No	Federal Home Loan Mortgage Corporation
Yes	Federal Home Loan Bank
Yes	Federal Intermediate Credit Bank
Yes	Federal Land Bank
No	Federal National Mortgage Association (Fannie Mae)
Yes	Federal Savings and Loan Insurance Corporation
No	Federal Tax Refunds
*No/Yes	Government National Mortgage Association
Yes	International Bank of Reconstruction
No	NRTA-AARP U.S. Government Money Market Trust
Yes	Production Credit Association
Yes	Resolution Funding Corp.
No	Repurchase Agreements
Yes	Series E and H Bonds
Yes	Series EE and HH Bonds
Yes	Student Loan Marketing Association
Yes	Tennessee Valley Authority
Yes	Treasury bills and notes
Yes	U.S. Postal Service bonds
No	U.S. Merchant Marine bonds
*No/Yes	Washington (D.C.) Metropolitan Transit Authority
Yes	Zero coupon obligations of the U.S. (e.g. "CATs" "STRIPS" "TIGRs", etc.)

* If the creditor has defaulted and the U.S. government is paying the interest, it is nontaxable.

Hist: Filed 9/22/86 and Eff. 12/31/86; Amended 12/31/87, 12/31/89, 12/31/91, 12/31/94

Addition for Original Issue Discount (OID)

150-316.680(2)(a) (1) The "original issue discount" (OID), as defined in section 1273 of the Internal Revenue Code, is considered as paid in lieu of interest on state and municipal obligations of other states, and is taxable for Oregon purposes.

(2) Holders of state and municipal bonds of other states (foreign states) shall include in income the sum of the daily portion of original issue discount determined for each day during the taxable year the bond is held. The original issue discount (OID) shall be prorated over
the life of the bond using the federal rules for taxable securities under Section 1272 of the Internal Revenue Code and corresponding regulations.

Example: On July 1, 1987, Jack purchased a California municipal bond for $800. The bond matures in two years and has a stated redemption price of $1,000. The bond contains $200 of original issue discount (stated redemption price of $1,000 less issue price of $800). Because the bond does not provide for periodic payments of interest, a six-month accrual period ending December 31 and June 30 of each calendar year is

used to determine the semiannual yield factor of 5.74 percent ($800 compounded semiannually for two years at 5.74 percent is $1,000). The amount of the original issue discount included in income for the period ending December 31, 1987, is the issue price ($800), multiplied by the semiannual yield factor of 5.74 percent, or $45.90. The adjusted issue price (basis) at the beginning of the second accrual period is equal to the issue price plus the portion of original issue discount included in the first accrual period ($845.90 = $800 + $45.90). The includable original issue discount and basis is determined for each subsequent period in the same manner.

	Adjusted issue price (basis) at beginning of each accrual period	**OID included in income**
July 1, 1987	$ 800.00	$ 45.90
Jan. 1, 1988	845.90	48.53
July 1, 1988	894.43	51.31
Jan. 1, 1989	945.74	54.26
July 1, 1989	1,000.00	–
		$ 200.00

[**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

Modification of Federal Taxable Income: Adding Federal Estate Tax Attributable to Income in Respect of a Decedent Not Taxable by Oregon

150-316.680(2)(c) The deduction allowed in the computation of federal taxable income for federal estate tax attributable to income in respect of a decedent must be added to federal taxable income to the extent that the deduction is allocable to income not taxable by Oregon.

The federal estate tax deduction allowed in arriving at federal taxable income is computed in accordance with section 691(c) of the Internal Revenue Code and section 1.691(c)-1 of the Treasury Regulations. The amount thus computed must be allocated to the income in respect of a decedent not taxable by Oregon.

The following formula will be used in determining the amount to be added to federal taxable income on the Oregon return:

A Income in respect of a decedent included in federal taxable income
B Income in respect of a decedent not taxable by Oregon
C Federal estate tax deducted on the federal return

Formula:

$$\frac{(B \times C)}{A} = \text{Amount added to federal taxable income on the Oregon return}$$

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

Hist: Eff. 11/73, Renumbered from OAR 150-316.067(2)(g) 12/31/80; Renumbered from OAR 150-316.067(2)(c) to OAR 150-316.680(2)(c), 12/31/83; Amended 12/31/91

U.S. Government Interest in Retirement Accounts

150-316.681 (1) Interest or dividends on U.S. obligations under ORS 316.680(1)(a) included in distributions from self-employed plans or individual retirement accounts as described under sections 401 to 408 of the Internal Revenue Code shall be subtracted from federal taxable income to determine Oregon taxable income.

(2) Annuities: The amount of the subtraction shall be determined by applying a “state exempt-interest ratio” to distributions received as annuity payments to the extent the payments are included in federal adjusted gross income for the taxable year.

The “state exempt-interest ratio” is the year-to-date balance of qualifying interest or dividends under ORS 316.680(1)(a) included in the account balance prior to the current year distribution divided by the account balance prior to the current year distribution.

The year-to-date balance of qualifying interest or dividends is equal to the cumulative total of those earnings less any prior year's subtraction. The formula is as follows:

$$\frac{a - b}{c} \times d = \text{Oregon exempt portion of distribution for current year}$$

a = total exempt earnings on account to date.
b = total exempt part of prior year's distributions.
c = total account balance prior to the current year distribution.
d = current year distribution.

The ratio shall be applied on the later of the annuity starting date or the date on which the taxpayer established residency. The annuity starting date shall be the date determined under Treas. Reg. Section 1.72-4(b).

Example 1: Sylvester Taxpayer set up an individual retirement account (IRA) which invested solely in U.S. Government securities throughout the life of the IRA. Sylvester contributed $2,000 per year for a period of 35 years to the IRA. At retirement his account balance is $542,041, of which $472,041 consists of interest and $70,000 the original contributions. His life expectancy is 20 years and the annual payout will be $63,668 paid at the end of each year. The rate of earnings equals 10 percent and for simplicity, the investments continue to earn at the rate of 10 percent.

Since the IRA continued to invest solely in U.S. Government securities after Sylvester retired, the numerator of the ratio for the first year's distribution would include all prior year's earnings plus the earnings for that year. The earnings for the first year of retirement equals $54,204. Therefore, the numerator in the ratio equals 526,245 (472,041 + 54,204). The account balance at the end of the first year equals $532,577 (Note: this is after the current year's distribution). We add back the current year's distribution to obtain the balance of the account just prior to the current year's distribution (the denominator in the formula).

Sylvester's tax-exempt interest for his first year of retirement is $56,193, computed as follows:

$$\frac{526{,}245 - 0}{532{,}577 + 63{,}668} \times 63{,}668 = \$56{,}193$$

During Sylvester's second year of retirement the account earns $53,258, and the account balance at the end of the year is $522,167. His tax-exempt interest that year is $56,873, computed as follows:

$$\frac{(526{,}245 + 53{,}258) - 56{,}193}{522{,}167 + 63{,}668} \times 63{,}668 = \$56{,}873$$

In the third year the account earns $52,217, and the account balance at the end of the year is $510,716. Sylvester's tax-exempt interest that year is $57,491, computed as follows:

$$\frac{(579{,}503 + 52{,}271) - 56{,}193 - 56{,}873}{510{,}716 + 63{,}668} \times 63{,}668 = \$57{,}491$$

Table 1

This table illustrates *Example 1.*

Distribution Year	Exempt Earnings	Distribution	Account Balance 12/31	Earning Rate	Earnings	Subtraction	Ratio
			542,041			0	
1	526,245	63,668	532,577	.10	54,204	56,193	.8826
2	523,310	63,668	522,167	.10	53,258	56,873	.8933
3	518,653	63,668	510,716	.10	52,217	57,491	.9030
4	512,234	63,668	498,120	.10	51,072	58,052	.9118
5	503,994	63,668	484,264	.10	49,812	58,563	.9198
6	493,858	63,668	469,022	.10	48,426	59,027	.9271
7	481,733	63,668	452,256	.10	46,902	59,449	.9337
8	467,510	63,668	433,814	.10	45,226	59,832	.9398
9	451,059	63,668	413,527	.10	43,381	60,181	.9452
10	432,230	63,668	391,212	.10	41,353	60,498	.9502
11	410,853	63,668	366,665	.10	39,121	60,786	.9547
12	386,734	63,668	339,664	.10	36,667	61,048	.9589
13	359,652	63,668	309,962	.10	33,966	61,286	.9626

14	329,361	63,668	277,290	.10	30,996	61,503	.9660
15	295,587	63,668	241,351	.10	27,729	61,700	.9691
16	258,023	63,668	201,818	.10	24,135	61,879	.9719
17	216,326	63,668	158,332	.10	20,182	62,041	.9745
18	170,117	63,668	110,497	.10	15,833	62,189	.9768
19	118,977	63,668	57,879	.10	11,050	62,324	.9789
20	62,441	63,668	0	.10	5,789	62,446	.9808
Total earnings prior to annuity starting date					472,041		
Total earnings and total amount subtracted					1,203,360	1,203,360	

Example 2: Assume the facts in Example 1, except the IRA which Sylvester set up ceased investing in U.S. Government securities the year in which Sylvester retired. Therefore, the balance of exempt interest earnings is equal to 472,041 for computing the first year's subtraction (the numerator of the ratio). It would not include the first year's earnings as in Example 1 since those earnings are not earnings on U.S. Government securities. For simplicity we will assume the investment is earning at the same rate (10 percent each year). Therefore, the account balance is the same as in Example 1.

Sylvester's tax-exempt interest for his first year of retirement is $50,405, computed as follows:

$$\frac{472{,}041 - 0}{532{,}577 + 63{,}668} \times 63{,}668 = \$50{,}405$$

During Sylvester's second year of retirement the account earns $53,258, and the account balance at the end of the year is $522,167. His tax-exempt interest that year is $45,823, computed as follows:

$$\frac{472{,}041 - 50{,}405}{522{,}167 + 63{,}668} \times 63{,}668 = \$45{,}823$$

During Sylvester's third year of retirement the account earns $52,217, and the account balance at the end of the year is $510,715. His tax-exempt interest that year is $41,657, computed as follows:

$$\frac{472{,}041 - 50{,}405 - 45{,}823}{510{,}715 + 63{,}668} \times 63{,}668 = \$41{,}657$$

(3) Lump-sum distributions: For lump-sum distributions from individual retirement accounts and self-employed retirement plans, the subtraction shall be equal to the total qualifying interest under ORS 316.680(1)(a) included in the account balance at the time of distribution.

Table 2

This table illustrates *Example 2.*

Distribution Year	**Exempt Earnings**	**Distribution**	**Account Balance 12/31**	**Earning Rate**	**Earnings**	**Subtraction**	**Ratio**
1	472,041	63,668	532,577	.10	54,204	50,405	.7917
2	421,636	63,668	522,167	.10	53,258	45,823	.7197
3	375,813	63,668	510,716	.10	52,217	41,657	.6543
4	334,155	63,668	498,120	.10	51,072	37,870	.5948
5	296,285	63,668	484,264	.10	49,812	34,427	.5407
6	261,858	63,668	469,022	.10	48,426	31,298	.4916
7	230,560	63,668	452,256	.10	46,902	28,452	.4469
8	202,107	63,668	433,814	.10	45,226	25,866	.4063
9	176,242	63,668	413,527	.10	43,381	23,514	.3693
10	152,727	63,668	391,212	.10	41,353	21,377	.3358
11	131,350	63,668	366,665	.10	39,121	19,433	.3052
12	111,917	63,668	339,664	.10	36,667	17,667	.2775
13	94,250	63,668	309,962	.10	33,966	16,061	.2523
14	78,190	63,668	277,290	.10	30,996	14,601	.2293
15	63,589	63,668	241,351	.10	27,729	13,273	.2085
16	50,316	63,668	201,818	.10	24,135	12,067	.1895

17	38,249	63,668	158,332	.10	20,182	10,970	.1723
18	27,279	63,668	110,497	.10	15,833	9,972	.1566
19	17,307	63,668	57,879	.10	11,050	9,066	.1424
20	8,241	63,668	(0)	.10	5,789	8,242	.1294
Total amount subtracted at the end of the annuity						472,042	

Example 3: Assume the same facts as in Example 2, except that Sylvester elected to receive the $542,041 balance of his account as a lump-sum distribution. The subtraction for the taxable year is $472,041, the amount of U.S. government interest in the account.

(4) Change of status from nonresident to resident: Nonresidents who become residents sometime after the annuity starting date shall use the same formula for computation of the ratio as if they were residents at the annuity starting date. For purposes of the formula shown in subsection (2)(a), "a" will equal the year-to-date balance of qualifying interest or dividends which is equal to the cumulative total of those earnings less any prior years deemed or actual subtraction.

Example 4: Assume the same facts in Example 2, except Sylvester became a resident in the second year of distribution. Sylvester's subtraction would equal $45,823 in that year. Note: This is the same amount of subtraction Sylvester received in the second year of distribution as computed in Example 2. Sylvester's subtraction would equal $41,657 in the third year of distribution (same as if he were a resident at the annuity starting date).

[**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; Amended 12/31/91, 2/1/95, 12/31/97

Federal Tax Deduction: Accrual Method of Accounting Required; Deductions Allowable to Cash Basis Taxpayers; Refunds to be Included

150-316.685(1) (1) Regardless of the method of accounting used by the taxpayer to report income to the federal government and to the State of Oregon, the federal income tax deduction for tax years beginning on or after January 1, 1969, shall be computed under the accrual method of accounting. Under ORS 316.685, an individual's federal income tax for the year must first be computed. The amount of federal income tax for that year will be the taxpayer's deduction on the Oregon income tax return for the same year. Time of actual payment will not be significant.

(2) For tax years beginning January, 1979, or later, any additional federal tax for a prior year shall be deducted when the tax is paid or when the adjustment is finally determined, whichever is later.

Example (1): Cash basis taxpayers' computation of federal income taxes on their 1979 federal tax return was $550. Their federal withholding for 1979 was $600. The amount of taxes deductible on their 1979 Oregon return is $550. In 1980 their federal tax liability as computed on their federal return was $780. Their withholding for the year 1980 was $650. Their federal tax deduction for 1980 is $780.

Example (2): Assume the same situation as in Example (1) except that, in 1979, federal tax deficiencies amounting to $170 for 1976 and $180 for 1978 were paid. The total tax deduction for 1979 is:

1976 tax	$170
1978 tax	180
1979 tax	550
Total 1979 deduction	$900

(3) If a person receives a refund of federal income taxes previously deducted on an Oregon return, the amount received shall be added to income in the year in which the refund was received. However, a taxpayer should add only those refunds for which a prior tax benefit has been received.

Example: John and Mary compute their joint 1984 federal income tax to be $1,200. They had $1,700 withheld from wages and received a federal refund of $500. The Internal Revenue Service audited the return, resulting in a refund of $150 in 1986. They are required to add $150 to their 1986 Oregon taxable income.

(4) Federal Tax Deduction

(a) For tax years beginning on or after January 1, 1987, the federal tax deduction on each return is limited to the lesser of:

(A) The amount of federal tax accrued attributable to the current year; or

(B) $3,000 ($1,500 if married filing separately).

(b) Refunds of federal tax for a prior year for which a previous tax benefit was received are included as income in the year received. The amount of the addition on the Oregon return is the amount of tax benefit received. Tax benefit is the amount of federal tax deducted in a prior year for which you received a refund in a later year.

Example 1: Dan and Karen have a 1987 federal tax liability of $4,000. They are limited to a $3,000 federal tax subtraction on their 1987 Oregon return. In 1989, their 1987 return is audited by IRS and they receive a $1,200 refund. Tax benefit received is calculated as follows:

1987 federal tax subtracted on the 1987 Oregon return	$3,000
Correct 1987 federal tax	2,800
Tax benefit received	$ 200

(c) Additional tax for a prior year. The deduction for additional federal income taxes paid or determined for tax years beginning on or after January 1, 1987, is the lesser of:

(A) The amount of federal tax accrued attributable to the current year plus any deficiencies paid or determined for prior years during the current year; or

(B) $3,000 ($1,500 if married filing separately).

Example 2: Randy's 1989 federal tax liability is $2,100. During 1989, his 1987 federal return is audited by the IRS. After the audit, he owes $1,500 additional federal tax. He pays that amount in 1989. On his 1989 Oregon return, Randy may subtract a total of $3,000 federal tax. Of this, $2,100 is his 1989 federal tax liability. He may subtract $900 of the $1,500 of federal tax paid for 1987 on his 1989 Oregon return. Lesser of:

1.	Additional tax paid		$ 1,500
2.	Maximum 1989 federal tax subtraction	$3,000	
	Less: 1989 federal tax liability	2,100	
3.	Maximum subtraction of prior year's federal tax		$ 900

If additional federal income taxes are paid or determined in tax years beginning on or after January 1, 1987, for tax years beginning on or before December 31, 1986, the deduction for the additional tax is the lesser of:

(A) The difference between the federal tax deducted on the original return and $7,000 ($3,500 if married filing separately); or

(B) The actual amount of additional federal income taxes paid or determined.

Example 3: Ralph and Louise have a 1989 federal tax liability of $4,500. Also in 1989, they amend their 1986 federal return and pay additional federal tax of $2,700. Their federal tax deducted on their original 1986 return was $5,200. Their federal tax subtraction for the 1989 federal tax is limited to $3,000 but because the additional federal tax paid is for a tax year beginning before December 31, 1986, the additional tax paid is not subject to the $3,000 limit. Their subtraction for the additional 1986 federal tax paid is the lesser of:

1.	Additional tax paid during 1989		$ 2,700
	or		
2.	Maximum 1986 federal tax subtraction	$7,000	
	Less: 1986 federal tax liability actually deducted	5,200	
3.	Maximum subtraction of prior year's federal tax deducted on the 1989 return		$ 1,800

Ralph and Louise would subtract $1,800 of prior year's federal tax.

(5) If husband and wife change from separate returns to joint returns after the original return is filed, the federal tax subtraction to be claimed on the amended return shall be the amount of combined federal tax liability shown on the original returns subject to the dollar limitation in effect for the taxable year. Any additional tax due or refund from the amended federal return shall be reported on the Oregon return in the year paid or received.

Hist: Eff. 1/69, Amended 12/70, 11/73, 9/74, 12/19/75, 11/19/76, 12/31/77, 12/31/78, (Renumbered from 150-316.072) 12/31/79; Renumbered from OAR 150-316.072(1) to OAR 150-316.685(1), 12/31/83, 12/31/84, 12/31/87, 12/31/89

150-316.695(1)(c)-(A)
Modification of Federal Taxable Income: Oregon Income Tax Claimed as an Itemized Deduction

Beginning in tax year 1991, if the taxpayer itemizes deductions for Oregon, the itemized deductions will be subject to the same phase-out requirement as required for federal income tax purposes under IRC Section 68. Oregon law allows federal itemized deductions, after the phase-out, reduced by any Oregon income tax that has been itemized for federal income tax purposes. To determine the amount of phased-out Oregon income tax that must be removed from total itemized deductions, taxpayers will use the following formula:

Itemized deductions left after being phased-out / Total itemized deductions subject to the phase-out under IRC Section 68	x	Oregon income tax included on Schedule A

Example: For tax year 1991, taxpayers file a joint return itemizing deductions and showing $500,000 of adjusted gross income. Their Schedule A shows the following deductions:

		Subject to Phase-out	**Not Subject to Phase-out**
Medical	$ 50,000		
Less: 7.5% of federal AGI	37,500		
	$ 12,500		$12,500
Taxes			
Oregon income tax	$ 36,000		
Other taxes	6,000		
	$ 42,000	$42,000	
Interest			
Home mortgage	$ 10,500		
Investment interest	10,000		
	$ 20,500	$10,500	$10,000
Contributions	$ 10,000	$10,000	
Casualty loss	$ 5,000		$ 5,000
Moving expense	-0-	-0-	
Miscellaneous	$ 25,000		
Less: 2% of federal AGI	10,000		
	$ 15,000	$15,000	
Total Itemized Deductions	$105,000	$77,500	$27,500

Under IRC Section 68, the medical expenses of $12,500, casualty loss of $5,000 and investment interest of $10,000 are not subject to the phase-out. Of the total $105,000 of itemized deductions, $27,500 is excluded from the phase-out and $77,500 is subject to the phase-out.

Itemized Deductions subject to the phase-out under IRC Section 68	$77,500
Reduced by 3% of Adjusted Gross Income that exceeds $100,000 per IRC Section 68 ($500,000 – 100,000) x 3%))	– 12,000
Phased-out itemized deductions	$65,500
Itemized deductions not subject to phase-out	+ 27,500
Total deductible itemized deductions for federal	$93,000

Itemized deductions left after being phased-out / Itemized deductions subject to the phase-out	x	Oregon tax claimed as an itemized deduction	=	$65,500 / $77,500 = 84% x $36,000 = $30,426

For Oregon, the taxpayers need to reduce the $93,000 of itemized deductions by $30,426 of Oregon income tax. Taxpayers have net Oregon itemized deductions of $62,574 ($93,000 – 30,426).

[**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 9/13/91 and Eff. 12/31/91

150-316.707(1)-(A)

Basis of Depreciable Assets Moved into Oregon

(1) For purposes of this rule taxpayer means an individual, S corporation, or partnership.

(2) Taxpayers not subject to the apportionment provision of ORS 314.280 or 314.605 to 314.675.

(a) For Assets First Brought into Oregon's Taxing Jurisdiction in Tax Years Beginning After 1982 and Prior to Tax Years Beginning January 1, 1985.

(A) If a taxpayer first brings a depreciable asset into Oregon's taxing jurisdiction in tax years beginning after December 31, 1982 and prior to tax years beginning January 1, 1985, the asset shall be treated as if it is being converted from personal use to business use. The asset's Oregon basis shall be the lower of the federal unadjusted basis or fair market value. However, in no instance shall the asset's Oregon basis be greater than the lower of:

(i) The federal unadjusted basis less Oregon depreciation previously allowed for Oregon tax purposes or

(ii) The fair market value less Oregon depreciation previously allowed for Oregon tax purposes.

(B) The federal unadjusted basis of an asset is its original basis prior to any adjustments (including, but not limited to, reductions for investment tax credits, depreciation, depletion, amortization, or amounts properly expensed under IRC Section 179). The asset's fair market value and its expected useful life shall be determined as of the time the asset was brought into Oregon's taxing jurisdiction. The taxpayer shall depreciate the asset using a method consistent with federal tax law as of December 31, 1980.

Example 1: A nonresident taxpayer has a business in California. The taxpayer has a light truck that is used only for business purposes. The truck was purchased on June 1, 1981 at a cost of $10,000. The truck was depreciated in California over a life of three years. The taxpayer moved to Oregon on September 1, 1983. The fair market value of the truck was $6,000 on this date. The expected useful life of the truck on September 1, 1983 was four years. The taxpayer elected to depreciate the truck using the straight-line method for Oregon purposes over four years. The amount of depreciation the taxpayer can claim in 1983 for Oregon purposes is $500 (4⁄12 x 1⁄4 x 6,000).

Example 2: Assume the same facts as in Example 1 above. The taxpayer sold the asset for $11,000 on January 1, 1985. The taxpayer shall recognize a total Oregon gain of $7,000. The type and amount of gain the taxpayer shall recognize for Oregon purposes is computed as follows:

(1) Capital Gain Portion	
Sales price	$11,000
Less: Oregon basis (9-1-83)	(6,000)
Oregon capital gain	$ 5,000
(2) Ordinary Gain Portion	

To determine the taxpayer's ordinary gain portion two steps are necessary.

Step 1. Determine the Oregon adjusted basis as of the date of sale.

Oregon basis (9-1-83)	$6,000
Less: Oregon depreciation	
1983 (4⁄12 x 1⁄4 x $6,000)	$ 500
1984 (12⁄12 x 1⁄4 x $6,000)	1,500
Total Oregon depreciation	2,000
Oregon adjusted basis (1-1-85)	$4,000

Step 2. Determine the ordinary gain portion for Oregon purposes.

Oregon depreciable basis (9-1-83)	$6,000
Less: Oregon adjusted basis (1-1-85)	4,000
Oregon ordinary gain portion	$2,000

(b) *For Assets First Brought into Oregon's Taxing Jurisdiction in Tax Years Beginning After 1984.* Assets first brought into Oregon's taxing jurisdiction in tax years beginning after December 31, 1984, shall be allowed to use the Accelerated Cost Recovery System (ACRS) method of depreciation as defined and allowed

in IRC Section 168 for Oregon purposes, if such assets were first placed in service in tax years beginning after December 31, 1984 pursuant to the conditions set forth in OAR 150-316.707(1)-(B). The basis of all assets first brought into Oregon's taxing jurisdiction beginning after December 31, 1984, shall be computed as if the asset is being converted from personal use to business use. The asset's Oregon basis shall be the lower of the federal unadjusted basis or fair market value. However, in no instance shall the asset's Oregon basis be greater than the lower of:

(A) The federal unadjusted basis less Oregon depreciation previously allowed for Oregon tax purposes or

(B) The fair market value less Oregon depreciation previously allowed for Oregon tax purposes.

The allowable depreciation method for Oregon purposes shall be determined as of the time the asset was first placed in service as defined in OAR 150-316.707(1)-(B).

Example: Mike is a California resident. He has owned a beanery business in Yreka since 1984. Mike purchased an office building for $100,000 and placed it in service on April 1, 1984. For federal purposes, the building qualifies as 18-year real property and is being depreciated using the applicable percentages allowed under ACRS. On January 1, 1988, Mike purchased his only other asset, a light truck, for $10,000. For federal purposes, the truck qualifies as a 5-year property and is being depreciated using the applicable percentages allowed under MACRS. On January 1, 1990, Mike moved to Ashland, Oregon and continued his California business in Yreka. Since Mike has moved into Oregon's taxing jurisdiction, Mike must determine his Oregon adjusted basis in the building and the truck in order to depreciate the assets for Oregon. The Oregon adjusted basis is computed as follows:

Oregon Adjusted Basis

	Building	**Truck**
Cost (Federal unadjusted basis)	$100,000	$10,000
Less: Depreciation previously allowed for Oregon tax purposes	-0-	-0-
Net basis	$100,000	$10,000
Fair Market Value (as of January 1, 1990)	$115,000	$ 6,000
Less: Depreciation previously allowed for Oregon tax purposes	-0-	-0-
Oregon Fair Market Value	$115,000	$ 6,000

The Oregon basis for depreciation of the building is the lesser of the net basis of $100,000 or fair market value of $115,000. The basis for Oregon depreciation is $100,000. Since Oregon did not adopt ACRS for assets first placed in service in tax years beginning before January 1, 1985, Mike must use an allowable depreciation method available for such assets using the federal laws in effect as of December 31, 1980. Mike elects for Oregon purposes to depreciate the building using the straight-line method over a useful life of 14 years.

Truck

The Oregon basis for depreciation of the truck is the lesser of the net basis of $10,000 or fair market value of $6,000. The basis for Oregon depreciation is $6,000. Since Oregon adopted ACRS for assets first placed in service in tax years beginning after December 31, 1984, and subsequently MACRS for assets placed in service in tax years beginning after December 31, 1986, Mike will use MACRS for his Oregon and federal depreciation deduction.

(3) *For taxpayers subject to the apportionment provisions of ORS 314.280 or 314.605 to 314.675.*

The basis for depreciation on a previously acquired asset shall be computed as if the taxpayer had always been subject to Oregon tax. The original unadjusted basis shall be reduced by the depreciation allowable in previous years, using a method acceptable for Oregon tax purposes in the year the asset is placed in service. The remaining basis of the asset shall be depreciated over the remainder of its original useful life, using the same allowable method.

Example 1: Alpha, Ltd. is a partnership that started operation in Washington. On January 1, 1984, the partnership purchased a building in Seattle for $100,000. For federal purposes, the partnership is depreciating the building under ACRS as 15-year property. The partnership expanded and began doing business in Oregon on July 1, 1986. In 1984 Oregon did not allow the ACRS depreciation method. For Oregon purposes, the partnership elected to depreciate the building under the straight-line method over a 20-year life. Since the

partnership is subject to the apportionment rules, the basis of the building for Oregon will be as if the building was depreciated for Oregon tax purposes using the straight-line method from the date of purchase.

Cost		$100,000
1984 Straight-line depreciation	(5,000)	
1985 Straight-linedepreciation	(5,000)	
1986 depreciation through July 1	(2,500)	(12,500)
Oregon basis as of July 1, 1986		$ 87,500

For purposes of determining Oregon taxable income, the partnership will depreciate the building using an Oregon basis of $87,500 and the straight-line method over the remaining life. For purposes of determining federal taxable income, the partnership will continue to depreciate the building under ACRS.

(4) *Bringing assets into Oregon's taxing jurisdiction.* A taxpayer may bring assets into Oregon's taxing jurisdiction in several different manners. First, a nonresident may become an Oregon resident and physically bring business assets into Oregon. Second, a nonresident taxpayer may become an Oregon resident and leave the assets in the other state. Third, a nonresident may open a business operation in Oregon and transfer business assets from a different state to the Oregon business.

(5) *Applicable dates.* Section (2) of this rule applies to tax years beginning after December 31, 1982.

(6) *Five year provision.* If for any period of five consecutive calendar years beginning on or after January 1, 1985, the Oregon and federal depreciation methods are identical, the Oregon basis for depreciation may be the same as the federal basis at the option of the taxpayer. This election applies only to assets first brought into Oregon's taxing jurisdiction upon the expiration of the five-year period.

[**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 12/20/83 and Eff. 12/31/83 (Temp.); 2/21/84 Perm.; Amended to Renumber from OAR 150-316.707 to OAR 150-316.707(1)-(A), 12/31/85, 12/31/86, 12/31/91, 12/31/92, 12/31/94

Amount Specially Taxed Under Federal Law to be Included in Computation of State Taxable Income: Accumulation Distributions

150-316.737 (1) Oregon law contains no alternate method of calculating tax in the manner provided by the Internal Revenue Code for the federal tax treatment of accumulation distributions. Therefore, income from an accumulation distribution must be added to Oregon taxable income.

(2) Distribution of a trust's income accumulation must be included in the income of the Oregon resident beneficiary for the taxable year that such income is distributed by the trust. The distributions are included in Oregon income in the same manner and to the same extent that the trust's income accumulations are includable in the taxable income of the beneficiary under federal law. The change in the Oregon fiduciary adjustment will also be distributed to the beneficiary.

Example 1: In 1987, the ABC trust had $27,596 of gross income. Of this amount, $15,496 was included in distributable net income (DNI). The other $12,100 was capital gain income, which was not included in DNI. The trust made a distribution of $9,460 to the beneficiary, leaving $6,036 in undistributed net income (UNI). After the $9,460 distribution deduction and the $100 exemption, the trust's federal taxable income was $18,036 ($12,000 capital gain plus $6,036 UNI).

On the Oregon return, the total fiduciary adjustment was ($10,862), of which the beneficiary's share was ($6,626), leaving ($4,236) as the fiduciary's share. The fiduciary's Oregon taxable income was $13,800 ($18,036 minus $4,236), and the Oregon tax was $1,102.

In 1993, the trust distributed more DNI to the beneficiary than the current year's DNI amount, resulting in a distribution of the 1987 accumulated income. The addition to Oregon income is the taxable accumulation distribution as defined in the Internal Revenue Code, Sections 665–668. The beneficiary is also allowed an additional fiduciary adjustment amount, based on the additional 1987 DNI distributed in 1993. This additional amount is calculated as follows:

Taxable accumulation distribution (from federal Form 4970)	$ 2,937
Plus: 1987 distribution deduction	9,460
Revised distribution deduction	$12,397
Plus: Tax exempt income (from 1987 Form 41, line 2A)	-0-

Revised income amount used to calculate beneficiary's share of fiduciary adjustment	$12,397
Percent of fiduciary adjustment allocable to beneficiary ($12,397/15,496)	80%
Beneficiary's revised share of 1987 fiduciary adjustment ($10,862 x .80)	$ (8,690)
Less: Beneficiary's share of 1987 fiduciary adjustment per return	(6,626)
Additional fiduciary adjustment allowed to beneficiary on 1993 return	$ (2,064)

(3) See OAR 150-316.287 for the limitations imposed on the portion of the fiduciary subtraction allowed to the beneficiaries.

(4) The change in fiduciary adjustment will be distributed to the beneficiaries in the same allocable portions as the income was distributed, according to the provisions in the trust instrument.

Example 2: If there's only one beneficiary, they will receive the entire $2,064 subtraction calculated in the previous example. If there are two beneficiaries who each get one-half of the income, they will each get one-half of the additional fiduciary adjustment.

(5) Income accumulation distributions of a trust must be included in the income of a nonresident beneficiary for the taxable year that distribution is actually made by the trust. The distributions are included in the adjusted gross income of a nonresident in accordance with the provisions of ORS 316.127. The nonresident will also be allowed the change in fiduciary adjustment to the extent this change is applicable to Oregon source income.

(6) A copy of the Schedule J of federal Form 1041, "Allocation of Accumulation Distribution," shall be attached to the Oregon fiduciary return for the taxable year of distribution, and a copy of federal Form 4970, "Tax on Accumulation Distribution of Trust," shall be attached to the Oregon return of the beneficiary.

(7) For information about calculating the accumulation distribution credit for Oregon taxes paid by a trust during income accumulation years, see OAR 150-316.298.

[**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 10/14/92 and Eff. 12/31/92; Amended 12/31/94

Time Limitations Affected by Desert Storm

150-316.789 (1) *Active duty pay earned outside Oregon.* All active duty pay earned outside of Oregon from August 1, 1990, to the date set by the President as the end of combat activities in the Persian Gulf Desert Shield area can be subtracted. The active duty pay subtraction under this statute plus the subtraction allowed under ORS 316.127 and ORS 316.680 cannot exceed the total active duty pay shown on the federal return. The subtraction is available to residents and nonresidents.

Example 1

Jan enlisted in the Air Force Reserves in 1988. She was called to active duty September 15, 1990, and shipped to Fort Lewis, Washington. She earned a total of $10,000 active duty pay in 1990. $1,000 was earned before September 15. She qualified for the $3,000 active duty pay subtraction. She also qualifies for the subtraction for the active duty pay earned out of Oregon after August 1. However, her total military pay subtraction cannot exceed $10,000.

Example 2

John enlisted in the Oregon Air National Guard in 1974. He was called to active duty on November 1, 1990. He earned $6,000 in active duty pay—$4,000 prior to August 1, and $2,000 after. His total subtraction for 1990 equals $5,000, made up of the following:

$3,000	regular active duty pay subtraction
2,000	active duty pay earned after August 1
$5,000	total subtraction

Example 3

Joe was a member of the Marine Corps and on active duty for all of 1990. He maintained a home in Oregon for his family. He earned $7,000 prior to August 1 and $5,000 after. Joe would be allowed to subtract

the $5,000 for active duty pay earned from August 1 until the end of the year. He would also be allowed to subtract $3,000 for active duty pay earned prior to August 1. His total subtraction would be $8,000.

(2) *Combat zone benefits.*

(a) Members of the Armed Forces who served in the combat zone are allowed extra time to take care of their Oregon tax matters. Taxpayers are allowed the statutory filing period of 3 months and 15 days following the close of the tax year plus at least 180 days after the later of:

(A) The last day the person was in the combat zone (or the last day the area qualifies as a combat zone), or

(B) The last day of any continuous qualified hospitalization for injury from service in the combat.

(b) The following are some of the tax actions that can be extended:

(A) Filing any return of income, estate, or gift tax (except employment and withholding taxes);

(B) Paying any income, estate, or gift taxes (except employment and withholding taxes);

(C) Filing a petition with the Tax Court,

(D) Filing a refund claim,

(E) Collection of any tax due by the Department of Revenue.

Example 1

Capt. Margaret Jones entered Saudi Arabia on August 26, 1990. She remained there through March 16, 1991, when she departed for the United States. She was not injured and did not return to the combat zone. Capt. Jones has 285 days (180 plus 105) after her last day in the combat zone, March 16, to file her 1990 income tax return. The 105 additional days are the number of days in the 31⁄2 month filing period that were left when she entered the combat zone (January 1–April 15). Her return is due by December 26, 1991.

Example 2

Petty Officer Leonard Brown's ship entered the Persian Gulf on January 5, 1991. On February 15, 1991, Petty Officer Brown was injured and flown to a U.S. hospital. He remained in the hospital through April 21, 1991. He has 281 days (180 plus 101) after April 21, his last day in the hospital, to file his 1990 income tax return. The 101 additional days are the number of days in the 31⁄2 month filing period that were left when he entered the combat zone (January 5–April 15). His 1990 return is due by January 27, 1992.

(c) You generally have 3 years from April 15, 1988, to file a claim for refund against your timely filed 1987 income tax return. Therefore, if you wish to amend the return, your claim normally must be filed by April 15, 1991. However, if you served in the combat zone between November 1, 1990, and March 22, 1991, your deadline for filing that claim is extended 346 days (180 plus 166) after you leave the combat zone (or hospital, if later). The 166 additional days (November 1, 1990–April 15, 1991) are the number of days in the 3-year period for filing the refund claim that were left when you entered the combat zone on November 1. You must file any claim for refund by March 2, 1992.

(3) *Filing requirements.* Military personnel called up for Desert Storm should write "Desert Storm" in red on the top of the return. Upon request of the department, the taxpayer will provide a chart or other information showing what amount is active duty income earned after August 1, 1990, and where they were stationed.

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