CHAPTER 316
PERSONAL INCOME TAX

GENERAL PROVISIONS

Procedure for Handling State Surplus Refund

150-316.NOTE (1) For purposes of determining underpayment of estimated tax for tax years beginning on or after January 1, 1985 and before January 1, 1995 the credit allowed for the state surplus refund shall be used to reduce the amount of the current year "net income tax" of the taxpayer. Net income tax means the total tax minus any credits against tax other than credits against tax provided by withholding.

(2) For purposes of determining underpayment of estimated tax for tax years beginning on or after January 1, 1995, the state surplus refund shall not be used to reduce the amount of the "net income tax" due for the tax year for which the surplus refund was granted.

(3) Whenever the taxpayer's income tax liability for tax years beginning on or after January 1, 1985 is either increased or decreased, the amount of the state surplus refund shall be adjusted accordingly.

Hist: Filed 10/7/85 and Eff. 12/31/85; Amended 12/31/88, 12/31/98

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

Policy—Application of Various Provisions of the Federal Internal Revenue Code

150-316.007-(A) The policy of the State of Oregon is to follow the Internal Revenue Code as closely as possible relating to the computation of taxable income of individuals. Other areas, such as tax credits, special tax computations, and administrative provisions are not tied to federal law because they do not relate to the computation of taxable income.

Claim of right: IRC 1341 allows a deduction on the federal return for amounts repaid by a taxpayer on income previously reported under a claim of right. This deduction is also allowed on the Oregon return. If the amount repaid exceeds $3,000 in the year of repayment, IRC 1341 allows the taxpayer to instead use a special tax computation rather than claim a deduction. If the taxpayer uses this special tax computation on the federal return, the taxpayer may not make a special tax computation for Oregon. However, the taxpayer may claim any repayments as a subtraction on the Oregon return.

Installment sale reporting: A taxpayer may report a loss on the sale of an asset for federal purposes. The same sale can result in a gain at the Oregon level because of differences in the basis of the asset. The taxpayer cannot use the installment reporting method for federal purposes because the asset is sold at a loss. However, for Oregon tax purposes, the taxpayer may report the gain using the installment method. The difference between the loss claimed on the federal return and the Oregon gain will be an adjustment on the Oregon return.

[**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 9/14/90 and Eff. 12/31/90; Amended 12/31/95

Adoption of Federal Law

150-316.012

[**ED. NOTE:** With the adoption of the Personal Income Tax Act of 1969, Oregon personal income tax law was tied to the Federal Internal Revenue Code of 1954 with certain modifications.

However, there have been periods during which Oregon law did not automatically adopt federal law amendments and enactments. The most recent of these periods and the federal law date to which each referenced period is connected are:

(1) For the period beginning January 1, 1985, Oregon personal income tax law is tied to federal law in effect, amended or enacted on or before December 31, 1984 with certain technical corrections, specifically Internal Revenue Code Sections 274(d) and 280F.

(2) For the period beginning January 1, 1987, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1986, with certain modifications.

(3) For the period beginning January 1, 1989, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1988, with certain modifications.

(4) For the period beginning January 1, 1991, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1990, with certain modifications.

(5) For the period beginning January 1, 1993, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before December 31, 1992, with certain modifications.

(6) For the period beginning January 1, 1995, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986, as amended on or before April 15, 1995, with certain modifications.

(7) For the period beginning January 1, 1997, Oregon personal income tax law is tied to the Federal Internal Revenue Code of 1986 or as in effect for that tax year of the taxpayer.]

Hist: Amended 12/31/83, 12/31/85, 12/31/87, 12/31/89, 12/31/91, 12/31/93, 12/31/95, 12/31/97

Oregon Net Operating Losses—Treatment After 1984

150-316.014 (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 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, Oregon lottery winnings, etc., 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, Oregon itemized deductions are the Oregon percentage of federal itemized deductions; or

(B) Oregon standard deduction. For part-year and nonresident, only 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 in a Loss Year Beginning After December 31, 1984.*

(a) For Oregon purposes, the amount of net operating loss a resident shall be allowed in any loss year beginning after December 31, 1984 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 shall begin 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 federal and Oregon tax returns. On their federal return, they reported wages of $12,000, 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 $7,800 which were all nonbusiness and claimed personal exemptions of $4,300.

On their Oregon return, Susan 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. Their allowable Oregon NOL is computed as follows:

Federal tax return	
Wages	$ 12,000
Interest income	800
Schedule C loss	(40,000)
Schedule D stock gain	400
Federal AGI	($26,800)
Personal exemptions	(4,300)
Schedule A deductions	(7,800)
Federal taxable income	($38,900)

Computation of Oregon NOL		
Oregon AGI		($26,800)
Personal exemptions		(4,300)
Schedule A deductions		(7,800)
Modified Oregon taxable income		($38,900)
Adjustments:		
Personal exemptions		4,300
Nonbusiness deductions	7,800	
Nonbusiness income	(1,200)	
Nonbusiness deductions in excess of nonbusiness income		6,600
Oregon NOL		($28,000)

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

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 $(28,000) computed as follows:

Federal tax return		
Wages		$ 12,000
Interest from U.S. government securities		800
Schedule C loss		(40,000)
Schedule D stock gain		400
Federal AGI		($26,800)
Personal exemptions		(4,300)
Schedule A deductions		(7,800)
Federal taxable income		($38,900)
Computation of Oregon NOL		
Oregon AGI		($26,800)
U.S. government interest		(800)
Personal exemptions		(4,300)
Schedule A deductions		(7,800)
Modified Oregon taxable income		($39,700)
Adjustments:		
Personal exemptions		4,300
Nonbusiness deductions	7,800	
Nonbusiness income	400	
Excess nonbusiness deduction		7,400
Oregon NOL		($28,000)

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 in any Loss Year Beginning After December 31, 1984.*

(a) A nonresident shall be allowed an Oregon NOL for any loss year when the NOL is attributable to Oregon sources. The computation of the allowable net operating loss for Oregon purposes shall begin with Oregon adjusted gross income as defined in this rule. Any modifications provided in IRC Section 172(d) shall be applied 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) modification 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 return. On their federal return, they have itemized deductions of $6,400 (all nonbusiness) and claimed personal exemptions of $4,300. They also had a business loss of $25,000 from Oregon sources and $1,000 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		4,300
Schedule A deductions		-0-
Modified Oregon taxable income		($29,300)
Adjustments:		
Personal exemptions		4,300
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 shall be applied in the same manner as the federal net operating loss as provided in IRC Section 172(b). If a taxpayer carries back a federal NOL, the taxpayer shall be 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 shall be 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 the third year prior to the Oregon loss year, the Oregon NOL is carried over to the year in which the loss may be first applied. The total number of years to which an NOL may be carried back or forward is the same for Oregon and federal.

Example 4. Joe has a net operating loss for federal and Oregon for tax year 1991. For federal purposes, Joe carried his federal NOL back to 1988. Since he carried back his loss for federal purposes, he must carry back the loss for Oregon purposes to his 1988 Oregon tax return. If he is not required to file an Oregon tax return for 1988, he may carry his Oregon NOL to his 1989 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 1991. Joe may carry his Oregon NOL over to his 1992 Oregon tax return even if the loss was carried back for federal purposes.

(6) *A Net Operating Loss Deduction, carryback and carryforward amount in A Tax Year Beginning After December 31, 1984.*

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

For a full-year resident, generally an NOLD, carryback and carryforward 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 6. John and Joyce incurred losses in 1990 from partnerships and S corporations. They compute an NOL of $12,000 and elect to carry the loss back. The 1987 and 1988 returns show negative taxable income, so the 1990 NOL is first applied to 1989 where the loss is completely absorbed. John and Joyce have a federal AGI in 1989 of $32,000. The fully absorbed 1990 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 federal AGI as revised	(8,000)	
Total Deductions		(13,000)
Oregon taxable income as revised		$10,000

Example 7. Assume the same facts in *Example 6,* except that John and Joyce elect to carryforward the NOL for federal and Oregon purposes. In 1991, John and Joyce have federal AGI of $10,000 and have reported additions of $8,000 and subtractions of $3,000. John and Joyce will apply the NOL to 1991 and compute the amount carried over to 1992 as follows:

Net operating loss deduction carryback or carryover			($12,000)
Federal AGI on Oregon return to which the loss is carried	$10,000		
Add: Capital loss deductions or	-0-		
Capital gain deduction	-0-		
Federal AGI for Oregon AGI as revised		$10,000	
Less: Prohibited amounts		-0-	
Standard or itemized deductions recomputed for modified Oregon AGI		(7,500)	
Modified Oregon taxable income (NOLD for 1991)			2,500
Carryover net operating loss available for 1992			($ 9,500)

John and Joyce's 1991 Oregon taxable income is recomputed as follows:

Federal AGI on Oregon return to which the loss is carried	$10,000
Less net operating loss deduction	(2,500)
Federal AGI including net operating loss deduction	7,500
Add: "Additions" per Oregon return	8,000
Less: "Subtractions" per Oregon return	(3,000)
Standard or itemized deductions	(7,500)
1991 Oregon taxable income as revised	$ 5,000

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

Example 8. In 1990, 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 1990, Ron or Valerie did not need to file Oregon returns. In 1991, 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 1991 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: Standard or itemized deductions recomputed for revised federal AGI	(5,040)	
Federal tax subtraction	(1,512)	
Oregon taxable income as revised	$295,948	

Example 9. Scott and Jill live in Vancouver, Washington and Scott operates a business in Oregon. In 1990, 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 1991, Scott and Jill reported Oregon income after adjustments of $1,600, federal income after adjustments of $32,000, and federal itemized deductions of $4,200. Scott and Jill calculate their net operating loss deduction for 1991 and the carryover to 1992 as follows:

Net operating loss carryback or 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 Oregon AGI		(210)	
Modified Oregon taxable income (NOLD for 1991)			1,390
Carryover of NOLD available for 1992			($4,610)

[**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 and Eff. 07/29/86 (Temp.), (Perm.) 12/31/86; Amended 12/31/91, 12/31/92, 12/31/94

Tax Reform Act of 1984 Adjustments

150-316.021 (1) Any adjustments to a taxpayer's 1984 Oregon taxable income due to modifications required under ORS 316.021 shall be made using either of the following methods:

(a) The taxpayer may amend the 1984 Oregon tax return and include such adjustments as increases or decreases to the taxpayer's 1984 Oregon taxable income; or

(b) The taxpayer may include the amount computed in (C) below as an increase or decrease in the taxpayer's 1985 Oregon tax liability. (This method is available to taxpayers who are required to file a 1985 Oregon tax return.)

(A) Compute the taxpayer's 1984 Oregon tax liability without regard to the adjustments required in this subsection.

(B) Compute the taxpayer's 1984 Oregon tax liability with regard to the adjustments required in this subsection.

(C) Subtract the amount computed in (A) from the amount computed in (B).

(D) If the amount computed in (C) is less then zero then the difference computed in (C) decreases the taxpayer's 1985 Oregon tax liability. If the amount computed in (C) is greater than zero, then the difference computed in (C) increases the taxpayer's 1985 Oregon tax liability.

(2) For purposes of this rule, "taxpayer" means any natural person, estate, trust, or beneficiary whose income is in whole or in part subject to the taxes imposed by ORS Chapter 316.

(3) Any adjustments necessary to a partner's 1984 Oregon tax return due to the provisions of this subsection, shall be reflected on the corresponding partnership return to which such adjustment applies.

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

Definition: "Resident"

150-316.027 (1) For purposes of this statute:

(a) "Domicile" means the place an individual considers to be their true, fixed, permanent home. A person can only have one domicile. An individual acquires a domicile by living there, even for a brief period of time, with no definite intention of moving. It is the place to which a person has the intent of returning after an absence. Factors that contribute to determining domicile include family, business activities and social connections.

(b) "Permanent" means fixed, enduring and lasting in nature. The taxpayer has no intent to go elsewhere for a period of time or the stay is for an indefinite period. The taxpayer does not consider the stay temporary or transitory, so it is the place to which the taxpayer has the intention of returning whenever absent. A person is deemed to have a "permanent abode" even in rented premises, which he or she is free to leave at will, but from which the person has no present intent or desire to change. Factors that contribute to permanence include the amount of time spent in the locality, the nature of the place of abode, activities in the locality and the taxpayer's intentions with regard to the length and nature of the stay.

(c) "Place of abode" means the location of a physical building, structure, or vehicle in which the taxpayer lives and sleeps. It is distinguishable from "domicile" in that an individual may have several residences (or abodes), but only one domicile, at any given time.

(d) "Temporary or transitory" means not permanent. It can be stated generally that an individual that is simply passing through this state on the way to another state or country, is here for a brief rest or vacation, or to complete a particular transaction which requires presence in this state only for a short period, will be treated as being in this state for temporary or transitory purposes, and will not be considered a resident by virtue of physical presence here. Temporary or transitory will depend to a large extent upon the facts and circumstances of each particular case.

(2) All persons domiciled in Oregon are presumed residents of the state, whether or not residing herein during the tax year. Domicile, once established, is never lost until there is a concurrence of

(a) the specific intent to abandon the old domicile,

(b) the specific intent to acquire a new domicile, and

(c) actual physical presence for some period in the new domicile after the intent to stay is formed.

Example 1: Ron maintains a home in Oregon and works in Oregon. He purchased a summer home in Nevada and each year thereafter spent about three or four months in that state. He continued to spend six or seven months of each year in Oregon. He continued to maintain his home and his social, club and business connections in Oregon, but set established his bank accounts in Nevada. The months not spent in Nevada or Oregon he spent traveling in other states or countries. Ron is a resident of Oregon since he has continued to maintain a permanent place of abode in Oregon and his time in Oregon is not for temporary or transitory purposes.

Example 2: Mark and Kim are domiciled in Minnesota. They maintain their family home there. Each October they come to the Oregon coast and stay through April. Originally they rented an apartment or house for the duration of their stay. Three years ago they purchased a house in Oregon. The house is either rented or put in the charge of a caretaker from May to October. Mark has retired from active control of a Minnesota business but still keeps office space and nominal authority in it. Mark and Kim belong to clubs in Minnesota, but none in Oregon. Mark and Kim have no business interest in Oregon. Neither Mark nor Kim are residents of Oregon. Their presence in Oregon is temporary or transitory.

Example 3: Don, a computer consultant, is domiciled in New York where he owns a home in which his family lives and where he keeps the bulk of his personal belongings. He votes in New York, maintains bank accounts there and returns to his home whenever possible. He accepts a position in Oregon with a large corporation with the expectation that the work will take one and one-half years. He spends virtually the entire time in Oregon, living in a temporary house built by the employer, where his wife and family join him in the summer. He intends to return to New York when the job is completed. During this period he will be taxed as a nonresident since he is in the state for a temporary or transitory purpose and maintains a permanent place of abode outside of the state.

Example 4: Douglas has lived and worked in Oregon all his life. On January 1, he retired, sold his personal residence, and began traveling throughout the United States. He has not established a new domicile outside of Oregon, nor does he intend to give up his Oregon domicile. Although Douglas does not maintain a permanent place of abode in Oregon and spent fewer than 30 days in Oregon, Douglas did not maintain a permanent place of abode outside of Oregon and therefore is taxed as a resident.

Hist: Eff. 1/69; Amended 12/31/92, 12/31/97

Administrative and Judicial Interpretations

150-316.032(2) As used in ORS 316.032(2) "administrative and judicial interpretations of the federal income tax law" include interpretive regulations promulgated by the Secretary of the Treasury, Revenue Rulings and Revenue Procedures issued by the Commissioner of Internal Revenue, and decisions of the federal courts interpreting those provisions of the Internal Revenue Code that are incorporated into Oregon law under ORS 316.007, regardless of the date of promulgation or issuance of the regulation, ruling, procedure or decision.

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

Taxable Income of Nonresidents and Part-year Residents

150-316.037 (1) For tax years prior to January 1, 1983 and for tax years beginning on or after January 1, 1984, the taxable income of a nonresident is the taxpayer's federal taxable income from Oregon sources as defined in ORS 316.127, with the modifications provided in ORS Chapter 316 as they relate to nonresidents. In computing taxable income, nonresident taxpayers shall be allowed a proportionate share of all deductions with related modifications required by ORS Chapter 316 allowable to residents. This includes the accrued federal tax deduction, personal exemptions, and itemized deductions or the optional standard deduction. The fraction to be used in making the proration of deductions is provided in OAR 150-316.117.

(2) For tax years beginning on or after January 1, 1983, but before January 1, 1984, the taxable income of a nonresident or part-year resident is the taxpayer's federal taxable income, as defined in the laws of the United States, modified and adjusted by ORS Chapter 316. The tax on the entire taxable income of nonresidents and part-year residents is multiplied by the fraction provided in OAR 150-316.117 to determine the tax on income derived from Oregon sources. This paragraph also applies to part-year residents for tax years beginning January 1, 1984 and after.

(3) For tax years beginning prior to January 1, 1983 the taxable income of a part-year resident is federal taxable income during the period the taxpayer is a resident plus federal taxable income derived from Oregon sources as defined in ORS 316.127 during the period the taxpayer is a nonresident, with the modifications provided in ORS Chapter 316. In computing taxable income, part-year resident taxpayers shall be allowed a proportionate share of all deductions with related modifications required by ORS Chapter 316 allowable to residents. This includes the accrued federal tax deduction, personal exemptions, and itemized deductions or the optional standard deduction. The fraction to be used in making the proration of deductions is provided in OAR 150-316.117.

(4) If a taxpayer is a part-year Oregon resident, the entire proportional share of partnership or S corporation income, gain, loss or deduction from a partnership or S corporation whose taxable year ends during the portion of the year the taxpayer is an Oregon resident is treated as Oregon source income. Guaranteed payments and taxable cash distributions from a partnership or S corporation that has no business activity in this state shall be treated as Oregon source income if the receiving partner or shareholder is an Oregon resident at the time the guaranteed payments or taxable cash distributions were received.

Example (1): Joe was a California resident all of 1991 and a partner in a California partnership whose fiscal year begins July 1, 1991 and ends June 30, 1992. The partnership has no property, payroll, or sales in Oregon. Joe moved to Oregon March 1, 1992. He files calendar year returns. He receives $1,000 each month as a guaranteed payment. The payments received through February, 1992 are not Oregon source income because they were received prior to the date Joe became an Oregon resident.

Example (2): Mark, a calendar year taxpayer, moved from Washington to Oregon on October 1, 1991. He was a shareholder in a calendar year Washington S corporation in 1991. The corporation has no property, payroll, or sales in Oregon. As of January 1, 1991, Mark's basis in the S corporation was zero. Mark received $1,000 a month in cash distributions from the S corporation during 1991. Mark's proportional share of S corporation income for 1991 was $12,000. Since Mark was an Oregon resident at the end of the corporation's taxable year, he will treat the entire $12,000 proportional share of S corporation income as 1991 Oregon source income. Because Mark's proportional share is taxable, the cash distributions are considered to have been made out of the accumulated adjustments account and are therefore not taxable. Accordingly, Mark need not treat the cash distributions as Oregon source income.

Hist: Filed 10/5/83 and Eff. 12/31/83, Amended 12/31/84, 12/31/85, 12/31/88; Renumbered from OAR 150-316.037(1)(b) to OAR 150-316.037, 12/31/89; Amended 12/31/93

Transitional Provision to Prevent Doubling Income or Deductions

150-316.047-(A) This section allows and requires adjustments to the taxpayer's net income to alleviate inconsistent treatment of income and deductions resulting from the transition from the Personal Income Tax Act of 1953 to the Internal Revenue Code.

The section allows and requires adjustments to prevent income items from being doubly taxed and deduction items from being deducted twice. In addition adjustments are allowed or required to prevent income from escaping taxation or the loss of a deduction due to the inconsistent treatment.

This section will not apply unless it can be shown that failure to allow or require an adjustment will result in the taxation of income or allowance of a deduction that had already entered into the computation of Oregon income in years beginning prior to January 1, 1969, or, failure to allow or require an adjustment will result in income escaping taxation or loss of a deduction that had already entered into the computation of federal income in years beginning prior to January 1, 1969 and would have been taxed or deducted on an Oregon return if it were not for the change in the Oregon Law. This section does not allow or require adjustments to account for items that are not solely transitional, viz., it does not allow or require adjustments for items of income or deductions not otherwise taxable or deductible under the Internal Revenue Code in years beginning prior to January 1, 1969 or beginning on and after January 1, 1969.

Example (1). Federal taxes on telephone and telegraph tolls were deductible in years beginning prior to January 1, 1969 for Oregon purposes under the Personal Income Tax Act of 1953. They are not deductible under the Internal Revenue Code and, therefore, not deductible for Oregon purposes for tax years beginning on or after January 1, 1969.

No adjustment is allowed under ORS 316.047 to deduct these taxes for Oregon purposes. The item is not transitional. They were not deductible under the Internal Revenue Code for tax years beginning before January 1, 1969 nor for tax years beginning on or after January 1, 1969.

Example (2). A net operating loss as defined in section 172, Internal Revenue Code, was realized in 1968 for both state and federal purposes. The loss was carried back three years and deducted for federal purposes with none to be carried forward to subsequent years. Oregon law for tax years beginning prior to January 1, 1969 allowed a five year carry-forward and no carry-back. An adjustment is allowed under this section to carry the net operating loss forward for five years. The amount of the net operating loss and the amount deductible in each year shall be determined under section 172, Internal Revenue Code, without regard to the carry-back provisions. This is a deduction that had entered into the computation of federal net income in years beginning prior to January 1, 1969 and would have been deducted on an Oregon return if it were not for the change in the Oregon law.

[**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 11/73, 12/19/75

COMPUTATION OF TAXABLE INCOME (Generally)

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. This section and other sections of ORS Chapter 316 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 shall be 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 which 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: Ward and June are married. June lives and works in Salem, Oregon. Ward lives and works in Seattle, Washington. They visit each other frequently. Ward sends part of his paycheck to June to deposit in their Oregon savings account and to help pay the bills. 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. Since Ward's wages are community property, they are not permanently separated and they have not agreed to treat their earnings as separate property, June must include one-half of Ward's Washington earnings in Oregon income.

Example 2: Darrin and Samantha are married. Darrin receives a promotion and moves to Crescent City, California to live and work until retirement. Samantha stays in Medford, Oregon and continues her job until she can retire in 5 years. They are not permanently separated by a legal decree and have no intention of filing for divorce. Under California law, earnings of spouses domiciled in California are community property. Since Darrin and Samantha are not permanently separated and have not agreed to treat their earnings as separate income, Samantha must include one-half of Darrin's California wages in her Oregon income. Samantha would be entitled to claim credit for taxes paid to another state.

(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 shall include in Oregon taxable income all amounts received from retirement benefit plans. Beginning January 1, 1996, nonresidents are not taxed by Oregon on retirement income.

(b) Conversion of a regular 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 the tax year shall include a prorated amount in Oregon income.

Example 1: Sam was a resident of Nevada at the time he converted his regular 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 4 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 regular IRAs to Roth IRAs after 1998. For tax years after 1998, converted amounts shall 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

Social Security and Railroad Retirement Benefits Eligible for Subtraction

150-316.054 A subtraction from federal taxable income is allowed for social security and Tier I railroad retirement benefits as defined under Internal Revenue Code Section 86. Tier II, windfall, dual-vested benefits, and any other supplemental annuities paid by the railroad are also allowed as a subtraction from federal taxable income. In all cases, the subtraction is allowed only to the extent that such benefits are included in federal taxable income.

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

(Credits)

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	× 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	× 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	× 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 Loss of Use of Limb(s); Substantiation

150-316.079 *For tax years beginning on or after January 1, 1994.* A Disability Certification form shall be obtained from the county public health officer the first year the credit is claimed. This form should not be attached to the tax return, but shall be kept with the taxpayer's records. Upon audit or examination, the information shall be made available to the department to verify any credit claimed under this section

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

Credit for Income Taxes Paid to Other States

150-316.082(1)-(A) (1) Credit is limited to taxes imposed upon income, but may be claimed with respect to gross income taxes as well as net income taxes. A gross income tax is a tax imposed on gross income as defined in U.S. Treasury Regulation Section 1.61-3. No credit will be allowed for taxes imposed on gross receipts, gross revenue, or gross sales (e.g. Washington Business and Occupation Tax). No credit is allowed with respect to property, transactions, sales or consumption taxes, nor with respect to occupational licenses unless they are imposed upon income. No credit may be claimed on account of interest or penalties paid in connection with a law imposing an income tax, and an allowable tax credit may not be applied against interest or penalties due under ORS chapter 316. The burden of proving that credit is due must be assumed by the taxpayer.

(2) For tax years beginning on or after January 1, 1981, taxes paid to a foreign country do not qualify for the credit although they may qualify as a deduction. (See ORS 316.690)

[**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: Amended and transferred some material from OAR 150-316.082(3) to OAR 150-316.082(1)-(A), 12/31/93

Credit for Taxes Paid to Another State When Paid by a Pass-Through Entity

150-316.082(1)-(B) (1) An individual who owns an interest in a pass-through entity may claim a credit for tax paid to another state by the entity if:

(a) The individual is an Oregon resident;

(b) The portion of the tax for which credit is claimed is computed upon the proportionate share of the entity's income which is taxable to the individual under ORS 316.048; and

(c) The tax paid or accrued is deducted on the entity's or individual's federal income tax return in determining federal taxable income and an addition for the individual's share of the tax deducted is made on the individual's Oregon return; and

(d) If the "pass-through entity" is not an S corporation, the tax paid to the other state was imposed upon the individual but was paid by the "pass-through entity" on behalf of the individual.

(2) The individual shall attach the following items to the Oregon return on which the credit is claimed:

(a) A statement explaining the other state's election, option or requirement under which the entity paid tax;

(b) A copy of the federal Schedule K-1 which shows the tax paid to the other state on the individual's share of the entity's income; and

(c) A schedule showing computation of the credit.

(3) The individual shall compute the amount of the credit under the provisions of OAR 150-316.082(2).

(4) "Pass-through entity" means an S corporation, partnership, or limited liability company that is characterized for federal purposes as a partnership.

[**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 10/5/87 and Eff. 12/31/87; Renumbered from OAR 150-316.082(1) to OAR 150-316.082(1)-(B), 12/31/93; Amended 12/31/97, 12/31/98

Credit for Income Taxes Paid to Other States—Computation

150-316.082(2) (1) Method of computing income tax credit for a full-year resident. For purposes of this rule, the net income tax imposed under ORS chapter 316 must be computed without reference to any credit allowable for income taxes paid to another state. Such tax is then multiplied by a fraction, the numerator consisting of the amount of adjusted gross income subject to tax in both the other state and in Oregon (i.e., mutually taxed adjusted gross income), and the denominator consisting of the total modified adjusted gross income reported on the Oregon return. The amount of tax credit allowable is the product of such multiplication or the income tax actually paid to the other state, whichever is less.

(2) For purposes of Subsection 1, the term "adjusted gross income" means adjusted gross income as defined in the Internal Revenue Code section 62 and the corresponding regulations. In

addition, adjusted gross income includes lump-sum distributions that are added to Oregon taxable income. "Modified adjusted gross income" means adjusted gross income as defined under this rule as modified under ORS Chapter 316, but only as to items of income or modifications of deductions that were used in arriving at federal adjusted gross income. For instance, the federal income tax subtraction, refund of prior year federal taxes for which a benefit was received, foreign taxes claimed as an itemized deduction, adoption expenses, etc., are not considered modifications used at arriving at federal adjusted gross income.

Example 1: Jon has, in addition to other income, $10,000 of rental income taxed both by Oregon and another state. Income tax paid to the other state is $300. Total Oregon tax after all other credits is $2,000. Jon computes the allowable credit as follows:

Federal Adjusted Gross Income	$40,000
Modifications:	
Less – U.S. Bond Interest	(5,000)
Civil Service Retirement	(2,000)
Add – California Municipal Bond Interest	17,000
Modified Adjusted Gross Income	$50,000

$$\frac{\text{Mutually Taxed Income}}{\text{Modified Adjusted Gross Income}} = \frac{\$10{,}000}{50{,}000} \times \$2{,}000 \text{ (Oregon Tax)} = \$400$$

The allowable amount is the lesser of the above or the actual tax paid. In this case it is the tax paid, i.e., $300.

(3) Method of computing income tax credit for part-year residents and nonresidents. For purposes of this subsection the credit for income taxes paid is the lesser of:

(a) the Oregon tax liability (after all other credits) based on the mutually taxed income,

(b) the other state's paid tax liability (after credits) based on the mutually taxed income,

(c) the income tax actually paid to the other state, or

(d) Oregon income tax liability after all other credits.

The following formula is used in determining the credit:

Formula: $\frac{A}{B} \times C = D$ and $\frac{A}{E} \times F = G$

A–Adjusted gross income taxed by Oregon and the other state (mutually taxed income).

B–Modified adjusted gross income.

C–Oregon tax liability (after all other credits).

D–Oregon tax liability (after all other credits) based on mutually taxed income.

E–Total income on the return of the other state.

For purposes of this rule, total income on the return of the other state means the other state's taxable income plus amounts subtracted for itemized deductions (or standard deduction) and exemptions.

F–Paid tax liability of the other state after credits.

G–Other state's paid tax liability (after credits) based on mutually taxed income.

Amount allowable is either D or G or the amounts defined under Sections 3(c) or 3(d), whichever is less.

(4) For purposes of determining mutually taxed income for computing credit for taxes paid to another state, any distributions that qualify for the subtraction under ORS 316.159 shall not be considered.

Example 2: Taxpayer is a resident of California from 1980 to 1990 and qualifies to make contributions to an individual retirement account for both federal and California. Taxpayer contributes $1,500 in 1980 and 1981 and from 1982 through 1990 contributes $2,000 per year. Both California and federal allowed a maximum $1,500 deduction for 1980 and 1981. For 1982 through 1986, federal allowed a maximum $2,000 deduction while California only allowed a maximum deduction of $1,500. Taxpayer made contributions of $2,500 ($500 × 5 years) while a California resident for which no deduction was allowed on the California return.

Taxpayer retires and moves to Oregon in June 1991 and begins to receive payments from the IRA account established in California. California permits tax-free recovery of contributions that were not allowed as California deductions. No income is reportable to California until the basis is recovered. Oregon taxes all of the IRA distributions received after June 1991 but will allow the taxpayer a subtraction on the Oregon return for the $2,500 of contributions which were not deductible.

Taxpayer receives total distributions of $2,450 in 1991. Taxpayer would not report any of the IRA distribution to California and would claim a subtraction of $2,450 on the 1991 Oregon return. In 1992, the taxpayer receives total distributions of $4,200. Taxpayer would exclude $50 from California income as tax-free recovery of contributions and would report $4,150 ($4,200 – 50) as taxable distribution. Taxpayer would report all of the $4,200 of IRA distribution as income to Oregon and would claim a subtraction on the Oregon return for $50 ($2,500 – 2,450).

For purposes of computing credit for taxes paid to another state, all of the $4,200 received in 1992 is considered to be income subject to tax by Oregon. The subtraction of $50 is ignored. The mutually taxed income used to compute the credit is the $4,150 reported as income to California which is also considered mutually taxed by Oregon as part of the $4,200 considered to be subject to Oregon tax.

(5) Special Filing Status. Filing status may affect the computation of the credit allowed by ORS 316.082. If a husband and wife file separate returns for Oregon and also file separate returns for another state, the credit is limited. Each spouse may claim only his or her portion of the actual taxes he or she paid to the other state (subject to all other limitations provided under this rule) in computing the allowable credit.

(6) If one spouse is a resident of Oregon and the other is a resident of a community property state and files a separate return in that state, the Oregon resident may be entitled to a credit for taxes paid to the other state on mutually taxed income. For purposes of this rule, the mutually taxed income is that which is earned and reported to the other state by the nonresident but included in the income of the Oregon resident by virtue of the laws of the community property state. The amount of the other state's tax paid on mutually taxed income shall be determined using the following ratio:

$$\frac{\text{Separate Spouse's Mutually Taxed Oregon Income}}{\text{Total Income on the Return of the Other State}} \times \text{Other State's Income Tax Liability}$$

(7) If a husband and wife file a joint return for Oregon, the entire amount of taxes either or both spouse paid to the other state (subject to all other limitations provided under this rule) may be claimed for purposes of computing the credit allowed under this statute. It does not matter which filing status the taxpayers use for the other state.

(8) If a husband and wife file separate returns for Oregon but file a joint return for another state, the amount of credit allowable under the statute is limited as follows. Each spouse may claim a credit for taxes paid to another state (subject to all other limitations provided under this rule) based on the following ratio:

$$\frac{\text{Separate Spouse's Mutually Taxed Oregon Income}}{\text{Total Income on the Return of the Other State}} \times \text{Other State's Income Tax Liability}$$

Example 3: Mark and Beth are part-year residents who elect to file separate Oregon returns and a joint Idaho return. Mark has $2,000 income taxed by both Oregon and Idaho and Beth has $8,000 income taxed by both Oregon and Idaho. The total income taxed by Idaho was $40,000 and the total Idaho tax liability was $2,400. The amount of Idaho taxes Mark may use in computing his credit is $120. ($2,000/$40,000 × $2,400). The amount of Idaho taxes Beth may use in computing her credit is $480 ($8,000/$40,000 × $2,400).

[**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: Amended and transferred some material from OAR 150-316.082(3) to OAR 150-316.082(2), 12/31/93

Credit for Income Taxes Paid to Other States—Proof Required and Procedure for Obtaining the Credit

150-316.082(3) (1) The taxpayer shall attach the following items to the Oregon return on which the credit is claimed:

(a) A complete copy of the other state's income tax return; and

(b) Proof of payment of the tax, including but not limited to:

(A) A copy of the check written to pay the tax at the time the other states return is filed;

(B) Copies of W-2 statements verifying withholding paid to the other state;

(C) A copy of a cashier's check or other negotiable instrument;

(D) A copy of a canceled check showing payment of tax or estimated tax payments; or

(E) A receipt of tax payment.

(2) If the taxpayer is required to amend per subsection (4) of this rule, in lieu of the complete copy of the other state's return as prescribed in subsection (1) of this rule, the taxpayer shall attach a copy of the other state's amended return or audit report, whichever is applicable.

(3) The credit may be taken either at the time of filing returns or subsequently.

(4) Credit for income taxes paid to another state is based on income that is taxed by both Oregon and another state in the same tax year.

(5) A taxpayer shall be allowed a credit for taxes paid to another state when the other state's taxes have been paid. If the other state's taxes have not been paid before the credit is claimed on the Oregon tax return, no credit shall be allowed. When the other state's taxes are paid, the taxpayer must file a refund claim in order to receive such credit. If any subsequent change or correction is made to the taxpayer's liability which also changes the credit allowed under ORS 316.082, the taxpayer shall amend the Oregon return for which such credit was originally allowed.

Example 1: In 1983, Gary and Joanne filed their joint income tax return claiming a credit for taxes paid to California in 1983 of $500. In 1985, after California audited their 1983 California tax return, they received a refund of the entire $500 (the amount of credit they originally claimed). Gary and Joanne will need to amend their 1983 Oregon tax return to show that no credit is available for taxes paid to California in 1983.

(6) Mutually taxed income is income subject to tax in both states according to federal and state law. Therefore, the credit allowed by this statute is only allowable based on taxes paid to another state if that state has jurisdiction to tax the income.

[**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. 1/69, Amended 12/70, 12/31/81, 12/31/84, Amended and Renumbered from OAR 150-316.082 to OAR 150-316.082(3), 12/31/86, 12/31/88, 12/31/89, 12/31/91, 12/31/92, Amended and transferred some material from 150-316.082(3) to 150-316.082(1)-(A) and 150-316.082(2), 12/31/93

Addition of Taxes Paid to Another State Claimed as an Itemized Deduction

150-316.082(4) If a credit is claimed for taxes paid to another state and the tax paid to the other state is also included as an itemized deduction, the taxpayer must restore to income the lesser of: (1) the amount of the other state's net tax liability for the year in which the Oregon credit is claimed, or (2) the amount of the other state's tax for that year included in itemized deductions. The year the credit is claimed may be different from the year the tax is included in itemized deductions. See the examples for further clarification.

Example 1: Joe deducts $200 tax withheld by the other state as an itemized deduction on his Oregon return. His income tax liability to the same state is $150, and his allowable Oregon credit is $100.

On his Oregon return, he must add $150 to income, the amount of the other state's net tax liability for the year in which the credit is claimed.

Example 2: Joe deducts $200 tax withheld by the other state as an itemized deduction on his Oregon return. His income tax liability to the same state is $250, and his allowable Oregon tax credit is $250.

He must add $200 to income, the amount deducted in that year. He will have to add to income the $50 ($250 – $200) in the year paid if deducted.

Example 3: Joe makes an estimated tax payment of $400 to California for tax year 1987 on January 15, 1988, (the last due date for estimated tax payments for 1987). Joe had a 1987 tax liability to California of $350 and was also able to claim a credit on his 1987 Oregon return of $350. In 1988 Joe made estimated tax payments to California for tax year 1988 in the amount of $700. His 1988 California tax liability was $950 and his 1988 Oregon tax credit was $950. He included $1,100 (400 + 700) taxes paid in his 1988 itemized deductions.

His 1988 addition to Oregon income is $1,050 (350 from tax year 1987 + 700 from tax year 1988).

Example 4: Same facts as in example 3. Joe makes a 1988 estimated payment of $250 on January 15, 1989, as well as $1,500 for 1989 taxes. He claims $1,750 (250 + 1,500) as a 1989 itemized deduction. His 1989 California tax liability and Oregon credit is $1,400.

His 1989 addition to Oregon income is $1,650 (250 from tax year 1988 + 1,400 from tax year 1989).

Hist: Filed 12/5/78, Eff. 12/31/78, Amended 12/31/90

Oregon Credit for the Elderly

150-316.087 (1) For tax years beginning on or after January 1, 1987, the Oregon credit is equal to 40 percent of the "allowable federal credit" as determined under Section 22 of the Internal Revenue Code. The "allowable federal credit" is the total credit computed on federal Schedule R or RP which is available to reduce the federal tax liability.

(2) For tax years beginning on or after January 1, 1985, but before January 1, 1987, the Oregon credit is equal to 15 percent of the "allowed federal credit" pursuant to Section 22 of the Internal Revenue Code. The "allowed federal credit" is the amount claimed on the federal return which actually reduces the federal tax liability (but not below zero). The allowed federal credit may be less than the allowable federal credit.

(3) For tax years beginning before January 1, 1985, the Oregon credit is equal to 15 percent of the "allowed federal credit" pursuant to Section 37 of the Internal Revenue Code as amended on December 31, 1984.

(4) For the purpose of subsection (1) and (2) of this rule, "federal tax liability" has the same meaning as defined in Section 26 of the Internal Revenue Code. For the purpose of subsection (3) of this rule, the "federal tax liability" has the same meaning as defined in Chapter 1 of Subtitle A of the Internal Revenue Code as amended on December 31, 1984.

(5) For application of the Oregon credit for the elderly allowed under ORS 316.087 used in conjunction with the Oregon child care credit allowed under ORS 316.078, see OAR 150-316.078.

[**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

Sewer Connection Credit

150-316.095 (1) The sewer connection credit can be claimed by taxpayers in eligible jurisdictions if the connection was made or the costs were incurred on or after January 1, 1985.

(2) For tax years beginning on or after January 1, 1992, the allowable credit is equal to the lesser of the costs paid or incurred to connect to the sewage treatment works or $800. The credit claimed in any taxable year shall not exceed one-fifth of the total amount of the credit per qualifying residence or the tax liability of the taxpayer. The balance of the allowable credit not used to reduce the tax liability of the taxpayer can be carried forward for a period not to exceed eight successive years.

(3) "Costs incurred" includes county assessments and other charges necessary to connect to the sewage treatment works. It does not include interest on indebtedness, fines, or penalties. It does not include costs to connect business property, even when located on the same tax lot as the principal residence.

(4) Costs relating to the rental portion of an owner-occupied multiple-family dwelling, or a home business, must be separated out from the total costs. The taxpayer may only claim costs incurred to connect the principal residence. Any charges for separate lines not serving the principal residence are not eligible for the credit.

Additional charges relating to business property must be capitalized. The expenses shall be amortized over the life of the property. "Multiple-family dwelling" includes duplexes, triplexes, and apartment homes.

(5) The credit must be claimed for the year in which the connection is made or the cost incurred, and is only allowed to the taxpayer who expended the funds for that purpose. The residence connected must be the principal residence of the taxpayer. If the taxpayer incurs the cost of connecting a principal residence to the sewer treatment works and then sells or converts the principal residence before the entire credit is claimed, the taxpayer may continue to claim the balance of the credit. If the taxpayer then purchases a new principal residence and incurs the cost of connecting the newly acquired residence to a treatment works, a new sewer connection credit may be claimed.

Example: The taxpayer connects a principal residence to a qualifying sewer treatment works and is entitled to a credit. The taxpayer will claim one-fifth of the total credit. After two years the taxpayer converts the residence to a rental. The taxpayer may continue to claim the three years of tax credits still available. If the taxpayer then buys a principal residence and incurs the cost of connecting a principal residence to a sewer treatment works, the taxpayer may claim a new sewer connection credit. It is possible that the taxpayer could be claiming a credit for a prior principal residence and a credit for a current residence in the same tax year.

The taxpayer's property basis must be reduced by any credit previously received when the principal residence is converted to business property.

(6) *For tax years beginning on or after January 1, 1994.* The receipt of payment required by this section should not be attached to the tax return, but shall be kept with the taxpayer's records. Upon audit or examination, the information shall be made available to the department to verify any credit claimed under this section.

(7) *Retroactive eligibility.*

(a) For tax years that begin on or after January 1, 1985, but before January 1, 1991, a taxpayer who is eligible for the credit as a result of the amendments to ORS 316.095 by Oregon Laws 1991, Chapter 781, Section 1 (SB 828), shall file an application for refund(s) on or before April 15, 1993. Taxpayers may either file amended returns for prior years to claim the credits or may claim the credits on the 1991 or 1992 tax returns.

(b) Oregon Laws 1991, Chapter 781, Section 1 (SB 828), amended ORS 316.095 to allow a resident individual a sewer connection credit if the order from the Assistant Director for Health is issued after January 1, 1988, and before July 1, 1995. If the costs are incurred or the connection is made in tax years beginning before January 1, 1992, then the taxpayer is entitled to a $750 sewer credit. If the costs are incurred or the connection is made in tax years beginning on or after January 1, 1992, then the taxpayer is entitled to an $800 sewer credit.

Hist: Filed 9/20/89 and Eff. 12/31/89; Amended 12/31/91, 12/31/92, 12/31/95

Sewer Connection Credit: Substantiation for Bancroft Bonding

150-316.095(6) (1) *General.* To qualify for the credit, the connection to the sewer treatment works must be made or the costs must be incurred on or after January 1, 1985.

(2) *Bancroft Bonding.*

(a) If a taxpayer is incurring the costs of connecting to a sewage treatment works by securing a Bancroft bond instalment agreement and the connection will not be made in the taxable year, the effective date of the agreement will be considered the date the costs are incurred to satisfy the requirements of Section (2)(a) of ORS 316.095. The effective date of the agreement must be on or after January 1, 1985, to qualify for the credit.

(b) The bond agreement will not meet the qualifications for a "receipt of payment" as required in ORS 316.095(6). The receipt must be issued from the installing or constructing entity and be in the form of a letter, notice, or other substantiation but must indicate the constructing entity incurred an obligation to make a sewer connection to the taxpayer's residence. A copy of the receipt shall be attached to the Oregon return on which the credit is claimed.

Hist: Filed 9/20/88 and Eff. 12/31/88; Amended 12/31/89

Disabled Child Exemption Credit

150-316.099 (1) For tax years beginning on or after January 1, 1986, an additional personal exemption credit is allowed for dependent children who are age 17 or younger and who are disabled on the last day of the tax year.

(2) Taxpayers must have their dependent children certified as disabled under guidelines provided by the Oregon Department of Education. A disabled child is evaluated each year for education purposes and may qualify for an individual education plan or an early intervention services program. Upon request of the department, the taxpayer claiming the personal exemption credit for a disabled child shall provide the first sheet of the applicable year's Department of Education form, showing all information as to the child's name, disability, date of diagnosis, and education eligibility, for each year the credit is claimed.

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

Credit for Political Contributions

150-316.102 (1) *In General:* To qualify for the political contribution credit, the contribution must be a voluntary contribution of money made to one of the following:

(a) A major political party or its political committees, or a minor political party or its political committees;

(b) A candidate for federal, state or local office; or

(c) A political committee organized and operated exclusively to support or oppose a ballot measure or measures.

Each of these categories is discussed in more detail in the following sections.

(2) *Contributions to political parties.* For purposes of this rule, a major political party is defined in ORS 248.006. A minor political party is defined in ORS 248.008. Contributions to any of these parties, or their political committees, qualify for the credit.

(3) *Contributions to candidates*. Qualifying contributions are those made directly to the candidate or the principal campaign committee of the candidate. Contributions made to any other political committee will not qualify as a contribution made to a candidate.

(a) A principal campaign committee (PCC) means a candidate's political committee that has a separate treasurer. The PCC must have met the filing requirements contained in Chapter 260 of the Oregon Revised Statutes.

(b) Candidates for a state office must also have filed a declaration of limitation on expenditures. For purposes of this rule, "state office" means:

(A) Governor, Secretary of State, State Treasurer, Attorney General, Superintendent of Public Instruction and the Commissioner of the Bureau of Labor and Industries; or

(B) the office of state senator or state representative.

Candidates for federal or local elections are not required to file a declaration of limitation on expenditures.

(c) Candidates do not have to appear on a ballot in this state in the same year the contribution is made for the credit to be claimed. However, if the candidate is not on a ballot, at least one of the following must have occurred in the same year the contribution is made:

(A) a prospective petition is filed;

(B) a declaration of candidacy is filed;

(C) a certificate of nomination is filed; or

(D) a designation of a principal campaign committee is filed.

(4) *Contributions to political committees*. Contributions made to a political committee which is not a principal campaign committee for a candidate will qualify only if the committee is organized and operated exclusively to support or oppose a ballot measure or measures to be voted on in Oregon.

(a) Contributions may qualify under this provision even though

(A) no measure appears on the ballot in the same year the contribution is made;

(B) the contribution is made to reduce a deficit from a prior year; or

(C) the political committee is formed by a national committee to support or oppose measures or questions to be voted on in Oregon.

(5) The amount of the contribution must be reduced by the fair market value of any items or services received in exchange for the contributions.

(6) A partnership or S corporation may make political contributions on behalf of its partners or shareholders. The credit may be claimed on the individual tax return, subject to all of the limitations in ORS 316.102 and this rule. See ORS 260.005 for limitations on political contributions made by corporations.

(7) Proof of the credit, such as a canceled check or receipt, should not be attached to the tax return but should be kept with the taxpayer's records. Upon audit or examination, the taxpayer must provide documentation to verify the credit.

The following examples illustrate these rules:

Example 1: In 1995, Jim contributes $50 to the Republican National Party, $50 to the Republican Committee to Re-elect US Senators, $50 to the Democratic National Party Committee to Re-elect Senator Jones of California and $50 to the Libertarian Party. All contributions qualify for the political contribution credit. Jim will be able to claim a credit of $50 on his income tax return. If he files a joint return with his wife, they may claim a $100 credit.

Example 2: In 1995, Kate Johnson filed a designation of a principal campaign committee. She will appear on the ballot in the 1996 primary election as a candidate for Oregon state senator. Contributions made in 1995 to Ms. Johnson, or her principal campaign committee, will qualify for the credit. Contributions made in 1996 will qualify if Ms. Johnson filed a declaration of limitation on expenditures for each election at which she was a candidate in 1996.

Example 3: Using the same facts as *Example 2*, assume Ms. Johnson was elected to office. If Senator Johnson remains in office for her entire term, she will need to file a designation of a principal campaign committee each of those years in order for contributions made to her or her principal campaign committee to qualify for the credit. She will not be required to file a declaration of limitation on expenditures, because there is no election at which she is a candidate during those years.

Example 4: Lu Ann formed a political committee to support the election of candidates to state senator or state representative. The committee will make donations to any candidate who is a graduate of the University of North Argyle. Contributions to this committee will not qualify for the credit. This committee is not the principal campaign committee of any candidate.

Example 5: Amanda, Sarah and Wendy are members of Young Medical Volunteers of America, a nonprofit organization. The organization formed a political committee solely to solicit contributions to support or oppose ballot measures. Contributions to the political committee will qualify for the credit.

Example 6: Royal is a member of the Association of Certified Engineers of America. The association forms a Political Action Committee (PAC) in Oregon and solicits voluntary donations from individual members. The PAC states in its material that it is organized and operated exclusively to support or oppose any measures or questions appearing on ballots in Oregon which the directors of the association determine will impact its members. Contributions to the PAC will qualify for the credit.

Example 7: Same facts as *Example 6*, except the PAC is organized and operated at the national level. It solicits donations from members throughout the United States, and expends funds to support or oppose state or federal legislation which it determines may impact its members. Contributions to the PAC will not qualify for the credit. Contributions must be to a PAC organized and operated exclusively to support or oppose measures or questions to be voted on in Oregon.

Example 8: A political committee is organized and operated to support a ballot measure to be voted on in Oregon. The committee solicits donations and offers T-shirts in return for contributions of $50 or more. Douglas contributes $50 and receives a T-shirt valued at $10. He may claim a political contribution credit of $40.

Example 9: Same facts as *Example 8*, except that Douglas contributes $100. He is entitled to a credit of $50 on a single return, or $90 on a joint return.

Example 10: Debra belongs to a trade union which, as part of its activities, supports or opposes certain ballot measures. The union informs Debra that a certain percentage of her monthly dues is used for political purposes. No part of her dues payment will qualify for the credit because it is not a voluntary payment of money to a political committee organized and operated exclusively to support or oppose a ballot measure or measures.

Example 11: Same facts as *Example 10*, but the union also solicits voluntary political contributions from its members. These funds are placed directly into a separate PAC, which is not subsidized in any way by the union, and are used exclusively to support or oppose ballot measures in Oregon. Debra signs up for a payroll deduction of $5 to be taken from her monthly checks. She may claim a credit of up to $50 on her tax return, or a credit of $60 (12 months x $5) if she files jointly with her husband.

Example 12: An organization is formed to educate taxpayers regarding candidates and ballot measures. The organization does not support or oppose any measure or any particular candidate. Funds raised by the organization are used to sponsor seminars and debates by candidates. Contributions made to the organization do not qualify for the political contribution credit. The organization must be formed to support or oppose a specific ballot measure or measures.

Example 13: In April, 1995, the Oregon Legislature referred a measure to the 1996 ballot for a vote. David filed with the Secretary of State for certification of a political committee to oppose the measure. The political committee solicits contributions and makes expenditures to oppose the referred measure. The political committee also decides that it will spend some of the contributions it receives to support another measure which will appear on a separate ballot in 1997. Even though the political committee was organized to oppose the referred measure, the committee is not restricted to soliciting contributions and making expenditures that are solely in opposition to the measure referred by the legislature. The political committee may use contributions to support or oppose other measures to be voted on in Oregon. Contributions to the political committee will qualify for the credit as long as it is organized and operated solely to support or oppose measures to be voted on in Oregon.

Hist: Eff 1/69, Amended 12/70, 11/73, 12/19/75, 12/19/77, 12/31/78, 12/31/79, 12/31/83 (Temp.); 2/21/84 Perm.; Amended 12/31/85, 12/31/87, 12/31/94, 12/31/95

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

150-316.109 For tax years beginning on or after January 1, 1979, a credit shall 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:

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

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

Credit for Installation of Alternative Energy Devices in a Dwelling

150-316.116 (1) For tax years beginning on or after January 1, 1988, the alternative energy device credit is based on the first year energy yield allowable *per dwelling utilizing the device.* The energy yield per dwelling is determined by dividing the energy yield per device by the total dwellings utilizing the device. "Dwelling" and "alternative energy device" are defined in ORS 469.160.

(2) For each taxable year, a taxpayer is limited to only one credit per device per dwelling that utilizes the device. If in the same tax year, two devices are installed and they serve the same dwelling, only one device shall qualify for the credit. If the devices were installed in two separate tax years, both devices would qualify for the credit.

(3) The credit cannot exceed the cost of acquisition, construction, and installation of the device. The maximum allowable credit per dwelling in any one year is limited to the amounts listed in section (4) of this rule. Each taxpayer that qualifies for the credit may apply the allowable credit to the current year's tax liability. Any unused credit balance may be applied to the following year's tax liability for up to five successive years. If *two or more* taxpayers qualify for the credit, *they must apportion the allowable credit between them* based on their investment in the device or ownership in the property.

(4) *Maximum allowable credit per dwelling.*

(a) For tax years beginning on or after January 1, 1988, and before January 1, 1990, the maximum allowable credit shall not exceed the lesser of $1,500 or the first year energy yield in kilowatt hours per year times $.60 per dwelling utilizing the device.

(b) For tax years beginning on or after January 1, 1990, and before January 1, 1996, the maximum allowable credit shall not exceed the lesser of:

(A) $1,500 or the first year energy yield in kilowatt hours per year times $.60 per dwelling utilizing a *device used for space heating, cooling, electrical energy or domestic water.*

(B) $1,500 or 50 percent of the cost of the device or the first energy yield in kilowatt hours per year times $.15 per dwelling utilizing a *device used for a swimming pool, spa or hot tub heating.*

(c) For tax years beginning on or after January 1, 1996, and before January 1, 1998, the maximum allowable credit shall not exceed the lesser of:

(A) $1,200 or the first year energy yield in kilowatt hours per year times $.48 per dwelling utilizing a *device used for space heating, cooling, electrical energy or domestic water heating.*

(B) $1,200 or 50 percent of the cost of the device or the first energy yield in kilowatt hours per year times $.15 per dwelling utilizing a *device used for a swimming pool, spa or hot tub heating.*

(d) For tax years beginning on or after January 1, 1998, and before December 31, 2001, the maximum allowable credit shall not exceed the lesser of:

(A) $1,000 or the first year energy yield in kilowatt hours per year times $.40 per dwelling utilizing a *device used for space heating, cooling, electrical energy or domestic water heating.*

(B) $1,000 or 50 percent of the cost of the device or the field energy yield in kilowatt hours per year times $.15 per dwelling utilizing a *device used for a swimming pool, spa or hot tub heating.*

(5) *Examples:* Examples 1 through 4 are based on the following set of facts:

On January 1, 1995, an alternative energy device (a domestic water heating device) was installed in a three-dwelling complex for $5,000. The energy yield of the device is 10,000 kWh but only 8,100 kWh services the three dwelling units. The energy yield per dwelling unit is 2,700 kWh or (8,100 kWh/ 3 dwellings = 2,700 kWh/ dwelling). The credit allowable per dwelling is $1,500 or (2,700 kWh × $.60 = $1,620, but the maximum is limited to $1,500). The total credit for the device is $4,500 or ($1,500 × 3 dwellings = $4,500).

Example 1: If one taxpayer qualifies for the credit, he may apply up to $4,500 of the credit to his current year tax liability and carry forward any remaining balance.

Example 2: If two taxpayers equally share in the investment and qualify for the credit, they may each apply up to $2,250 ($4,500 ÷ 2 = $2,250) of the credit to their current year tax liability. They may **each** carry forward any remaining balance up to five years.

Example 3: If five taxpayers share equally in the investment and qualify for the credit, they may each apply up to $900 of the credit to their current year tax liability ($4,500 ÷ 5 = $900).

Example 4: If the total cost of the acquisition and installation of the device was $3,600, the sum of the credits to be taken in the current year and any subsequent years for all taxpayers would be limited to $3,600.

Example 5: On January 1, 1997, an alternative energy device costing $7,000 was installed to heat a swimming pool. The first year's energy yield is 10,000 kWh. The allowable credit is the lesser of: $3,500 (50 percent of the cost of the device), or $1,500 (10,000 kWh × $.15 = $1,500), or $1,200 (the maximum credit).

(6) *Eligibility and substantiation.*

(a) In order to be eligible for the alternative energy device credit, the taxpayer shall have the system certified by the Department of Energy or installed by a contractor who is certified by the Department of Energy in accordance with ORS 469.170.

(b) Pursuant to ORS 469.170 the taxpayer shall provide the following information for any year in which the credit is claimed:

(A) a copy of the verification of installation form, and

(B) a copy of the alternative energy device system certificate, or

(C) a copy of the contractor certification certificate if the device was installed by a contractor certified by the Department of Energy.

(c) These forms should not be attached to the tax return, but shall be kept with the taxpayer's records. Upon audit or examination, the information shall be made available to the department to verify any credit claimed under this section.

(d) If the verification form or certification certificate is transferred to a purchaser of the dwelling who qualifies for the credit under ORS 469.170, the purchaser shall also provide the substantiation as required under this section to claim the credit.

Hist: Filed and Eff. 12/31/77; Amended 3/79 (Temp.); 5/79 (Perm.); 12/31/79, 12/31/84, 12/31/89, 12/31/94, 12/31/95

(Taxation of Nonresidents)

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

Taxable Income of Nonresidents: Deductibility of Alimony Payments

150-316.117-(B) (1) Full-year nonresidents shall follow the rules under ORS 316.130(2)(c) in determining deductibility of alimony payments.

(2) In determining income from Oregon sources, part-year residents shall not deduct any alimony or separate maintenance payments, as defined in IRC 215(b) and 71(b), made to residents during the portion of the year the part-year resident was a nonresident.

[**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 10/5/87 and Eff. 12/31/87

Separate or Joint Federal Returns for Husband and Wife

150-316.122 (1) For tax years beginning on or after January 1, 1987, ORS 316.122 contains exceptions to the general rule that the filing status of the federal return, whether joint or separate, determines the filing status on the Oregon return. If a joint federal income tax return is filed and one or both of the spouses is not a full-year resident, each spouse must file a separate state return unless they elect to file a joint state return.

(2) The income to be included by the spouses in computing their joint Oregon taxable income is determined as follows:

(a) A full-year resident spouse shall include all income received during the year as determined in OAR 150-316.048.

(b) A part-year resident spouse shall include:

(A) For the portion of the year the spouse is a resident all income as determined under OAR 150-316.048.

(B) For the portion of the year the spouse is a nonresident the Oregon source income as determined under ORS 316.127 and the rules thereunder.

(c) A nonresident spouse shall include all Oregon source income as determined under ORS 316.127 and the rules thereunder.

(d) The Oregon source net operating loss of a part-year resident included in the filing of a joint return is determined as follows:

(A) For the portion of the year the spouse is a resident any loss determined under OAR 150-316.014.

(B) For the portion of the year the spouse is a nonresident any loss determined under OAR 150-316.014 as it relates to nonresidents.

(3) This election to file a joint state return may not be revoked after the due date of the return for the tax year. An amended return filed prior to the due date is considered an original return and may contain a change from a joint return to separate returns.

(4) Spouses may change from separate state returns to a joint state return within the time prescribed by law for filing amended returns. The change to a joint return shall not be made if the change would not be allowable under Internal Revenue Code Section 6013(b).

(5) In the event the election to file a joint return for Oregon tax purposes is not made, then each spouse with income subject to Oregon tax must compute an "as if" federal return on the basis of the separate federal adjusted gross income of the taxpayer.

(6) If the taxpayers can clearly segregate their itemized deductions, each taxpayer may claim his or her own deductions instead of apportioning them by income. The burden of proof for substantiating the segregation rests with the taxpayer. See OAR 150-316.695(1) for treatment of itemized deductions on separate returns when one spouse is not required to file in Oregon.

(7) If a joint federal return has been filed, the federal tax deducted in arriving at Oregon taxable income on the separate state return shall be computed by apportioning the total accrued federal tax liability of both spouses. Apportionment shall be made on the basis of the separate federal adjusted gross incomes of both spouses. The result is subject to the $1,500 limitation of the federal tax deduction for each spouse for tax years beginning on or after January 1, 1987. See OAR 150-316.685(1).

[**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 12/70, Amended 11/73, 12/19/75, 12/31/78, 12/31/84; Amended and Renumbered from OAR 150-316.122(3) to OAR 150-316.122(2), 12/31/85; Amended and Renumbered from OAR 150-316.122(2) to OAR 150-316.122, 12/31/87, 12/31/90

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

Nonresident Partners: Other Methods of Allocation and Apportionment

150-316.124(4) (1) ORS 314.605 to 314.670 are designed to allocate and apportion to Oregon, in a fair and equitable manner, a nonresident partner's items of partnership income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without the state of Oregon. If the methods provided under those sections do not so allocate and apportion these items, the department may permit a nonresident partner to allocate and apportion those items under an alternative method as proposed by the partner. An alternative method will be allowed only in limited and specific cases. ORS 316.124(4) may be invoked only in unusual fact situations (which ordinarily will be unique and nonrecurring). These are situations which will generally violate a nonresident partner's rights under the constitution of Oregon or of the United States.

(2) An application to use an alternative method of allocation and apportionment must be made in writing. The request must a) specify why the standard method does not fairly represent the extent of the partnership's Oregon business activity; b) specify how the standard method of allocation and apportionment violates the nonresident partner's constitutional rights; and c) must include a detailed description of the alternative method.

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

Gross Income of Nonresidents; Personal Services

150-316.127-(A) (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. 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. See paragraph (b) of this subsection.

(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. 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 while within this state, the entire amount of compensation so earned is taxable without apportionment.

Example 1: 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:

$$\frac{\text{Days actually worked in Oregon}}{\text{Total days actually worked in both states}} \quad \frac{132}{220} \times \$30,000 = \$18,000$$

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

Example 2: John manages one office. That office is located in Oregon. He only spends a portion of his time, however, in Oregon and is a nonresident of Oregon. B-Corp pays him a salary exclusively for managerial services in the total amount of $30,000. The entire $30,000 would be 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 3: Joan is a nonresident of Oregon. She actually worked a total of 220 days during the year and was paid for 40 nonworking 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:

$$\frac{\text{Days actually worked in Oregon}}{\text{Total days actually worked in both states}} \quad \frac{110}{220} \times \$26,000 = \$13,000$$

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

(d) Total compensation for personal services includes amounts paid in a form other than money. To the extent the payments are treated as compensation for federal income tax purposes, they will be treated as compensation for Oregon tax purposes and shall be apportioned as provided in paragraph (3) of this rule. Examples include nonqualified stock options, personal use of a business asset, employer-paid membership fees, etc.

(e) 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 more other states, the unemployment compensation benefits shall be apportioned to Oregon using a method that reasonably reflects the services performed in Oregon.

Example 4: Gary, a nonresident, worked in Oregon and Washington for the last 5 years. At the beginning of the current year, he was laid off by his employer. Gary may use the Oregon wages as a percentage of total wages reported on his nonresident tax return for the prior year to determine the percentage of unemployment benefits to be included in Oregon income for the current year. Alternatively, he may use any other method that results in a reasonable amount of unemployment benefits included in Oregon income.

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

Hist: Eff. 1/69, Amended 11/73, 12/19/75, 1/1/77, 12/31/81, 12/31/84; Amended and Renumbered from OAR 150-316.127(1) to OAR 150-316.127, 12/31/85, 12/31/87; Amended and Renumbered from OAR 150-316.127 to OAR 150-316.127-(A); and transferred some material from OAR 150-316.127-(A) to OAR 150-316.127-(B), OAR 150-316.127-(C), and OAR 150-317.127-(D), 12/31/89, 12/31/90; Amended 12/31/91, 12/31/92; Amended and transferred some material from OAR 150-316.127-(A) to OAR 150-316.127-(E), 12/31/93; Amended 12/31/94, 12/31/95, 12/31/98

Gross Income of Nonresidents; Pensions and Retirement Income

150-316.127-(B) The provisions of paragraphs one through four of this rule apply to pension and retirement income received by nonresidents before January 1, 1996. For rules relating to the taxation of pension and retirement income received after December 31, 1995, see paragraph five of this rule.

(1) *Definitions.*

(a) *Qualified Employer Retirement Benefit Plan.* "Qualified employer retirement benefit plan" means any employer-related plan which is defined and administered pursuant to part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code. This includes, but is not limited to, the following employer administered plans: qualifying pension and profit sharing plans, annuity plans, cash or deferred compensation arrangements, or tax-shelter annuity plans.

(b) *Qualified Employee Retirement Benefit Plan.* "Qualified employee retirement benefit plan" means any plan established and maintained solely by an employee or on the employee's behalf which is defined and administered pursuant to part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code. This includes, but is not limited to, the following employee-related plans: individual retirement accounts, individual retirement annuities, simplified employee pension plans, or self-employed retirement plans.

(2)(a) *General provisions.* In general, Oregon nonresident taxpayers shall include in Oregon taxable income distributions received from qualified employer and employee retirement benefit plans which are derived from or connected with services performed in Oregon. Only contributions made to a retirement plan while the employee was performing services in Oregon are considered Oregon source income when received by the nonresident taxpayer. Resident taxpayers include in Oregon taxable income the same amount of the distribution as included for federal purposes regardless of where the services were performed or when the contributions were made to the plan.

Example 1: Joanne lived in Oregon and worked in Washington during her employment years. Upon her retirement, she moved her domicile to Florida. Her retirement income is not Oregon source income and is not subject to Oregon tax, because the job services were not performed in Oregon. Any retirement income actually or constructively received while an Oregon resident is subject to Oregon tax under ORS 316.048.

Example 2: Doug always lived and worked in Colorado. Subsequent to his retirement, he moved to Oregon and became an Oregon resident. While he remains an Oregon resident, all of his retirement distributions are subject to Oregon tax under ORS 316.048. If he later moves out of Oregon, none of the distributions received after his change of residence are subject to Oregon tax.

(b) *Exception.* If the compensation is not taxable by Oregon due to federal Public Law (P.L.) 101-322, then the related retirement benefits are not taxable. See OAR 150-316.127-(E) regarding P.L. 101-322.

(3) *Qualified Employer Retirement Benefit Plans.*

(a) *General.* Contributions or compensation paid by an employer pursuant to any qualified employer's retirement benefit plan shall be included in Oregon taxable income when received by a nonresident taxpayer if such contribution or compensation is derived from or attributable to Oregon sources. For purposes of this subsection, "taxpayer" means the employee or any other beneficiary of the employee's interest in the plan. This income is from Oregon sources if it relates to services performed in Oregon.

(b) If the employee is receiving a single life annuity, the employee must first compute the expected return using the tables set forth in Treas. Reg. Section 1.72-9, and then make the applicable allocations set forth below to determine the Oregon source amount. Once the Oregon source amount is determined, use *Example 3* under Section (3)(d) of this rule to determine the amount of income to be reported to Oregon each year. If the retirement account also contained employee contributions, the employee will need to compute and apply the Oregon exclusion ratio defined in Section (3)(d)(B) of this rule.

(c) The next two examples are intended to help define Oregon source income and are based on the assumption that the employee is receiving distributions from a profit sharing account which contains only the employer's contributions, plus interest earnings. Because profit sharing distributions may be irregular in both the timing and amount of the distribution, at the employee's election, expected return cannot be computed for these accounts.

Example 1: Sam lived and worked in Oregon until retirement. At retirement he left his Oregon domicile and moved to Arizona. His retirement account balance at that time was $100,000. This included $31,000 in employer contributions and $69,000 in earnings. Of this amount, $31,000 is Oregon source income and is subject to Oregon tax, while he remains a nonresident. Earnings on the account are not subject to Oregon tax if they were not actually or constructively received until after his move. Sam would file an Oregon return and report 31 percent of each distribution each year until $31,000 has been reported to Oregon.

Example 2: Eliza has always lived in Washington and worked in an Oregon plant. Upon retirement, she moved to Hawaii. At retirement, her account balance was $150,000. Of this amount, $46,500 is from employer contributions and $103,500 are earnings on the account. Because she worked in Oregon, only the $46,500 in employer contributions is Oregon source income. She will report 31% ($46,500 ÷ $150,000) of each distribution to Oregon until $46,500 has been taxed by Oregon.

(d) If an employee, while performing services within Oregon, makes contributions to a qualified employer retirement benefit plan, those contributions shall be considered as part of the taxpayer's basis to the extent the employee has received no tax benefit with respect to such contributions.

For purposes of the following examples, the following phrases are defined.

(A) *Employee contributions.* "Employee contributions" means those contributions made to a qualified employer retirement benefit plan by an employee while the employee was performing services in Oregon.

(B) *Oregon exclusion ratio.* "Oregon exclusion ratio" means the ratio of the total employee contributions plus total earnings to the total expected return. Total expected return is to be calculated using the tables set forth in Treas. Reg. Section 1.72-9.

(C) *Oregon annual exclusion amount.* "Oregon annual exclusion amount" means the product of the total distributions received during a taxable period and the Oregon exclusion ratio.

(D) *Oregon receipts.* "Oregon receipts" mean the excess of the total distributions received during a taxable period over the Oregon annual exclusion amount.

(E) *Oregon taxable percentage.* "Oregon taxable percentage" means the ratio of the total Oregon source distributions to the total expected return net of the employee's contributions. The total Oregon source distributions means that amount which is subject to Oregon tax. This includes the employer contributions or compensation amounts relating to services performed within Oregon.

(F) *Amount currently taxable for Oregon purposes.* "Amount currently taxable for Oregon purposes" means the product of the Oregon receipts and the Oregon taxable percentage.

Example 1: Don has been a resident of Oregon all his life. He worked in Oregon for an employer who contributed $30,000 to his qualified pension plan. On December 1, 1985, Don, age 65, retires and elects to receive benefits in a lump-sum distribution. On January 1, 1986, Don moves to Idaho. On February 1, 1986, Don receives the lump-sum distribution of $100,000, of which $30,000 (the employer's contribution) is taxable income for Oregon purposes.

Example 2: Don has been a resident of Idaho all his life. He worked in Oregon for an employer who contributed $30,000 to his qualified pension plan. On December 1, 1985, Don retired and elected to receive his $100,000 pension benefits in a lump-sum distribution. On February 1, 1986, he received the entire $100,000 distribution. Only $30,000 of the distribution (the employer's contribution) is taxable for Oregon purposes.

Example 3: Assume the same facts as in *Example 2,* except that Don receives his benefits in the form of a single-life annuity to be paid at $1,200 per month for the rest of his life. His expected return using the annuity tables pursuant to Treas. Reg. Section 1.72-9 is $216,000 ($1,200/mo. × 12 months × 15.0 (from Table I)). The amount of income he reports to Oregon for each payment is $167 ($1,200/mo. × ($30,000 ÷ $216,000)) or $2,000 annually until the entire $30,000 has been subject to Oregon tax.

Example 4: Jan lives in Ontario and works for Farewell and Associates in Ontario, Oregon. Farewell and Associates contributes $1,000 a year to a qualified pension for Jan. Jan also makes small contributions to this plan.

After 10 years, Jan moved to Nampa, Idaho continuing to work for Farewell and Associates in Oregon. At this time, Jan had $25,000 in her pension account made up of $10,000 in employer contributions, $1,000 of employee contributions, and $14,000 of earnings.

At the end of her 20 years of service with Farewell and Associates, Jan, age 65, retired in Idaho. Her pension was worth $70,000 which was comprised of $20,000 in employer contributions, $2,000 of employee contributions, and $48,000 of earnings. Jan elected a lump-sum distribution. She should report the employer contributions of $20,000 as Oregon income since it is considered attributable to Oregon sources.

Example 5: Assume the same facts as in *Example 4* except Jan receives her benefits in the form of a single-life annuity to be paid at $700 per month, for the rest of her life. The income currently taxable for Oregon purposes is calculated as follows:

Step 1: Compute the expected return using tables set forth in Treas. Reg. Section 1.72-9. Jan's expected return is $152,880 ($700/mo. × 12 months × 18.2 (from Table I)).

Step 2: Compute the Oregon exclusion ratio pursuant to Internal Revenue Code Section 72 (b) and this rule. Jan's exclusion ratio is 32.7%. ($2,000 employee contributions plus $48,000 earnings ÷ $152,880 (expected return)).

Step 3: Compute the Oregon annual exclusion amount. Jan's Oregon annual exclusion amount is $2,747 ($700/mo. × 12 months × 32.7% exclusion ratio).

Step 4: Compute the Oregon receipts. Jan's Oregon receipts are $5,653 ($8,400 annual receipts – $2,747 Oregon annual exclusion amount).

Step 5: Compute the Oregon taxable percentage. Jan's Oregon taxable percentage is 19.4% calculated as follows:

$$\frac{\text{\$20,000 (Oregon source distribution)}}{\text{\$152,880 (expected return)} - \text{\$50,000 (employee contributions plus earnings)}}$$

Step 6: Compute the amount currently taxable for Oregon purposes. The amount Jan will report as currently taxable for Oregon purposes is $1,097 ($5,653 × 19.4%).

(4) *Qualified Employee Retirement Benefit Plans.* Distributions from qualified employee retirement benefit plans shall be included in Oregon taxable income to the extent a tax benefit was

received for Oregon purposes with respect to the contributions made by the taxpayer. Interest or other income earned on such contributions is taxable by Oregon only to the extent distributed while the taxpayer was an Oregon resident. Oregon taxable income includes all distributions until the taxpayer has recovered the total amount of distribution subject to Oregon tax.

Example 1: Rick has been an Oregon resident all his life. For the past 20 years, he has worked in Portland for an accounting firm. To ease his tax burden and provide for additional security upon retirement, he invested in an individual retirement account (IRA). He retires and moves to Vancouver, Washington. His balance in the IRA is $63,000 at this time ($20,000 of his tax deductible contributions and $43,000 of earnings). He elects to receive a lump-sum distribution of this amount. He shall report $20,000 (his tax deductible contributions) as Oregon taxable income when he receives the distribution.

Example 2: Assume the same facts as in *Example 1* except that Rick was not an Oregon resident for any of the time he was working in Portland. When he receives his lump-sum distribution, he shall report the $20,000 (his tax deductible contributions) as Oregon taxable income.

Example 3: Assume the same facts as in *Example 1* except that Rick was not an Oregon resident. Also, instead of receiving a lump-sum distribution, Rick receives the IRA balance in the form of an annuity payable in $1,000 monthly installments for the rest of his life. He received $12,000 in each of the first two years. He shall include the entire $12,000 in his Oregon taxable income in the first year. In the second year, he shall include only $8,000 in his Oregon taxable income, since he will have recovered the entire $20,000 subject to Oregon tax at that time.

(5)(a) *Retirement Income Received After December 31, 1995.* PL 104-95 prohibits states from taxing retirement income received after December 31, 1995 by individuals who are not residents or domiciliaries of the state. For purposes of this paragraph, "retirement income" means income from:

(A) qualifying employer pension and profit sharing plans exempt from tax under Internal Revenue Code (IRC) Section 401(a), such as corporate retirement plans and "Keogh" plans;

(B) annuity plans (IRC 403(a) and IRC 403(b));

(C) cash or deferred compensation arrangements (IRC 401(k) plans and IRC 457 plans);

(D) simplified employee pension plans ("SEPs") under IRC 408(k);

(E) individual retirement arrangements ("IRAs") under IRC 408(a) and IRC 408(b);

(F) plans established and maintained by federal, state or local government for the benefit of employees (IRC 414(d));

(G) any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10 of the United States Code;

(H) trusts, as described in IRC 501(c)(18), that were created before June 25, 1959 that meet the specific requirements of that IRC section.

(b) Payments received after termination of employment qualify if the payment is made under a plan, program, or arrangement maintained solely for the purpose of providing retirement benefits that exceed the amounts allowed under the qualified retirement plans described in paragraph 1 of this rule.

(c) Payments received from nonqualified deferred compensation plans (as described in IRC 3121(v)(2)(C)), qualify if the payments are part of a series of substantially equal periodic payments that are made for the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or for a period of at least 10 years.

(d) Retirement income does not include income received from stock options, restructured stock plans, severance plans, or unemployment benefits.

(e) Individuals who have Oregon as their domicile are taxed as residents, unless they meet the requirements to be taxed as nonresidents as provided in ORS 316.027.

Hist: Eff. 1/69, Amended 11/73, 12/19/75, 1/1/77, 12/31/81, 12/31/84; Amended and renumbered from OAR 150-316.127(1) to OAR 150-316.127, 12/31/85, 12/31/87; Amended to renumber and transfer some material from OAR 150-316.127-(A) to OAR 150-316.127-(B), 12/31/89; Amended 12/31/91, 12/31/93, 12/31/96

Gross Income of Nonresidents; Business Income

150-316.127-(C) (1)(a) *General.* The gross income of a nonresident (other than one who is employed by another, as distinguished from doing business on the nonresident's own account) from a business, trade, profession or occupation (including independent contractor) is determined in the same manner as is the gross income of a resident from a similar activity, but includes only income from the business, trade, profession or occupation carried on in this state. Net income from Oregon sources shall be determined by apportionment in a manner consistent with ORS 314.605 through 314.670 and the rules adopted thereunder.

(b) *Exception:* Various federal laws affect the application of Oregon tax laws to income received by nonresidents from rail, motor, air and water carriers. See OAR 150-316.127-(E).

(2) *Rents.* The gross income of a nonresident from rents includes all rents received from property, whether real or personal, located within this state.

(3) *S Corporations.* The taxable income of an S corporation that elects to be taxed under the provisions of IRC Section 1362 which is derived from or connected with sources from this state is taxable income to nonresident shareholders for tax years beginning after December 31, 1972. Net operating losses of an S corporation derived from or connected with sources from this state are deductible by nonresident shareholders. Net operating losses shall be determined under IRC Section 1366. If an S corporation of Oregon commercial domicile is liquidated any gain or loss from liquidation is Oregon source income. Nonresident shareholders shall report their proportionate share of the gain or loss on their individual Oregon income tax returns as income from Oregon sources.

(4) *Fiduciary fees*. Oregon source income of a nonresident includes compensation received for services performed as a fiduciary of an Oregon estate or trust.

[**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 11/73, 12/19/75, 1/1/77, 12/31/81, 12/31/84; Amended and Renumbered from OAR 150-316.127(1) to OAR 150-316.127, 12/31/85, 12/31/87; Amended to renumber and transfer some material from OAR 150-316.127-(A) to OAR 150-316.127-(C), 12/31/89; Amended 12/31/91, 12/31/98

Gross Income of Nonresidents; Other Income and Sale of Property

150-316.127-(D) (1) *Income from intangible personal property.*

(a) *Business situs.* Intangible personal property, including money or credits, of a nonresident has a situs for taxation in this state when used in the conduct of the taxpayer's business, trade or profession in this state. Income from the use of such property, including dividends, interest, royalties and other income from money or credits, constitutes a part of the income from a business, trade or profession carried on in this state when such property is acquired or used in the course of such business, trade or profession as a capital or current asset, and is held in that capacity at the time the income arises.

(b) *Examples:* If a nonresident pledges stocks, bonds or other intangible personal property in Oregon as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this state, the property has a business situs here. Again, if a nonresident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this state, the bank account has a business situs here. If intangible personal property of a nonresident has acquired a business situs here, the entire income from the property, including gains from the sales thereof, regardless of where the sale is consummated, is income from sources within this state, taxable to the nonresident.

(2) *Sales of property.*

(a) *Tangible property.* The gain or profit from any sale, exchange or other disposition by a nonresident of real or tangible personal property located in this state is taxable, even though it is not connected with a business carried on in this state, and the loss from such a transaction is deductible if it is a business loss or a transaction entered into for profit. The gain or loss from the sale, exchange or other disposition by a nonresident of real property or tangible personal property located in this state is determined in the same manner, and is recognized to the same extent, as the gain or loss from a similar transaction by a resident.

(b) *Intangible property.* The gain or profit of a nonresident from the sale, exchange or other disposition of intangible personal property, including stocks, bonds, and other securities, ordinarily is not taxable and should not be included in gross income, except to the extent that such intangible personal property has acquired a business situs in this state. Likewise, losses sustained from the sale, exchange or other disposition of such property are not deductible, except to the extent that they are losses incurred in a business carried on within this state by the nonresident taxpayer.

(c) *S corporation stock.* In general, a nonresident's gain or loss from the sale, exchange, or disposition of S corporation stock is not attributable to a business carried on in this state and is not sourceable to Oregon. The gain or loss from the S corporation stock shall not be used in the determination of Oregon taxable income unless the stock has acquired a business situs in this state. See subsection (1) of this rule.

(3) *Interest income received on contract sale of property.*

Interest income received by a nonresident from the sale of Oregon property is not includable in Oregon source income. The source of the income is not from the sale of the property but rather from the use of the money permitted the buyer in an instalment contract.

(4) *Distribution of a trust's income accumulation to a nonresident.*

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

(5) *Net operating losses.* See OAR 150-316.007 and OAR 150-316.014 for the treatment of net operating losses.

(6) *Passive activity losses.* See OAR 150-314.300 for the treatment of passive activity losses.

[**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 11/73, 12/19/75, 1/1/77, 12/31/81, 12/31/84; Amended and Renumbered from OAR 150-316.127(1) to OAR 150-316.127, 12/31/85, 12/31/87; Amended to renumber and transfer some material from OAR 150-316.127-(A) to OAR 150-316.127-(D), 12/31/89; Amended 12/31/91, 12/31/92, 12/31/93

Gross Income of Nonresidents; Federal Laws Affecting Nonresident Employees of Motor, Rail, Air and Water Carriers

150-316.127-(E) (1) *General:* Various federal laws affect the application of Oregon tax laws to nonresident employees of motor carriers, rail carriers, air carriers and water carriers. For purposes of this rule the following definitions apply:

(a) "Person" means a corporation, company, association, firm, partnership, or individual.

(b) "Common carrier" means:

(A) Any person who transports persons or property for hire or who publicly purports to be willing to transport persons or property for hire by motor vehicle; or

(B) Any person who leases, rents or otherwise provides a motor vehicle to the public and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.

(c) "Regularly assigned duties in more than one state" means duties that are performed on a regular basis in more than one state, e.g., daily, weekly, or monthly assignment. Duties that are performed on an "on-call" or "as-needed" basis, or duties that are performed on a sporadic or intermittent basis during the year, are not considered to be "regularly assigned duties."

(d) "Property" means the cargo or load being transported.

(2) *Motor carrier employees.* Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, and Public Law 104-88, the ICC Termination Act of 1995, (Title 49 USC 14503), provide that no part of the compensation paid by a motor carrier or a motor private carrier to a nonresident employee who performs regularly assigned duties in more than one state is subject to Oregon tax. For purposes of this subsection, the following definitions apply:

(a) "Employee" means:

(A) an operator of a commercial motor vehicle (including an independent contractor);

(B) a mechanic;

(C) a freight handler; or

(D) an individual not an employer, who

(i) directly affects commercial motor vehicle safety in the course of employment; and

(ii) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, a State, or a political subdivision of a State.

(b) "Employer" means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it.

(c) "Motor carrier" means a person providing motor vehicle transportation for compensation.

(d) "Motor private carrier" means a person, other than a motor carrier, transporting property by motor vehicle when:

(A) the transportation is between two states;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(e) "Commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property if the vehicle:

(A) has a gross vehicle weight rating of 10,001 or more pounds;

(B) is designed or used to transport passengers for compensation, but excluding vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places;

(C) is designed or used to transport more than 15 passengers, including the driver and is not used to transport passengers for compensation; or

(D) is used in transporting material found to be hazardous under Title 49 USC 5103 and transported in a quantity requiring placarding under regulations prescribed under Title 49 USC 5103.

(f) "Directly affects" means that the employee is required by his or her daily routine and duties to work directly with a commercial motor vehicle or its contents. The duties shall be of a direct, hands-on nature that requires the employee to physically move, touch or affect the vehicle or its contents. Supervisory, managerial or consulting duties which indirectly affect the safety of a motor vehicle do not meet the definition of "directly affects."

(3) The following examples illustrate the application of this subsection.

Example 1: Adam, a nonresident, works for an Oregon based interstate trucking carrier as a driver. He has a regular route from Idaho to Oregon and picks up or delivers products in Oregon. Adam's compensation is not taxable.

Example 2: Brenda, a nonresident, works for an interstate trucking carrier as a driver. She has a regular route from Portland to Vancouver, Washington. This is a daily or weekly route. However, the Portland-Vancouver route only takes about 2 to 3 hours. Brenda has a regular route from Portland to Salem for the remaining time.

Brenda is considered to be performing "regularly assigned duties in more than one state," since the Portland-Vancouver assignment is on a regular basis. Therefore, her compensation is not taxable.

Example 3: Carl, a nonresident, works for an Oregon based interstate trucking carrier as a driver. The company's customers are mostly lumber mills located in Oregon and Washington. Carl picks up his truck every morning in Washington and receives delivery assignments for the day. Depending on where the lumber needs to be delivered, Carl may not have to come to Oregon on a daily basis. He may pick up and deliver lumber products all within Washington or may do so all within Oregon. However, Carl does drive to Oregon at least once a month due to the company's customer base.

Due to the nature of the business, the company may not be able to assign regular duties to Carl. The company itself does not even know what the delivery route will be until the customers notify the trucking company. Although Carl may not have a regular route in Washington and Oregon, he does drive to Oregon at least once a month. Carl is considered to have "regularly assigned duties in more than one state," as long as all the routes (including interstate routes) are assigned indiscriminately among all drivers on a regular basis. Carl's compensation is not taxable.

Example 4: Dave, a nonresident, works for an interstate trucking carrier as a driver. All of his routes are within Oregon, mainly from Portland to Pendleton. However, for some reason, the company "requires" that Dave drive to Washington before reaching the destination in Oregon (Pendleton in this case).

Dave's compensation is taxable. He does not have "regularly assigned duties in more than one state." Dave may drive to Washington every day, but there is no business reason to drive to Washington. There is no product waiting for pick-up or delivery in Washington.

Example 5: Edward, a nonresident, works for an Oregon trucking carrier as a clerk. The company has one terminal in Oregon and one terminal in Washington. Edward regularly works in both terminals, i.e., works in two states.

Edward is not considered an employee for purposes of P.L. 101-322. He is not a driver, a mechanic or a freight handler. His duties do not directly affect the safety of the vehicle. Therefore, the Oregon source income is taxable.

Example 6: Frieda, a nonresident, works for an Oregon retail store as a freight handler. Her regularly assigned duties are to load and unload freight. Occasionally, Frieda is asked to fill in as a driver and, over the course of a year, may drive several routes in and out of Oregon. Frieda does not have "regularly assigned duties in more than one state" and her Oregon-sourced compensation is taxable.

Example 7: George, a nonresident, works as a mechanic for an interstate trucking firm. He is assigned to the Portland terminal and performs the majority of his work there. His job duties require that he be available to perform minor repair work away from the terminal on an "as-needed" basis. Several times during a given year, he may be required to travel to Washington to repair a flat tire, do minor engine work, etc. George does not have "regularly assigned duties in more than one state" and his Oregon-sourced compensation is taxable.

Example 8: Harold, a nonresident, is employed by an interstate trucking firm. He is a supervisor whose primary duty is management of the company's Portland terminal. His management duties include: authorizing and ordering drug testing for employees; road testing a driver's abilities; investigating accidents involving company vehicles; ordering repairs to motor vehicles; removing vehicles from service; and approving and implementing safety programs and policies. While Harold may be responsible for vehicles, and his work may have a significant impact upon safety, that impact is not direct, but is implemented through others. He does not meet the requirement that he "directly affect" the safety of a commercial motor vehicle and his Oregon-sourced compensation is taxable.

Example 9: Garrett, a nonresident, works as a freight handler in the Portland terminal of a trucking company. His duties also require him to attend day-long staff meetings at the company's headquarters in Vancouver, Washington each month. Although Garrett has "regularly assigned duties in more than one state," only the duties he performs at the Portland terminal directly affect the safety of a commercial motor vehicle. Garrett does not have "regularly assigned duties in more than one state" that "directly affect" the safety of a commercial motor vehicle. His compensation related to services performed in Oregon is taxable.

Example 10: Roberto, a nonresident, works for a small furniture manufacturing company located in Oregon. His job requires him to drive to various states to buy hardwood for use in building the furniture. Roberto is exempt from Oregon tax on his wages because he is employed by a motor private carrier and he transports a product to further a commercial business.

Example 11: Ken, a nonresident, works as a line repairman for a utility company. He uses a company truck to transport the tools he uses when making service calls in both Oregon and Washington. Ken is not exempt from Oregon tax because he does not drive a "commercial motor vehicle" (i.e., a motor vehicle used to transport passengers or property).

(4) *Changes in exempt status.* The determination of whether an employee is exempt under these provisions shall be made on an annual basis. If an employee meets the requirements of this section for only a portion of a taxable year, the individual shall be considered exempt for that tax year.

Example 12: Ivan, a nonresident, works as a driver for an interstate trucking company. From January 1 through May 31, 19X5, his regular route is entirely within Oregon. On June 1, 19X5, Ivan is the successful bidder on a route from Seattle to Spokane which will last for two years. For the 19X5 tax year, Ivan had regularly assigned duties in more than one state. Ivan's compensation is exempt from Oregon tax for 19X5.

(5) *Rail carrier employees.* Federal Public Law (P.L.) 101-322, the Amtrak Reauthorization and Improvement Act of 1990, and Public Law 104-88, the ICC Termination Act of 1995, (Title 49 USC 11502), provide that no part of the compensation paid by a rail carrier to a nonresident who performs regularly assigned duties on a railroad in more than one state is subject to Oregon income tax. For purposes of this subsection, the following definitions apply:

(a) "Rail carrier" means a person providing a common carrier railroad transportation for compensation.

(b) "Railroad" includes

(A) a bridge, car float, lighter, and ferry used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.

(6) *Air carrier employees:* Federal law (Title 49 USC 40116) provides that the pay of a nonresident employee of an air carrier having regularly assigned duties on aircraft in more than one state is subject to Oregon income tax only if the employee earns more than 50 percent of that pay in Oregon. The employee is deemed to earn 50 percent or more of the pay in Oregon if, for the calendar year, the employee's scheduled flight time in Oregon is more than 50 percent of the employee's total scheduled flight time. For purposes of this subsection, the following definitions apply:

(a) "Air carrier" means a citizen of the United States, as defined by Title 49 USC 40102, undertaking by any means, directly or indirectly, to provide air transportation.

(b) "Air transportation" means the interstate or foreign transportation of passengers or property by aircraft as a common carrier for compensation, or the interstate or foreign transportation of mail by aircraft.

Example 13: Jean, a nonresident, works as a pilot for an Oregon-based corporation. Jean transports company executives to various job locations in the United States. Jean is not exempt from Oregon tax, as she is not employed by an "air carrier" that provides "air transportation." Her wages are subject to Oregon tax to the extent services are performed in Oregon.

Example 14: James, a nonresident, is employed by an air carrier as an office manager. Each calendar year, he works as a substitute pilot outside of Oregon in order to log the minimum amount of flight time required to retain his license. James does not qualify as exempt from Oregon income tax because his "regularly assigned duties" are not on an aircraft, but as a manager in an office.

(7) *Water carrier employees:* Federal law (Title 49 USC 14503) provides that the pay of a nonresident employee of a water carrier is subject to withholding of Oregon income tax only if the employee earns more than 50 percent of that pay in Oregon. The employee is deemed to earn 50 percent or more of the pay in Oregon if, for the calendar year, the employee's time worked in Oregon is more than 50 percent of the employee's total time worked. Federal law does not affect the liability of these employees for Oregon income taxes, nor does it affect the obligation of such employees to make payments of estimated income taxes as required by ORS 316.587. The provision of federal law merely affects the authority of the State of Oregon to require withholding by employers of such employees. For purposes of this subsection, the following definitions apply:

(a) "Employee" means a master, officer, or sailor who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal, or noncontiguous trade or in the fisheries of the United States.

(b) "Water carrier" means a person providing water transportation for compensation.

(c) *Example 14:* Derek, a nonresident, works on a tugboat on the Columbia River. His work takes him to ports in both Washington and Oregon, but less than 50 percent of his time is worked in Oregon. Derek is not required to have Oregon income tax withheld from his pay, nor is his employer required to report those wages to Oregon. Derek is, however, subject to Oregon income tax on wages earned in Oregon.

[**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: Amended and transferred some material from OAR 150-316.127-(A) to OAR 150-316.127-(E), 12/31/93; Amended 12/31/96, 12/31/98

Gross Income of Nonresidents; Compensation Received by Nonresident Professional Athletes

150-316.127-(F) (1)(a) *General.* Oregon source income of a nonresident individual who is a member of a professional athletic team includes that portion of such individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within Oregon rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without Oregon during the taxable year.

(b) *Special rule.* Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in Oregon. However, such travel days shall be considered duty days spent within and without Oregon.

(2) *Definitions.* For purposes of this rule:

(a) The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team.

(b) The term "member of a professional athletic team" shall include those employees who are active players, players on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes but is not limited to coaches, managers and trainers.

(c)(A) The term "duty days" shall mean all days during the taxable year from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete.

(B) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, the "Pro Bowl" or promotional "caravans"). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(C) Included within duty days, shall be game days, practice days, days spent at team meetings, promotional caravans and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete.

(D) Duty days for any person who joins a team during the season shall begin on the day such person joins the team, and for any person who leaves a team shall end on the day such person leaves the team. Where a person switches teams during the taxable year, a separate duty day calculation shall be made for the period such person was with each team.

(E) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

(F) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be included in total duty days spent within and without the state.

(G) The provisions of this paragraph can be illustrated by the following examples:

Example 1: Kelly, a member of a professional athletic team, is a nonresident of Oregon. Kelly's contract for such team requires Kelly to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Kelly has a contract which covers seasons that occur during year 1/ year 2 and year 2/year 3. Kelly's contract provides that he will receive $500,000 for the year 1/year 2 season and $600,000 for the year 2/year 3 season. Assuming Kelly receives $550,000 from such contract during taxable year 2 ($250,000 for one-half the year 1/year 2 season and $300,000 for one-half the year 2/year 3 season), the portion of such compensation received by Kelly for taxable year 2, attributable to Oregon, is determined by multiplying the compensation Kelly receives during the taxable year ($550,000) by a fraction. The numerator of such fraction is the total number of duty days Kelly spends rendering services for the team in Oregon during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season). The denominator of such fraction is the total number of Kelly's duty days spent both within and without Oregon for the entire taxable year.

Example 2: Sam, a member of a professional athletic team, is a nonresident of Oregon. During the season, Sam is injured and is unable to render services for Sam's team. While Sam is undergoing medical treatment at a clinic in Oregon, Sam's team travels to Oregon for a game. The number of days Sam's team spends in Oregon for practice, games, meetings, etc. while Sam is present at such clinic in Oregon shall not be considered duty days spent in Oregon for Sam for that tax year for purposes of this section, but such days are considered to be included within total duty days spent within and without Oregon.

Example 3: Jean, a member of a professional athletic team, is a nonresident of Oregon. During the season, Jean is injured and is unable to render services for Jean's team. Jean performs rehabilitation exercises at the facilities of Jean's team in Oregon as well as at personal facilities in Oregon. Days Jean performs rehabilitation exercises in the facilities of Jean's team are considered duty days spent in Oregon for Jean for that tax year for purposes of this section. However, days Jean spends in private facilities in Oregon shall not be considered duty days spent in Oregon for Jean for that tax year for purposes of this section, but such days are considered to be included within total duty days spent within and without Oregon.

Example 4: Terry, a member of a professional athletic team, is a nonresident of Oregon. During the season, Terry travels to Oregon to participate in the annual all-star game as a representative of Terry's team. The number of days Terry spends in Oregon for practice, the game, meetings, etc., shall be considered duty days spent in Oregon for Terry for that tax year for purposes of this section, as well as included within total duty days spent within and without Oregon.

Example 5: Assume the same facts as given in example 4, except that Terry is not participating in the all-star game and is not rendering services for Terry's team in any manner. Terry is traveling to and attending such game solely as a spectator. The number of days Terry spends in Oregon for such game shall not be considered duty days spent in Oregon for purposes of this section.

(d)(A) The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered: (i) from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during that taxable year; and (ii) during the taxable year on a date which does not fall within the aforementioned period (e.g., participation in instructional leagues, the "Pro Bowl" or promotional "caravans"). Such compensation shall include, but is not limited to, salaries, wages, bonuses as described in subparagraph (B) of this paragraph and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation shall not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

(B) For purposes of this paragraph, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in subdivision (1)(a) of this section are:

(i) bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff or "bowl" games played by a team, or for selection to all-star league or other honorary positions; and

(ii) bonuses paid for signing a contract, unless all of the following conditions are met:

(I) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(II) the signing bonus is payable separately from the salary and any other compensation; and

(III) the signing bonus is nonrefundable.

(iii) This section is designed to apportion to Oregon, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the foregoing provisions of this section will result in a fair and equitable apportionment of such compensation. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion such compensation, the Department of Revenue may require such member of a professional athletic team to apportion such compensation under such method as the department prescribes, as long as the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion such compensation, where they demonstrate that the method provided under this section does not fairly and equitably apportion such compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for Oregon.

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

Alimony Deduction for Tax Years Before 1987

150-316.127(1)(a) (1) A full-year nonresident shall be allowed a deduction for the amount of any alimony or separate maintenance paid in the proportion provided in ORS 316.117. In determining the proportion in ORS 316.117, the taxpayer's adjusted gross income will not include a deduction for alimony. "Alimony or separate maintenance payments" has the same meaning given the phrase in section 215 of the Internal Revenue Code.

(2) Taxpayers may claim the deduction by amending their Oregon returns as provided by ORS 305.270 to claim the alimony deduction. This rule is applicable for all years open to examination for tax years beginning before January 1, 1987.

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

Part-Year and Nonresidents - Basis of Assets Moved into Oregon

150-316.127(2)(a) Follow the rules under OAR 150-316.707.

Hist: Filed 10/5/83 and Eff. 12/31/83

Moving Expense Deduction—for Part-year and Nonresidents

150-316.127(3)(a) To be deductible from the Oregon portion of federal adjusted gross income, moving expenses must be connected with employment within Oregon. Thus, for a part-year or nonresident taxpayer, the moving expenses incurred are deductible only if the taxpayer's new principal place of work is within Oregon. Moving expenses incurred by a part-year or nonresident taxpayer for the purpose of beginning work at a new principal place of employment outside of Oregon are not deductible.

Example 1: Matt moves from Oregon to California to begin work there. The moving expenses are not deductible.

Example 2: Paul moves from Utah to Oregon to begin work in Oregon. The moving expenses are deductible.

Example 3: Sally moves from Oregon to Washington to begin work in Oregon. The moving expenses are deductible.

Example 4: Greg moves from Nevada to Washington to begin work in Oregon. The moving expenses are deductible.

Example 5: Anne moves from Montana to Oregon to begin work in Washington, lives in Oregon temporarily and then settles in Washington. The moving expenses are not deductible.

Example 6: Sue moves from Florida to Oregon to begin work in Idaho. While the expenses are not related to Oregon employment, they are deductible if they were paid after Sue became a full year resident of Oregon.

Reimbursement of moving expenses shall be included in the Oregon portion of federal adjusted gross income if the moving expenses are connected to Oregon employment.

Example 7: John moves from California to Oregon to begin work in Oregon. His employer reimburses him $10,000, which includes $4,000 of qualified moving expenses under IRC 132. John includes $6,000 of income in the Oregon portion of federal adjusted gross income. The reimbursement of $4,000 is not included in income and is not claimed as a deduction.

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

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:

$$\frac{\$\ 7,000}{\$35,000} \times \$15,000 = \$3,000$$

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

Nonresident Deduction for Contributions to IRA, Keogh, or Qualified Medical Savings Accounts

150-316.130(3) (1) Nonresident individuals who are allowed a deduction for contributions made to Keoghs, SEPs, individual retirement accounts (IRAs), and qualified savings accounts (MSA) for federal purposes shall also be allowed a deduction for Oregon purposes. The deduction for Oregon is limited to a percentage of the federal deduction (not to exceed 100 percent).

(2) For contributions made to a qualified Keogh or SEP plan under section 401 of the Internal Revenue Code, the deduction for Oregon is equal to the federal deduction times the ratio of Oregon earned income over earned income from all source. In general, "earned income" is the net earnings from self-employment in a trade, business, or profession in which the taxpayer performs personal service.

(3) For contributions made to an IRA account under section 219 of the Internal Revenue Code, the deduction for Oregon is equal to the federal deduction times the ratio of Oregon compensation over compensation from all sources. In general, "compensation" includes alimony, wages, professional fees, or other amounts derived from or received from personal services rendered and included in gross income for the tax year. It does not include pensions, annuities, or other forms of deferred compensation.

Example: Assume a nonresident taxpayer had a $2,000 IRA deduction for federal purposes. His federal and Oregon wages were $40,000 and $20,000, respectively. His Oregon deduction would be equal to $1,000 or ($2,000 × (20,000/40,000)).

(4) For contributions made to a MSA under section 220 of the Internal Revenue Code, the deduction for Oregon is equal to the federal deduction times the ratio of Oregon compensation over compensation from all sources.

[**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 and Renumbered from OAR 150-316.127(1)(a)-(C) to OAR 150-316.130(3), 12/31/89; Amended 12/31/97

Credit for Taxes Paid to State of Residence

150-316.131(1) (1) *Computation.* OAR 150-316.082(2) subsection 3 shall be followed.

(2) *Proof required and procedure for obtaining credit.* OAR 150-316.082(3) and OAR 150-316.082(1)-A shall be followed.

(3) *Special filing status.* OAR 150-316.082(2) subsections 5, 6, 7, and 8 shall be followed.

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

(Costs In Lieu of Nursing Home Care)

Credit for Elderly Care

150-316.148 The eligible taxpayer either may make payments directly to the qualified individual or may provide that individual with food, medical care, clothing and transportation.

Receipts or other substantiation of these expenses may be required upon audit of the return.

Hist: Filed and Eff. 12/31/79

Evidence of Eligibility for Credit

150-316.149 Upon request of the department, the taxpayer must provide a "Credit for Home Care of an Elderly Person" certification form. Part I and II must be completed. Part I of the form must be certified by the Department of Human Resources for the year in which the credit is taken.

Hist: Filed and Eff. 12/31/80; Amended 12/31/94

(Retirement Income)

Retirement Income Credit

150-316.157 (1) Definitions.

(a) *Retirement Income.* Retirement income includes distributions from any:

(A) U.S. Government pension

(B) State public pension

(C) Employee pension benefit plan

(D) IRA or KEOGH

(E) Deferred compensation plan

(F) Employee annuity plan

which is included in federal taxable income.

(b) *Age.* In order to claim the credit, the taxpayer must meet the following age requirement before the end of the tax year:

(A) The individual must be 58 years old for tax years beginning on or after January 1, 1991, and prior to January 1, 1993.

(B) The individual must be 59 years old for tax years beginning on or after January 1, 1993, and prior to January 1, 1995.

(C) The individual must be 60 years old for tax years beginning on or after January 1, 1995, and prior to January 1, 1997.

(D) The individual must be 61 years old for tax years beginning on or after January 1, 1997, and prior to January 1, 1999.

(E) The individual must be 62 years old for tax years beginning on or after January 1, 1999.

If taxpayers are married filing a joint return, the spouse receiving the pension income must meet the age requirement in order to claim the tax credit.

(c) *Base.* The base is equal to $7,500 if the taxpayer files as single, head of household, qualifying widower, or married filing a separate return. The base is equal to $15,000 if the taxpayer is married filing a joint return.

(d) *Social Security.* Social security is the taxable and nontaxable benefits received by the individual who is receiving retirement income. In the case of a married filing joint return, social security is the taxable and nontaxable benefits received by both spouses.

For purposes of this credit, household income is the total income of the taxpayer and the taxpayer's spouse, regardless of which spouse received the income or of the source. Household income does not include any taxable or nontaxable Social Security benefits received by either the taxpayer or the taxpayer's spouse.

(2) *Credit.* Eligible individuals receiving retirement pay are allowed a credit for tax years beginning on or after January 1, 1991.

The credit is equal to 9 percent of the lesser of:

(a) retirement income or

(b) the base, reduced by any social security received and by the household income limitation.

(3) *Household Income Limitation.* If a taxpayer filing a joint return has more than $30,000 of household income (as defined by ORS 310.630), the base is reduced dollar for dollar by the amount that household income of the taxpayer exceeds $30,000. If a taxpayer files as single, head of household, qualifying widower, or married filing a separate return and has more than $15,000 in household income, the base will be reduced by household income in excess of the $15,000. For purposes of this credit, benefits received from Social Security or Railroad Retirement are not included in computing the household income limitation.

Example 1: John's retirement income totals $6,000. John's wife, Mary, has retirement income totaling $2,000. John and Mary file a joint return. John and Mary's total retirement income is $8,000 ($2,000 + 6,000) and is all taxable on their Oregon return. They receive social security benefits which total $4,000 for the year. Their household income equals $31,000 not including social security. The base of $15,000 is reduced by $4,000 (social security benefits) and by $1,000 (the excess household income over $30,000). This equals $10,000 (15,000 – 4,000 – 1,000). The credit is equal to 9 percent of the lesser of $10,000 or $8,000 (the total of their retirement income). John and Mary's retirement credit is $720 (.09 × $8,000).

(3) *Part-year Resident.* The credit is calculated in the same manner as the credit allowed a resident in section (2) but is based only on retirement income that is taxable by Oregon.

Example 2: Use the facts in Example 1 except assume that John and Mary are filing as part-year residents. Assume that of John's $6,000 of retirement income, $1,500 is retirement from services performed in California and is all received before they move to Oregon. Also assume that $2,000 is compensation sourced to Oregon but received before they move to Oregon. The balance, $2,500 ($6,000 – ($1,500 + 2,000)) is compensation received after they moved to Oregon. Mary's $2,000 of retirement income is all received after they move to Oregon and is all taxable by Oregon. The base of $15,000 is reduced by $4,000 (social security benefits) and by $1,000 (the excess household income over $30,000). The product of the formula is $10,000 ($15,000 – 4,000 – 1,000). The credit is equal to 9 percent of the lesser of $10,000 or $4,500 (retirement income taxable by Oregon). John and Mary's retirement credit is $405 (.09 × $4,500).

(4) *Nonresident.* Retirement income received after December 31, 1995 by a nonresident is not includible in Oregon taxable income and may not be used to claim the retirement income credit.

(5) In no event will a taxpayer be allowed the credit in excess of the taxpayer's tax liability or be allowed to carry any excess over to the following tax year.

(6) The taxpayer shall claim either this credit or the credit for the elderly and the permanently and totally disabled, but not both.

(7) The provisions of this rule apply to retirement income received after December 31, 1995. Prior to January 1, 1996, the retirement income credit was based on retirement income included in federal taxable income.

Hist: Filed 9/13/91 and Eff. 12/31/91; Amended 12/31/97

Subtraction for Previously Taxed Contributions

150-316.159 (1)(a) For tax years beginning on or after January 1, 1991, Oregon will allow resident taxpayers a subtraction for distributions from an individual retirement account, Keogh plan or Simplified Employee Pension plan for the contributions to the plan that have already been taxed by another state. The subtraction is allowed only if all of the following conditions are met:

(A) The distributions consist of contributions made during a period in which the taxpayer was a nonresident of Oregon;

(B) The distributions consist of contributions made during a period in which the taxpayer was a resident of a state that imposes an income tax;

(C) The distributions consist of contributions for which no deduction, exclusion or exemption for the contributions was allowed or allowable in the state in which the taxpayer was a resident prior to becoming an Oregon resident; and

(D) No deduction, exclusion, subtraction or other tax benefit has been allowed for the distributions by another state before the taxpayer becomes a resident of Oregon.

Example 1: In 1997 Sam was a resident of a state that imposes no income tax. He made a deductible IRA contribution in 1997. In 1998 Sam converted his regular IRA of $2,000 to a Roth IRA. The distribution will be reported over a 4-year period. Sam became a permanent Oregon resident on April 1, 1998. Sam is not entitled to a subtraction because the contributions were not previously taxed. Sam will be taxed on $375 (3/4 of $500 for the period April through December 1998) on his 1998 part year Oregon return. If Sam remains an Oregon resident he will be taxed on $500 in 1999, 2000 and 2001.

(b) If any portion of the distributions received by a resident of Oregon qualify for the subtraction, those distributions first received by the taxpayer are allowed to be subtracted. The subtraction continues until the distributions that qualify for the subtraction are recovered. Any distributions received after that are fully taxable to the Oregon resident.

(c) The following contributions do not qualify for the subtraction:

(A) Contributions made during a period when the taxpayer was a nonresident required to file an Oregon return to the extent that a deduction or exclusion was allowable for those contributions; or

(B) Contributions made during a period when the taxpayer was a resident of a state that does not impose an income tax; or

(C) Contributions for which the taxpayer was allowed a credit for taxes paid to another state.

Example 2: Taxpayer is a resident of California from 1980 to 1990 and qualifies to make contributions to an individual retirement account for both federal and California. Taxpayer contributes $1,500 in 1980 and 1981 and from 1982 to 1990 contributes $2,000 per year. Both California and federal allowed a maximum $1,500 deduction for 1980 and 1981. For 1982 through 1986, federal allowed a maximum $2,000 deduction while California only allowed a maximum deduction of $1,500. For 1987 through 1990, both federal and California allowed a maximum deduction of $2,000. Taxpayer made contributions of $2,500 ($500 × 5 years) while a California resident for which no deduction was allowed on the California return.

Taxpayer retires and moves to Oregon in June 1991 and begins to receive payments from the IRA account established in California. Oregon taxes all of the IRA distributions received after June 1991 but will allow the taxpayer a subtraction on the Oregon return for the $2,500 of contributions which were not deductible.

Taxpayer receives 7 payments of $350 in 1991 for a total of $2,450 ($350 × 7). Taxpayer would claim a subtraction of $2,450 for 1991. In 1992, the taxpayer received 12 payments of $350 for a total of $4,200 ($350 × 12). The taxpayer would be able to subtract the balance of $50 ($2,500 – $2,450). From that point on, no subtraction is allowed on the Oregon return for recovery of contributions.

(2) If the taxpayer has already received distributions from an IRA, Keogh or SEP that is a recovery of contributions that meet the provisions of Section (1), then the taxpayer will be allowed a subtraction in 1991 for those contributions. Taxpayer will then be allowed a subtraction each year until all qualifying contributions are recovered. From that point on, no subtraction is allowed on the Oregon return for recovery of contributions.

Example 3: Use the same facts as Example 2, except that the taxpayer retires and moves to Oregon in June 1989. Taxpayer made contributions while a California resident for which no deduction was allowed of $2,500 ($500 × 5 years). The taxpayer has already received $2,450 ($350 × 7 months) of IRA distributions in 1989 and $4,200 ($350 × 12) of IRA distributions in 1990. For tax year 1991, taxpayer may claim a subtraction of $2,500, the full amount of contributions for which no deduction was allowed on the California return. The $2,500 subtraction consists of recovery of contributions of $2,450 in 1989 and $50 of recovery of contributions in 1990. After that, no subtraction is allowed on the Oregon return for recovery of contributions since the taxpayer has recovered all $2,500 of qualifying contributions.

Example 4: Use the same facts as Example 3. The taxpayer retires and moves to Oregon in June 1989 but instead of receiving periodic payments, the taxpayer withdraws the entire balance of the IRA from California as a lump-sum distribution. The lump-sum distribution is taxable by both Oregon and California. Taxpayer made contributions while a California resident for which no deduction was allowed of $2,500 ($500 × 5 years). For tax year 1991, the taxpayer will claim a one time subtraction for all contributions for which no deduction was allowed on the California return. The subtraction is limited to federal adjusted gross income and cannot create a net operating loss. If the taxpayer does not claim a subtraction for all of the contributions for which no deduction was allowed due to the federal adjusted gross income limitation, no subtraction may be claimed in subsequent years for the balance of the contributions. Taxpayer has adjusted gross income of $18,000 so may claim the full subtraction of $2,500 in 1991.

Hist: Filed 9/13/91 and Eff. 12/31/91; Amended 12/31/98

(Collection of Tax Source on Wages)

Withholding: Basis of Amount Withheld

150-316.162(2)-(A) (1) Remuneration includes merchandise, stocks, bonds, room, board, or other consideration passing to the employee in payment for services.

(2) The cash value must be based upon sound principles and the Department reserves the right to determine standard valuations for such items as meals, lodging, etc. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts or lodges, or if a room only, an apartment, a house or any other consideration is provided, the value, for withholding tax purposes, will be the actual value of this remuneration. (Living quarters or meals furnished to the employee for the convenience of the employer are excluded from income pursuant to section 119 of the IRC and the regulations pertaining thereto.)

(3) Amounts paid as reimbursable expenses to an employee are not subject to withholding; however, such payments must be identified either by making a separate payment or by specifically indicating the separate amount where both wages and reimbursement of expenses are made in a single payment. If an employee receives a definite weekly, monthly, or annual salary, withholding is required upon the entire amount even though the amount may be fixed by including an estimate of expenses which will necessarily be incurred by the employee on behalf of the employer. Only reimbursement based upon actual expenses is exempted from withholding. Sickness disability benefits and other disability pensions paid by an employer to an employee are emoluments unless they fall within exemptions of sections 104 to 106 of the IRC.

(4) Where an employer-employee relationship exists between a husband and wife, the employing spouse must withhold. Sums received by unemancipated minors which are not gifts, but compensation for bona fide personal services rendered to parents, require withholding.

(5) Withholding is required from distributions from a deferred compensation plan as defined in IRC 457 or a nonqualified plan under IRC 403 if the contributions to the plan or payments from the plan are wages.

(6) Wages due but not yet paid at the date an employee dies are not considered wages and are not subject to withholding.

(7) Withholding is required from accrued vacation pay, even though disbursed after termination of employment.

[**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 11/71, 12/31/87, 12/31/91, 12/31/92, 12/31/93, 12/31/98

Employees Exempt from Withholding

150-316.162(2)-(B) (1) *Active service in Armed Forces.* See OAR 150-316.680(1)(c)-(B).

(2) *Carrier employees.* Public Law 101-322 and ORS 316.162(2)(b) exempt from state withholding railroad and trucking employees unless they are Oregon residents. OAR 150-316.127-(E) contains definitions and examples of trucking employees. Public Law 91-569 and ORS 316.162(2)(b) exempt from state withholding nonresident air carrier employees unless they earn 50 percent or more of their compensation in Oregon. Employees whose scheduled flight time in Oregon is more than half of their total flight time for the year are considered to have earned more than half of their compensation in Oregon. The employees covered are those actually involved in transportation activities in more than one state.

(3) *Domestic service.* The exemption in ORS 316.162(2)(c) does not apply to wages paid to an employee who performs both domestic and business services, such as the chauffeur who also transports his employer's business clients, the domestic cook who also prepares meals for other employees or the paying public, etc.

(4) *Casual labor.* Withholding is not required from wages paid for casual labor not in the course of the employer's trade or business. Withholding is required from wages for substantial labor not in the regular course of the employer's trade or business, such as the construction of a private home where the owner is the employer. Labor which is both casual and not in the course of the business or trade of the employer is exempt from withholding requirements. "Business," as used in this section, is given a broader interpretation than "activity for profit" and includes governmental as well as proprietary functions of the state government or any of its political subdivisions.

(5) *Agricultural services.* An employer is required to withhold on every employee's wages for labor rendered solely in connection with the planting, cultivating, or harvesting of "seasonal agricultural crops" unless the total annual wages paid are less than $300.00. If this amount is received by the employee, the withholding must then relate back to the prior payments made during the calendar year.

A "seasonal agricultural crop" is a crop dependent upon an annual or less season for its fruition, and which is harvested at the termination of its season or shortly thereafter.

Seasonal agricultural crops include:

(a) Field and forage crops.

(b) The seeds of grasses, cereal grains, vegetable crops and flowers.

(c) The bulbs and tubers of vegetable crops.

(d) Any vegetable or fruit used for food or feed.

(e) Holly cuttings harvested annually for Christmas sales.

Labor performed in connection with the following are not exempt from withholding:

(A) Forest products.

(B) Landscaping.

(C) Nursery stock as defined in ORS 571.005(5) unless planted, cultivated, and harvested within an annual period.

(D) Raising, shearing, feeding, caring for, training or management of livestock, bees, poultry, fur-bearing animals or wildlife.

Withholding is required as to the entire wages of "regular" farm employees even though, as a part of their duties, they engage in planting, cultivating, or harvesting. Withholding is required as to all wages paid in such seasonal activities as canning, or other food processing, logging, and sheep shearing, because they are not solely in connection with the planting, cultivating, or harvesting of seasonal agricultural crops. Withholding is required as to all wages paid in such agricultural activities as the care of poultry or livestock, and dairy farming, because they are not in connection with the planting, cultivating or harvesting of seasonal agricultural crops.

(6) Withholding is not required from wages paid to a duly ordained, commissioned, or licensed minister of a church when performing the duties of the minister's ministry, or from wages of a member of a religious order in performance of the religious duties required by the order, when the duties are not commercial in nature. Any amounts received from services performed outside of the

order, and where a legal relationship of employer and employee exists between a member of a religious order or a minister and a third party, are considered income and are subject to withholding. For example, a member of a religious order has been hired by a school to teach a class for a fee. That member becomes an employee of the school and the wages are subject to withholding. Pursuant to IRS publication 525.

(7) Real Estate Salespeople. Withholding is not required from services provided to real estate brokers by real estate salespeople if there is a written contract providing the salesperson will not be treated as an employee by the real estate broker with respect to the services provided for Oregon tax purposes. Their income from commissions is not subject to state withholding taxes.

[**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 11/71, 11/73, 9/74, 12/19/75, 12/31/77, 12/31/83, 12/31/85, 12/31/87, 12/31/92, 12/31/95, 12/31/98

Withholding on Fringe Benefits

150-316.162(2)-(C) (1) A fringe benefit is not subject to withholding for Oregon purposes if it is not subject to Oregon income tax.

(2) When a fringe benefit is subject to withholding, the rate of withholding is determined by Oregon withholding tax tables considering total income for the payroll period.

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

Independent Contractor Definition

150-316.162(2)(j) (1) This rule has been adopted jointly by the Construction Contractors Board, Department of Human Resources (Employment Division), Department of Insurance and Finance (Workers' Compensation Division), and Department of Revenue of the State of Oregon under the authority of ORS 670.605.

(2) As used in the various provisions of ORS Chapters 316, 656, 657, and 670, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 and this rule are met:

(a) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(b) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(c) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(d) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(e) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodical retainer;

(f) The individual or business entity providing labor or services is registered under ORS Chapter 670, if the individual or business entity provides labor or services for which such registration is required;

(g) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(h) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist;

(A) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(B) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(C) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(D) Labor or services are performed only pursuant to written contracts;

(E) Labor or services are performed for two or more different persons within a period of one year; or

(F) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

(3) For the purposes of subsection (2)(b) of this rule, "assumed business registrations or professional occupation licenses" do not include certificates or permits required pursuant to ORS Chapter 767.

(4) For the purposes of subsection (2)(e) of this rule, "periodical retainer" includes but is not limited to partial payments made periodically during the term of the contract.

(5) For the purposes of subsection (2)(h)(F) of this rule, evidence that "the individual or business entity assumes financial responsibility for defective workmanship or for services not provided" is not limited to the ownership or performance bond, warranties, errors and omission insurance, or liability insurance relating to the labor or services to be provided.

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

Personal Liability of Responsible Officers or Employes for Taxes Withheld

150-316.162(3) (1) "Employer" includes, but is not limited to an officer or employe of a corporation or other business entity if, among other duties, that individual has:

(a) the power or authority to see that the withholding taxes are paid when due;

(b) power or authority to prefer one creditor over another:

(c) authority to hire and fire employes;

(d) authority to set working conditions and schedules;

(e) authority to sign or co-sign checks;

(f) authority to compute and sign payroll tax reports;

(g) authority to make fiscal decisions of the corporation;

(h) authority to incur debt on behalf of the corporation;

(i) knowledge of the nonpayment of the withholding taxes;

(j) exercised authority on behalf of the corporation at or after the time the duty arose to collect and hold the taxes;

(k) exercised authority on behalf of the corporation at or after the time the duty arose to pay over the taxes required to be withheld; or

(1) performed duties other than those outlined by the corporate bylaws.

(2) The following factors do not preclude a finding that the individual is liable for the payment of taxes which were required to be withheld:

(a) whether the failure to pay over the required withholding was willful;

(b) whether the individual received remuneration;

(c) maintenance of full-time employment elsewhere;

(d) the department considers another individual liable for the same withholding taxes;

(e) a corporate bylaw position description to the contrary;

(f) absence of signatory authority on a corporate bank account;

(g) absence of bookkeeping or recordkeeping duties;

(h) absence of authority to hire, fire, and to set working conditions and schedules.

(i) whether any functions establishing liability have been delegated to another.

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

Bonding Requirements for Delinquent Withholding Employers

150-316.164 (1) As used in this section, a surety bond means a bond that guarantees payment of future withholding taxes of employers. In order for a surety bond to be acceptable, it must be issued by a company authorized to do business in Oregon by the Oregon Department of Insurance and Finance.

(2) As used in this section, an irrevocable letter of credit means an irrevocable letter of credit issued by a commercial bank. "Commercial bank" is defined as a bank, a savings bank, a stock savings bank, a national bank, a foreign institution or an extranational institution.

(3) The department may require an employer to post a bond or irrevocable letter of credit if the employer becomes delinquent for three calendar quarters and the tax amount exceeds $2,500.00. The amount of the bond or irrevocable letter of credit shall be at least equal to the amount that should have been withheld from wages for four calendar quarters.

(4) If an employer elects to pay over withholding taxes within three banking days of each payday, the employer shall not be required to post a bond or irrevocable letter of credit. Employers electing this option, shall continue making payments in this manner until all delinquent amounts are paid in full and they have had no further delinquent returns or payments for four consecutive calendar quarters.

(5) As used in ORS 316.164(4), "other methods of collection" means billing notices, collection letters, and telephone calls.

(6) All bonds or irrevocable letters of credit become the property of the department and shall be used solely to guarantee payment of withholding taxes. The department may, at any time, apply any part or all of the bond or irrevocable letter of credit to any delinquency accrued after the bond or irrevocable letter of credit was posted. However, the employer shall maintain the original amount of the bond or irrevocable letter of credit at all times.

(7) The bond or irrevocable letter of credit, or unused portion shall be returned to an employer when

(a) the employer stops doing business as an employer and all delinquent amounts are paid in full; or

(b) the employer pays all delinquent amounts in full and has no further delinquent returns or payments for four consecutive calendar quarters.

(8) The department may proceed with action through the Oregon Tax Court to require compliance from any employer who fails to comply with this section.

(9) Any appeal by an employer shall not relieve an employer of posting a bond or irrevocable letter of credit or making accelerated payments, if required to do so by the department.

Hist: Filed 10/7/85 and Eff. 12/31/85; Amended 12/31/88, 12/31/91

Withholding by Employers

150-316.167(1) (1) The term "employer" includes any person or organization for whom an individual performs any service as an employee. An employer may be an individual, corporation, partnership, estate, trust, association, joint venture, or other unincorporated organization. The term also includes religious, educational, charitable, and social organizations or societies even though such organizations are themselves exempted from payment of taxes. It includes governmental agencies, including federal, state, and local subdivisions, such as towns and counties. The federal government agencies withhold under an agreement sanctioned by the Act of Congress of July 17, 1952, and Executive Order 10407, dated December 6, 1952. It includes employers who engage only in interstate commerce.

(2) No statutory distinction is made as to the location of the employer. The withholding provision applies generally to any employer within the jurisdiction of the State of Oregon. Withholding is required of employers situated outside the state upon wages, commissions, or other emoluments paid to an employee or agent for services performed within the state, even though the employee or agent may be a nonresident and their Oregon employment may be of short duration. The department may, upon the written petition of an out-of-state employer, relieve such employer of the duty to withhold where it can be shown to the satisfaction of the department that

the nonresident employee or agent temporarily serving within Oregon is not acting in the regular course of the employer's business or their stay within Oregon will be extremely short and income resulting therefrom will not create a potential Oregon individual income tax liability as to the employee. Both in-state and out-of-state employers may be relieved of the duty to withhold where it can be shown to the satisfaction of the department that each individual employee serving within Oregon will receive $300 or less in wages from that employer within a calendar year.

(3) Withholding is required as to all wages paid by resident and nonresident employers doing business in Oregon for services performed by any employee within the state. For services performed by a resident partly or entirely outside of Oregon the Department of Revenue may authorize special withholding arrangements in hardship cases where it can be shown that withholding tax is being paid to another state on such employee. An employer who is located outside of the state and has no Oregon business activity cannot be required to withhold Oregon tax from the wages of an Oregon resident working outside the state. However, such employer may register and withhold as a convenience to the employee. All wages paid to nonresidents (persons domiciled outside Oregon) for services performed in Oregon are subject to withholding. If the nonresident earns wages both in and outside of Oregon, such as a salesperson, only that part of the wages earned in Oregon is subject to withholding.

(4) If the employer, in violation of the provisions of ORS 316.167, fails to deduct and withhold the tax, the employer nevertheless is liable to remit to the department the amount which should have been withheld. The employer shall be relieved of such liability if and when the employer can show by proper evidence and proof satisfactory to the department that the employee's income tax against which such sum would have been credited has been paid without reduction through failure to withhold. Such waiver shall not operate to relieve the employer from liability for penalties, additions, or interest provided in the Act. The moneys withheld by employers from the wages of employees must be remitted promptly on the due date and no extension of time for such remittance is provided by statute or can be granted by the department. The funds involved are held by the employer in trust for the State of Oregon, and any use thereof by the employer amounts to an illegal conversion. The employer may not regard such funds as being in the same category as their own personal income tax indebtedness.

(5) An "employee" is any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance. Designation of an individual as an employee for purposes of industrial accident insurance, unemployment compensation, federal social security, or federal withholding will establish that individual as an employee for purposes of the Oregon withholding tax unless facts can be shown to the contrary.

(6) If the relationship of employer and employee actually exists, a different description of the relationship by the parties is immaterial; thus, it is of no consequence that the employee may be designated as a partner or independent contractor, contrary to fact. Family relationships or the fact that compensation may be based upon an agreed percentage of profits or other indeterminate measure, are of no consequence in determining the relationship of employer to employee. No distinction is made between classes or grades of employees; administrative and executive personnel and corporate officers are employees. Persons who are in business solely for themselves are not employees. However, professional people organized under Oregon's Professional Corporation Act, ORS Chapter 58, will be treated as employees of the corporation. By incorporating and rendering services, the professional person generally creates an employment relationship with the corporation.

(7) As used in this rule, the definition of worker leasing company is identical to the definition found in ORS Chapter 656.

The relationship of employer to employee exists between worker leasing companies and the workers for which they act as lessor. The relationship of employer to employee does not exist between leased workers and the lessee if the following conditions are met:

(a) The worker leasing company has a valid license under ORS chapter 656 and;

(b) there is a valid written worker leasing contract between the worker leasing company and the lessee.

If these conditions are not met, the department may determine that the lessee is the employer of the leased workers.

Statements in contractual agreements concerning employer tax liabilities are not sufficient to transfer liabilities between worker leasing companies and lessors.

[**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 as four separate rules: OAR 150-316.167-(A), OAR 150-316.167-(B), OAR 150-316.167-(C), and OAR 150-316.197-(A), Amended 12/19/75 and renumbered OAR 150-316.167(1), Amended 12/31/82, 12/31/83, 12/31/93

Employer's Election of Method of Computing Withholding

150-316.167(2) Employers have the option of using either the tax tables or the formulas developed and furnished by the Department in computing the amount to be withheld from regular wage payments. The tax tables and formulas are published by the Department. Employers may not modify the published tables or formulas except to update the exemption credit allowance as modified by state law.

Example: The version of the published formula for an annual wage, effective January 1, 1988, contains a subtraction of $90 x allowances, this may be modified to $128 x allowances because under 1997 state law the exemption credit is $128.

If a supplemental wage payment is made the employer may compute the amount to be withheld by using the tax tables or formulas, or may withhold at a flat rate which shall be 9 percent. Supplemental wage payments include bonuses, premiums, awards, gifts and other payments made to an employee, on the condition of their employment, occurring no more than twice a year.

Hist: Eff. 1969 as OAR 150-316.167-(D), Amended 12/19/75 (Renumbered), 12/31/83, 12/31/84, 12/31/91, 12/31/93, 12/31/98

Withholding Payments: Cash Basis

150-316.168(1)-(A) All withholding is on a cash basis and must be reported on a cash basis.

Example: If services are performed in January but not compensated until April, withholding on the wages for those services is reported on the report for the quarter ending June 30.

Hist: Filed 9/13/91 and Eff. 12/31/91

Additional Time to File Reports

150-316.168(2) Oregon does not allow additional 10 day federal extension to file the quarterly tax report when all payments are paid when due. Information provided by the taxpayer on the tax report is essential to providing timely payment of Unemployment Insurance benefits.

Hist: Filed 9/13/91 and Eff. 12/31/91; Amended 12/31/98

Treatment of Payroll Based Program Overpayments

150-316.171 (1) If an employer has overpaid their withholdings or transit district payroll taxes due for a quarter and files an original or amended combined quarterly tax return, the department will refund the overpayment or apply the overpayment (rollover) toward the employer's liability for the current or prior quarter as instructed by the employer. However, the following rules apply if the employer does not instruct the department:

(2) If an employer has overpaid their withholdings or transit district payroll taxes due for a quarter, the overpayment will be rolled over as a payment toward the employer's liability for that program for the current quarter.

(3) If the department records show that the employer is no longer in business, and all returns have been filed, the overpayment will be refunded.

Hist: Filed 9/15/94 and Eff. 12/31/94; Amended 12/31/98

Exemption Status of Employes

150-316.177(1)-(A) Effective January 1, 1982 Internal Revenue Service's Form W-4, Employe's Withholding Allowance Certificate, may be used by an employer in the same manner for Oregon withholding as it is used for federal withholding. For the exemption claimed on line 6 of the W-4 to be effective for Oregon, all of the following conditions must be met. The employe:

(1) Did not owe any Oregon income tax last year.

(2) Does not expect to owe any Oregon income tax for the current tax year.

Hist: Filed 10/05/83 and Eff. 12/31/83; Renumbered from OAR 150-316.177-(A) to OAR 150-316.177(1)-(A), 12/31/91

Exemptions for Military Personnel

150-316.177(1)-(B) In addition to the withholding exemptions that a member of the Armed Forces may claim for federal income tax withholding purposes, such person who is a resident of the State of Oregon shall be allowed to claim a sufficient number of personal exemptions to equal the amount of active duty military pay that is permitted to be subtracted from gross income on the member's Oregon personal income tax return.

Hist: Filed and Eff. 12/31/77; Amend to Renumber from OAR 150-316.177 to OAR 316.177-(B), 12/31/83; Renumbered from OAR 150-316.177-(B) to OAR 150-316.177(1)-(B), 12/31/91

Assessment of W-4 Penalty

150-316.177(2) (1) A penalty is assessable against an employe who files an erroneous withholding statement:

(a) claiming

(A) more than 10 withholding exemptions for federal or state income tax withholding; or

(B) exemption from withholding and the employe's income is expected to exceed $200 per week for both federal and state purposes; or

(C) exemption from withholding for state purposes but not for federal purposes; and

(b) as of the time the statement was made there was no reasonable basis for the statement.

(2) The penalty shall not be assessed against employes who have a reasonable basis for the erroneous statement. "Reasonable basis" includes but is not limited to the following situations:

(a) An employe in good faith files an erroneous W-4 for the first time.

(b) The employe computed the number of withholding allowances in accordance with the instructions on the Form W-4, but due to unforseen events, the number of allowances claimed is incorrect.

(c) The erroneous W-4 was filed because the employe relied upon the advice of an individual who is qualified to practice law or public accounting in this state or an individual who is licensed by the State Board of Tax Service Examiners and the employe supplied the individual with complete information connected with the advice given.

(3) The penalty shall be assessed against an employe filing an erroneous W-4 for the first time in reliance on a frivolous position or with the apparent intent to delay or impede the administration of the income tax laws of this state (or the federal government).

(4) As used in this section, a "frivolous position" includes, but is not limited to:

(a) reference to a spurious constitutional argument;

(b) reliance on a "gold standard" or "war tax" deduction;

(c) an argument that wages or salaries are not includable in taxable income;

(d) an argument that the Sixteenth Amendment to the United States Constitution was not properly adopted; or

(e) an argument that "unenfranchised, sovereign, free men or natural persons" are not subject to the tax laws.

Hist: Filed 4/5/88 and Eff. 6/1/88; Renumbered from OAR 150-316.177(4) to OAR 150-316.177(2), 12/31/91

Procedure for Correcting the Filing of Withholding Certificates

150-316.182 (1) Except as provided by paragraph (2) an employer shall not use a withholding exemption certificate for state income tax withholding purposes if:

(a) The certificate claims an exempt status for state withholding purposes but not federal purposes; or

(b) The certificate is filed with the employer for use in determining both state and federal withholding, and the Internal Revenue Service has notified the employer that the certificate is materially defective.

(2) An employer may use a withholding exemption certificate that claims an exempt status for state purposes when the employee's compensation is exempt from Oregon tax under a provision of federal or state law. Examples of exempt compensation include those described in:

(a) Public Law 101-322, the Amtrak Reauthorization and Improvement Act of 1990, relating to certain rail carrier and motor carrier employees (Title 49 USC 11502 and Title 49 USC 14503, respectively);

(b) ORS 316.127(8), relating to federal employees of hydroelectric facilities on the Columbia River;

(c) Public Law 96-193, the Aviation Safety and Noise Abatement Act of 1979, relating to certain aircraft employees (Title 49 USC 40116);

(d) ORS 316.777 (relating to earnings of enrolled tribal members).

(3) If subsection (1) of this rule applies, the employer shall withhold as if the employee was single claiming zero exemptions, until such time as the employee files a new certificate. The employer shall give prompt notice to the employee of the employer's action. The employer shall give prompt notice to the employee that a certificate claiming an exempt status for state purposes only is not acceptable because there is no applicable provision under state or federal law for such exempt status.

(4) The employer shall submit to the department a copy of any withholding certificates which are:

(a) Certificates which claim more than 10 withholding exemptions for state purposes; or

(b) Certificates which claim exemption from withholding and the employee's income is expected to exceed $200 per week for both federal and state purposes; or

(c) Certificates which claim exemption from withholding for state purposes but not federal purposes.

The copy shall be submitted within 20 days of the employer's receipt of the certificate.

(5) If, after receipt of a copy of the certificate, the department makes a written request to the employee for verification of the statements in the certificate, and after 20 days does not receive such verification, the department shall notify the employer in writing of the lack of verification. If the department makes a determination to change the withholding certificate based on available information, the department shall notify the employer and employee in writing of the change. Upon receipt of the notice, the employer shall withhold according to the department's determination.

(a) If the employee files a new certificate with the employer claiming more exemptions than the determination made by the department, or exemption from state withholding, the employee shall also submit a copy of the newly filed certificate to the department requesting a redetermination. The certificate should have the word "Redetermination" written on the top of the newly filed certificate. The employer shall continue to withhold according to the department's most recent determination until the department authorizes a subsequent change.

(b) If the employee files a new certificate with the employer claiming fewer exemptions than the determination made by the department, the employer may withhold according to the newly filed certificate.

The employee may appeal the action of the department as otherwise provided by law.

Hist: Filed and Eff. 12/18/79 (Temp.), 5/20/80 (Perm.), Amended 2/11/82 (Temp.), 5/5/82 (Perm.), 12/31/84, Amended 12/31/85, 12/31/87, 12/31/92, 12/31/98

Credit for Tax Withheld

150-316.187-(A) If the tax has actually been withheld at the source and reported to the Department of Revenue, credit or refund shall be made to the recipient of the income even though such tax has not been paid to the Department by the employer. Where the employer has neither reported nor paid the tax required to be withheld from an employe's wages but the employe submits evidence proving to the satisfaction of the Department that the employer actually did withhold such a tax, the Department shall allow the employe credit or refund for the amount so proved. Ordinarily, minimum satisfactory evidence shall consist of a statement from the employer showing the amount of tax withheld and an affidavit of the employe as to the facts upon which the claim for credit or refund is based.

Hist: Eff. 1/69, Amended 12/70

Where Taxpayer Reports on Fiscal Year Basis

150-316.187-(B) Taxes withheld during any calendar year shall be allowed as a credit for the taxable year of the taxpayer which begins in that calendar year. For example, where an employe is on a fiscal year ending June 30, 1969, he would credit the tax withheld on his wages for the calendar year 1968.

Hist: Eff. 1/69

Withholding on IRAs, Annuities and Compensation Plans

150-316.189 (1) The withholding of taxes from commercial annuities, employers deferred compensation plans, and individual retirement plans is mandatory. However, an individual may elect, under certain circumstances, to have no withholding. Such an election will remain in effect until revoked by the individual.

(2) An individual may not make an election to have no withholding from the amount of a payment from a plan which is wages as defined in ORS 316.162. Therefore, an individual may not make an election if the individual is receiving payments from an employer deferred compensation plan as defined in IRC 457 or a nonqualified plan under IRC 403 if the contributions to the plan or payments from the plan are wages.

(3) The payor of any periodic distribution shall withhold as if the payment were wages using the withholding tables prepared and furnished by the department. The exemptions for state withholding purposes will be the same as listed on federal form W-4P. If no withholding election form has been filed by the payee, the withholding status is single and the number of exemptions is zero.

(4) The payor of any nonperiodic distribution shall withhold from such a payment at a rate of 8 percent of the amount of money or the fair market value of other property received in the distribution.

(5) The minimum amount of withholding per payee shall be no less than 10 dollars per distribution. The payor is not required to determine benefits subject to Oregon tax when figuring withholding.

(6) If an individual has elected to have no federal withholding from payments or distributions there shall be no state withholding unless the individual notifies the payor, in writing, otherwise.

(7) The payor shall provide a form to each payee, prior to the first periodic distribution, which shall explain the payee's right to elect to have no tax withheld. A completed form shall be returned to the payor no later than 30 days after the mailing date. If the payee does not elect out of withholding, it is the payee's responsibility to provide the payor with a completed Form W-4P which properly reflects the withholding needed for Oregon purposes. If a completed form W-4P is not provided, the payor shall withhold as directed in sections (3) to (5) of this rule. A separate election form shall be provided to the payee prior to each nonperiodic distribution. The election form must be returned to the payor no later than 30 days but can be returned as early as necessary to meet the date of distribution. If a completed form is not returned the payor shall withhold tax at the established rate. The payor may use federal form W-4P or a form that includes the same information as form W-4P.

(8) The payee may revoke the election to have withholding or may change the amount of withholding. The payee shall send a written request to the payor using federal form W-4P or an appropriate form furnished by the payor. The revocation or change shall be effective within 45 days after receipt by the payor.

(9) The payor shall be considered an employer and subject to the same withholding rules as are imposed under ORS 316.162 to ORS 316.212 for withholding of income taxes from wages. The

department shall provide appropriate forms, instructions and an account identification number necessary for reporting and remitting payments.

[**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 12/31/87, 12/31/92, 12/31/93

Withholding on IRA's, Annuities and Compensation Plans

150-316.189(6) Oregon's requirements to withhold taxes from IRAs, Annuities and Deferred Compensation plans will be consistent with the provisions of Internal Revenue Code Section 3405 except that mandatory backup withholding will not be required for a rollover from one qualifying plan to another qualifying plan under circumstances that would require such withholding for federal purposes.

Example: On July 1, 1992, Fred Smith removed his IRA account from Bank A and two days later placed it with Bank B. Since Fred didn't have Bank A do a direct transfer of funds to a new IRA account in Bank B, IRC 3405 requires Bank A to withhold 20 percent in payment of any taxes that may be due if Fred failed to roll the funds into a new qualifying plan (which would cause the funds to be includible in taxable income). For Oregon, Bank A is not required to withhold.

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

Alternative Withholding Filing or Payment Method for Employers to Avoid Undue Burden

150-316.191 (1) ORS 316.191 allows alternate methods of filing withholding returns and making withholding payments when an undue burden is caused by the present withholding method.

The following are two examples of "undue burden:"

(a) The employer is required to make Oregon tax withholding payments to the state of Oregon based on its nationwide payroll more often than it would based on payroll for its employes working in the state of Oregon.

(b) Oregon resident performs services outside the state and the employer is asked to register and withhold, voluntarily, as a convenience to the employe and the state of Oregon.

(2) Employers who believe that federal withholding methods create an undue burden for them which is not shared by most other similar employers, may request a different method of withholding tax payments or filing in writing, to the Withholding Program Manager, Department of Revenue, 955 Center Street, NE, Salem, OR 97310. Request shall contain the following information: Business name of employer; Oregon Withholding Account No.; nature of burden; remedy requested; and proposed effective date of modified withholding method.

(3) An example for an alternate method indicated in (a) above would be to base the out-of-state employer's withholding method on their Oregon payroll only.

(4) Only those employers whose withholding accounts are current may request an alternative withholding method. No alternative withholding method shall be used before the Department of Revenue has approved the request in writing and has designated the effective date of the change.

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

Voluntary Withholding for Retired Members of the Uniformed Services

150-316.193 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:

(1) member's full name,

(2) Social Security number,

(3) amount of monthly withholding being requested,

(4) the state to receive withheld monies,

(5) member's current address,

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

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

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

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

(3) *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

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

(5) *Coast Guard:*
Commanding Officer (Retired)
U. S. Coast Guard
Commanding Officer (F)
444 SE Quincy Street
Topeka, KS 66683

(6) *PHS:*
U.S. Public Health Service
Compensation Branch
5600 Fisher Lane (Rm. 4-50)
Rockville, MD 20857

(7) *NOAA:*
Commanding Officer
Navy Finance Center (Code 301)
Anthony J. Celebrezze Federal Bldg.
Cleveland, OH 44199

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.

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.

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.

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

Voluntary Withholding for Civil Service Annuitants

150-316.196 (1) Upon written or telephone request to the U.S. Office of Personnel Management, a civil service annuitant may request voluntary state tax withholding.

(2) A permanent withholding tax account shall be established in the name of the U. S. Office of Personnel Management for deposit of monies withheld by the request of civil service annuitants. An account number and appropriate reporting forms shall be supplied at the inception of said account.

(3) 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 U.S. Office of Personnel Management within 30 days after the end of each quarterly payroll period.

(4) Payment of withholding trust funds shall be made at the same time the quarterly return is filed.

(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 U. S. Office of Personnel Management 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, 12/31/97

Semiannual Reports and Payments

150-316.197(1)(a)-(A) For purposes of semiannual reporting the calendar year will be divided into two six-month periods; the first period being January through June with the return and any payment due on or before July 31; the second period being July through December with the return and any payment due on or before January 31 of the following year. No other semiannual reporting periods will be permitted. Employers reporting on the semiannual method must file an annual report before February 16 as required of all employers under ORS 316.202(2). No semiannual returns will be allowed for periods after December 31, 1989. All returns due on, and subsequent to, January 1, 1990, shall be reported on the Oregon Quarterly Combined Tax Report form.

For rules governing annual agricultural filing, see OAR 150-316.202(4).

Hist: Filed and Eff. 12/19/75, Amended 12/31/82, 12/31/83; Amended and Renumbered from OAR 150-316.197(1)-(A) to OAR 150-316.197(1)(a)-(A), 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

Withholding Tax Payment Requirements for Agricultural Employers

150-316.197(1)(b) An employer of agricultural employees is required to pay Oregon taxes withheld at the same time as federal social security tax (FICA) is deposited.

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

Employe's Rights

150-316.197(2) Recourse against an employer in regard to taxes on wages withheld and reported, but not paid to the Department of Revenue, is exclusively that of the state. An employe's rights as to any such tax withheld, reported and unpaid are those of a tax credit or refund as provided in ORS 316.187 and OAR 150-316.187-(A).

Hist: Eff. 1/69 as OAR 150-316.197-(B), Amended 12/19/75 (Renumbered); Renumbered from OAR 150-316.197(3) to OAR 150-316.197(2), 12/31/91

Requirement to use Electronic Funds Transfer.

150-316.198 (1) An employer required to make payment of Oregon combined payroll taxes and assessments under ORS 316.162 through ORS 316.216 shall do so by electronic funds transfer (EFT) if the employer's total annual payments exceed the thresholds shown in the table below. The employer will estimate the total payments they will make for the periods to determine when they are required to begin paying by electronic funds transfer. If they estimate they will exceed the threshold during the period, they are required to begin paying by EFT at the beginning of the period.

(2) As a guide, employers can use the payments made during the prior four quarters as a base in determining whether they are subject to the mandate. Employers should also consider other factors such as growth or expansion or increased or reduced salary costs in making the determination. See OAR 150-316.198-(A) for other information about payments that must be included.

(3) The following schedule shows the thresholds for total annual payments above which employers shall begin paying by EFT. Also shown are the dates employers are required to begin paying by EFT if they are above the threshold.

For Oregon Quarterly Combined Payroll Tax and Assessment reporting period starting:		An Employer shall pay by EFT if the estimated total of payments for the period will exceed:	Date after which Employer shall pay by EFT:
on or after,	**but before**		
July 1, 1998	July 1, 1999	$1,000,000	July 1, 1998
July 1, 1999	July 1, 2000	$200,000	July 1, 1999
July 1, 2000	July 1, 2001	$50,000	July 1, 2000
July 1, 2001	not applicable	The employer is required to pay federal payroll taxes by EFT (see the exception below)	July 1, 2001

(4) If an employer is in business only part of the period, the employer will annualize the amount to determine whether the employer is required to pay using EFT.

(5) Following are examples illustrating how to determine whether an employer is mandated to pay by EFT.

Example 1: Employer A expects to pay $1,200,000 in Oregon Combined Quarterly Payroll Tax and Assessment payments during the period 7/1/99-6/30/2000. The employer shall begin making combined payments by electronic funds transfer starting with the reporting period beginning on or after July 1, 1999.

Example 2: Employer B will begin business on Jan. 1, 1999. Therefore, the employer will be in operation one-half of the reporting period. Employer B expects to make combined payroll taxes and assessments totaling $850,000 from Jan. 1, 1999 to June 30, 1999. The employer will multiply the total of payments made ($850,000) by two. The annualized amount of payments would be $1,700,000. Employer B will be required to pay using electronic fund transfer beginning with their first payroll for January, 1999.

(6) For any reporting period beginning on or after July 1, 2001, is required to use electronic funds transfer to pay Oregon Combined Payroll Taxes and Assessments if the employer is required to do so for federal payroll taxes. An exception to paying by electronic funds transfer is explained in Oregon Administrative Rule 150-316.191. The exception is available if this payment method will cause an undue burden to the employer. Additionally, an employer with limited activity in Oregon that is required to pay federal payroll taxes by electronic funds transfer need not do so for Oregon tax if the total of the annual payments to Oregon will not exceed $1,000.

(7) Employers not meeting the requirement to pay by EFT may voluntarily do so by completing and submitting to the department an application for either ACH Debit or ACH Credit EFT. Applications can be requested from the department.

(8) After beginning to make payments electronically, a volunteer may discontinue electronic payments by sending a written request to stop paying by EFT. The request must be sent at least 30 days prior to the date the volunteer wishes to stop paying by EFT. If the volunteer has not reached the then current mandate threshold, the department shall allow the employer to discontinue electronic payments. The volunteer shall continue to make payments by EFT until 30 days after sending the request to the department or the volunteer receives notice from the department agreeing to the discontinuance, whichever occurs earlier.

Hist: Filed 11/13/98 and Eff. 12/31/98

Electronic Funds Transfer. Payroll taxes and corporation estimated income and excise taxes not combined in determining mandate. Payments to be included.

150-316.198-(A) (1) For the purpose of determining whether payment of combined quarterly payroll taxes and assessments is required to be made by electronic funds transfer (EFT), only the payments for related business activities shall be combined. The employer will not add combined payroll taxes paid with corporate income or excise taxes when making the determination. The employer will include combined payroll tax billing payments and amended payroll payments when making the determination.

(2) For the following examples, assume the current mandate threshold above which employers are required to pay by EFT is $1 million of annual payments.

Example 1: Business A is an insurance company. The business has registered twice with the department to pay by EFT, once for their employees' payroll tax payments and once for their withholdings on insurance payments to claimants. Each registration is under its own department Business Identification Number. Business A has annual deposits of combined quarterly payroll taxes and assessments under ORS 316.197 totaling $900,000 based on their status as an employer. Business A also pays withholding totaling $150,000 annually based on payments to their insurance claimants. Business A would not be mandated to pay by EFT.

Example 2: Business B is a retail chain. Business B has registered with the department three times. Each registration is under its own department Business Identification Number. Business B has registered once for their auto parts stores, once for their apparel stores and once for their restaurants. Payments of combined taxes and assessments are $280,000, $450,000 and $600,000 respectively. Business B would be mandated to pay by EFT because the payments made separately for each of their registrations are for payment of taxes and assessments based on their employee payroll.

Example 3: Business C is an incorporated grocery retailer. Annually, the business pays combined payroll taxes and assessments based on wages of its employees totaling $900,000 Additionally, Business C annually pays $400,000 in corporate excise taxes. Business C is not mandated to pay by EFT because payment of corporate excise taxes and payment of combined employer payroll taxes are unrelated, even though the taxes are paid under the same business identification number.

Hist: Filed 11/13/98 and Eff. 12/31/98

Withholding: Payment and Reports

150-316.202(1) It is the responsibility of a new employer to register with the department. A registration number shall be assigned by the department for use in it's administration of the withholding and transit excise tax laws. Employers shall use the registration number on all reports and payments filed with the department which are for tax programs on the Oregon Quarterly Combined Tax Report.

A registered employer shall submit a report for each reporting period, even though the employer may not have had any payroll during that period.

Failure by an employer to obtain remittance forms shall not constitute an excuse for failure to report total compensation paid and to remit the tax withheld within the time required by law. This responsibility ceases only after the employer notifies the department that the employer no longer has employes subject to withholding or transit excise taxes.

Hist: Eff. 1/69, Amended 12/19/75, 12/31/83; Amended and renumbered from OAR 150-316.202(1)-(A) to OAR 150-316.202(1), 12/31/91

Waiver of Termination Reports

150-316.202(2) For the purposes of waiver of termination reports, the Department of Revenue adopts the successor-in-interest definition as found in Employment Division OAR 471-31-140, Filed 12-23-77 and Effective 1-1-78.

Hist: Eff. 1/69 as OAR 150-316.202(1)-(B), Amended 12/19/75 (Renumbered), 12/31/83; Amended and Renumbered from OAR 150-316.202(2)-(A) to OAR 150-316.202(2), 7/1/91

Withholding: Annual Report by Employer

150-316.202(3) (1) An individual withholding statement showing total wages paid and state and federal tax withheld during the calendar year, the name, address, and social security number of the employee, the name, address, and state firm identification number of the employer, shall be completed annually for each employee. The federal withholding statement (Form W-2) may be used for this purpose. If the employer is withholding from certain periodic payments as described in ORS 316.189, Form 1099-R may be used for this purpose.

A copy of the W-2 to be filed with the Oregon personal income tax return shall be given to the employee within thirty-one days of the close of the calendar year. If an employee is terminated and requests a copy of the W-2, the employer shall provide the form within 30 days of the request or the final wage payment, whichever is later.

(2) Every employer shall file a summary of total compensation paid and Oregon tax withheld for each employee, including a reconciliation of sums remitted to the department by the employer against the total of individual Oregon amounts withheld from employees, Form WR. A $100 penalty may be imposed if the form is not filed. If, on the Form WR, there is a difference between the amount paid in by the employer and the amount withheld from the employees' wages, the employer must also include with the Form WR an explanation of the difference.

(3) The report shall be submitted to the department on or before the due date of the corresponding federal report. If the employer ceases doing business, the report is due within 30 days of termination of business.

(4) To verify the reconciliation, the department may request that the employer submit copies of forms W-2 to reconcile amounts paid by employer with amounts shown as withheld from employees.

Hist: Eff. 1/69 as OAR 150-316.202(2), Amended 11/73, 12/74, 12/19/75 (Renumbered), 12/31/83, 12/31/84, 12/31/87, 12/31/92; Amended and Renumbered from OAR 150-316.202(2)-(B) to OAR 150-316.202(3), 12/31/93; Amended 12/31/94

Combined Reports: Agricultural Employers

150-316.202(4) If an agricultural employer is subject to a tax program (in addition to withholding tax) for example, Tri-Met or Lane Transit tax, the employer is required to file the Oregon Combined Payroll Tax Report quarterly. The withholding portions of the Oregon Combined Payroll Tax Report may still be filed annually on Form WA. The annual agricultural return is due by January 31 of the following year.

Hist: Filed 9/13/91 and Eff. 12/31/91

Liability for Tax; Warrant for Collection

150-316.207 It is the employer's duty to hold in trust any amount of tax withheld from his employes and to assume custodial liability for such amounts to be remitted to the Department of Revenue. Any employer who fails to pay the tax when due will be subject to delinquency charges as provided in ORS Chapter 314 in the same manner as any other taxpayer who fails to file a return or pay a tax due. Any employer who fails to pay such tax withheld to the Department of Revenue is in violation of ORS 314.075 and is subject to the penalty provisions of subsection (1) of ORS 314.991.

Lenders, sureties, or other persons who directly pay wages to employes on behalf of an employer are liable for payment of withholding taxes. A trustee in bankruptcy may be held liable for payment of withholding taxes.

Where a corporation is absorbed by another corporation in a statutory merger or consolidation, the resulting entity is regarded as the same employer as the absorbed corporation and is liable for payment of withholding tax and must furnish withholding information to the Department.

If a corporation fails to file returns or to pay the tax withheld when due, any or all officers or any employes who are responsible for exercising the duties of an employer, may be held personally responsible for the returns and/or payments together with any interest, penalties or charges due. Whether the officer or employe has exercised the duties or not is immaterial. A warrant may be issued against such corporate officers or employes to enforce collection of any amount of delinquent withholding tax, including all accrued delinquency charges, provided a timely notice of assessment in the name of such corporate officer or officers has been issued. A notice of tax assessment issued merely in the name of the corporation will not, in itself, cause the Department to institute distraint proceedings against any officer or officers for collection of such delinquent withholding taxes.

Hist: Eff. 11/71, Amended 12/19/75, 12/31/91

Officer Liability: Joint Determination of Liability Conference

150-316.207(3)(a) The provisions of this rule dealing with hearings apply to hearing requests filed with the Department of Revenue prior to September 1, 1997. See OAR 150-305.525 for information about hearing requests filed on or after September 1, 1997.

(1) If one or more of the persons who may be held liable under ORS 316.162 to 316.212 appeals an assessment of unpaid withholding taxes, a joint conference may be required by the department. If a conference decision is appealed a joint hearing may be required by the department.

(2) It is the policy of the department to notify all persons against whom liability may be asserted to attend the joint conference or subsequent hearing.

(3) If the department is unable to notify any person or if any of the persons notified fail to appear at the conference or hearing, the department may proceed with the conference or hearing and determine liability against any person to whom notice was given.

(4) Notification of the conference or hearing shall be mailed to each person against whom the department may assert liability. Mailing shall be made by certified or registered mail, return receipt requested.

(5) A finding at the conference that a person or persons are liable does not preclude a later finding that other persons are also liable.

Hist: Filed 10/5/85 and Eff. 12/31/85; Amended 7/4/97 (Temp.), 12/31/97 (Perm,.)

Withholding Penalties

150-316.212 See ORS 305.992, 314.400, 314.410, 314.440, 314.991 and rules pertinent thereto for procedures followed in collection of taxes withheld from wages.

Hist: Eff. 1/69; Amended 12/31/92

Nonresident Alternate Filing

150-316.216 (1) Out-of-state employers may elect an alternate method of filing, reporting or calculating tax liability for payroll earned in Oregon by nonresident employees for a payroll period not to exceed 200 days in one calendar year.

(2) Notice of election of alternative method shall be given on Oregon Department of Revenue form, Application for Alternative Filing Method for Temporary Employers, available from Oregon Department of Revenue, 955 Center Street, NE, Salem OR 97310.

(3) The Oregon Department of Revenue shall furnish the employer with Oregon Withholding Tax forms and instructions for filing and paying tax. The employer shall remit payment(s) and file completed Oregon quarterly combined tax reports as required by ORS 316.168 and ORS 316.197.

(4) An employer electing the alternative method of withholding shall notify its employees of such election at the time withholding is made.

(5) If a qualifying nonresident employee files a personal income tax return under the allowed alternative method, the return also serves as a closing agreement. The amount of withholding is considered to be the amount of income tax owing for the tax year and is not subject to change by the taxpayer or the department unless it is determined that the taxpayer was not a "qualifying nonresident employee" while working for the nonresident employer.

(6) A nonresident employee who is working for an out-of-state employer which elects the alternative method under this rule, may elect to report and pay personal income tax on income earned by the employee in connection with the employee's performance of temporary services within this state in the same manner as any other nonresident.

Hist: Filed 10/5/85 and Eff. 12/31/85; Renumbered from OAR 150-316.857 to OAR 150-316.216, 12/31/89; Amended 12/31/91, 12/31/93

(Resident Estates and Trusts)

Tax Treatment of Unincorporated Organization

150-316.277 Except as otherwise provided by statute, regulations under Internal Revenue Code Section 7701 that allow unincorporated entities to elect to be classified as corporations or partnerships for federal tax purposes shall also be effective for Oregon tax purposes.

Hist: Filed 9/12/97 and Eff. 12/31/97

Resident and Nonresident Estates and Trusts

150-316.282 (1) For the purposes of the taxes imposed upon the income of estates and trusts and paid by the fiduciary thereof, estates and trusts are classified as either resident or nonresident.

(2) An estate is a resident if the fiduciary was appointed by an Oregon court or, where there is no appointment by an Oregon court, if the administration is carried on in Oregon. An estate of a decedent is but one taxable entity although there may be two or more fiduciaries appointed by courts of two or more states or countries. In such a case, the fiduciary appointed by the Oregon court (or administering the estate in Oregon) is required to file an Oregon state income tax return and is liable for any Oregon state income tax of the estate. The Oregon state income tax is determined by the status of the principal administration as to its resident or nonresident character, and shall be computed on an Oregon return required to be filed by the fiduciary of the principal administration. If the principal administration, considered without regard to other administrations, is an Oregon resident estate, all income of the estate, including that of nonresident fiduciaries, is taxable as that of an Oregon resident. If the principal administration, considered without regard to other administrations, is a nonresident of Oregon, the Oregon state income tax liability is to be computed as that of a nonresident.

(3) A trust is a resident if the fiduciary is a resident of Oregon or if it is administered in Oregon.

(4) A trust is a nonresident only if there is no Oregon resident trustee and the administration is not carried on in Oregon. See ORS 316.307 and the rules thereunder regarding treatment of nonresident trusts.

(5) If the trustee is a corporate fiduciary engaged in interstate trust administration, the trust is considered to be a resident of Oregon and the place of administration for that trust is considered to be Oregon if the trustee conducts the major part of its administration of the trust in Oregon. In this context, "administration" relates to fiduciary decision making of the trust and not to the incidental execution of such decisions. Incidental functions include, but are not limited to, preparing tax returns, executing investment trades as directed by account officers and portfolio managers, preparing and mailing trust accountings, and issuing disbursements from trust accounts as directed by account officers.

Example (1): X Trust Company, with its headquarters in Oregon, serves as trustee for trusts in Oregon and Washington. For its Washington trusts, account officers with offices in Washington: (a) serve as X's primary contact with beneficiaries, (b) hire lawyers, accountants, and other professionals for the trust, and (c) make the majority of fiduciary decisions, which include when to make distributions and where to invest trust assets. Assets are invested in common trust funds or in mutual funds on the advice of either an affiliate of X located in Oregon or by unaffiliated investment companies located in Oregon or other states. A committee of X's senior managers, including some stationed in Oregon, oversees the account officer's activities. Various incidental functions for the Washington trusts are performed by X's personnel in Oregon. Because the majority of the fiduciary decisions for the Washington trusts are made in Washington, those trusts are not administered in Oregon.

Example (2): Same facts as Example (1), except that the majority of fiduciary decisions for Washington trusts are made by account officers of X stationed in Oregon. Because the majority of fiduciary decisions are made in Oregon, the Washington trusts are administered in Oregon, and therefore are Oregon resident trusts.

Example (3): Same facts as Example (1), except that X and an Oregon resident serve as co-trustees of a Washington trust. Because the Washington trust has an Oregon resident trustee, that trust is an Oregon resident trust.

(6) The tax liability of a resident estate or trust is computed generally by utilizing the same principles as those governing individuals, except that in lieu of the modifications allowed to individuals by ORS 316.680 and ORS 316.697 the estate or trust may be allowed a "fiduciary adjustment" as set forth in ORS 316.287.

(7) For the purpose of determining whether income of an estate or trust which is deductible as a distribution deduction on its return is taxable on the Oregon return of a beneficiary, it is immaterial whether the estate or trust is a resident or nonresident. The income deductible as a distribution deduction on the return of an estate or trust is included in the net income of the beneficiary and is taxed in the same manner as if it had been received directly by the beneficiary without the intervention of the estate or trust. Its character is determined by the provisions of the Internal Revenue Code and not necessarily by the character or source of the money or property distributed.

(8) The amount of income to be reported by a beneficiary, including the allocation in case there is more than one beneficiary, is determined by: (a) residency status of the beneficiary, (b) allocation of the "fiduciary adjustment" as provided in ORS 3l6.287, (c) various provisions of local law, and (d) the provisions of Subchapter J of Subtitle A of the Internal Revenue Code.

(9) For rules on accumulated income distributions from a trust to a resident or nonresident beneficiary, see OAR 150-316.737 and 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: Eff. 11/71; Amended 12/19/75, 12/31/87, 12/31/93, 12/31/94, 12/31/97

Fiduciary Adjustment

150-316.287 The modifications applicable to individuals described in ORS Chapter 316 may or may not be applied in computing the income tax liability of an estate or trust, depending on the treatment of distributable net income of the estate or trust in the Internal Revenue Code. No modification may be added or deducted separately. Neither may trust principles of accounting or statutory provisions governing allocations of receipts and disbursements by the fiduciary be applied in allocating the tax burdens or benefits arising from modifications. The net amount of all modifications constitutes the "fiduciary adjustment," which must be allocated between the fiduciary and any beneficiaries as required in ORS 316.287(2). However, the share of a fiduciary adjustment allowable in reduction of the taxable income of a beneficiary shall be limited to the amount of the distribution deduction taxable on his individual federal return. The share of a fiduciary adjustment increasing taxable income of a beneficiary shall be limited to an amount computed by deducting the amount of income of the estate or trust taxable on his individual 0regon return from the total amount of money and the value of property distributed or required to be distributed to him during its current taxable year by the estate or trust. Any amounts not allocated to a beneficiary solely by reason of these limitations shall be added to the share of the estate or trust. A computation of the federal distributable net income must be shown on a copy of the federal Form 1041 attached to the Oregon fiduciary Form 41, unless it is clearly evident from the character of the estate or trust and the income that either (1) there is no distributable net income as defined in the Internal Revenue Code, (2) all distributable net income is taxable to the beneficiary, or (3) no distributable net income is deductible on the federal fiduciary return as a distribution deduction.

Example: An estate had ordinary income and capital gains. A property worth in excess of the ordinary income was distributed to a residuary beneficiary in the taxable year. The total net fiduciary adjustment, including federal income tax paid on capital gains, is allocated to the distributee, although the personal representative must charge the federal income tax against principal. Thus, the tax benefit is granted to the beneficiary receiving current distribution while the eventual economic burden of payment falls on the residuary beneficiaries ratably. On the other hand, the beneficiary receiving a current distribution has been burdened with both federal and 0regon tax liability arising from ordinary income. Had he received no distribution the liability for tax would have fallen on the estate and the eventual economic burden on the residuary beneficiaries ratably. However, if the estate has federal taxable income which is not subject to Oregon income taxation, such as interest from the United States bonds, to include in the fiduciary adjustment to bring the total fiduciary adjustment up to an amount in excess of the value of the property distributed, the beneficiary may deduct on his individual return only the amount of fiduciary adjustment necessary to offset the income of the estate included in his taxable income. Similarly, if a U.S. income tax refund was claimed by and allowed to the estate in an amount to bring the total fiduciary adjustment up to an addition to income in excess of the value of the property distributed, the beneficiary need include only the amount of the fiduciary adjustment that, when added to the income of the estate included in his taxable income, equals the value of the property distributed.

[**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. 11/71, Amended 12/19/75

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

(Nonresident Estates and Trusts)

Nonresident Estates and Trusts

150-316.302 See OAR 150-316.282.

Hist: Eff. 1/69, Amended 11/71

Taxable Income of Nonresident Estate or Trust

150-316.307 The determination of the taxable income of a nonresident estate or trust differs from that of a nonresident individual in that there is no provision for proration of items of income, deductions or exemptions. Taxable income must be determined by first recomputing the fiduciary's net taxable income under the Internal Revenue Code using only those items of income, gain, loss and deductions derived from or connected with sources in Oregon, including the full amount of the personal exemption allowable in determining federal taxable income. This computation may be made on a federal Form 1041 and accompanying schedules if they are clearly marked as state schedules. Regardless of the form of the computation, a copy of the federal Form 1041, and all accompanying schedules, as filed with the Internal Revenue Service must be attached to the Oregon Fiduciary Form 41.

To arrive at the fiduciary's Oregon taxable income, the recomputed federal net taxable income, limited to items derived from or connected with sources in Oregon, is increased or decreased by the "fiduciary adjustment" provided in ORS 316.287 and the transitional adjustment, if any, provided for in ORS 316.047. The "fiduciary adjustment" is computed in the same manner as that used for resident estates or trusts except that only items of income, gain, loss and deductions that are derived from or connected with sources in Oregon and a portion of any accrued federal income tax liability or refund are included in the computation. The amount of each federal income tax item of the fiduciary adjustment is computed by multiplying the accrued liability or refund by the percentage that the recomputed federal net income from Oregon sources bears to the federal net taxable income from all sources. Both factors in this computation must include only those items taken into account in determining net taxable income of the tax year to which the liability or refund applies.

[**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. 11/71

RETURNS; PAYMENTS

Definition of "Federal Net Income"

150-316.362(1) "Federal net income" as used in ORS 316.362, means the amount remaining when either the total of allowable itemized deductions or the standard deduction (defined in IRC sec. 63) is subtracted from federal adjusted gross income (defined in IRC sec. 62).

[**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 12/31/87

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

Persons Required to Make Returns

150-316.362(2) A person having income taxable by this state which is not included in federal taxable income is required to file a return. For example, a return must be filed reporting interest on obligations of any foreign state or territorial possession of the United States which by the laws of the United States is exempt from federal income taxation but not from state income taxation.

Hist: Eff. 12/70; Renumbered from OAR 150-316.362(6) to OAR 150-316.362(2), 12/31/89

Joint Return of Husband and Wife

150-316.367(3) See OAR 150-316.122 for conditions under which a joint return may not be filed as provided by ORS 316.367(3).

Hist: Eff. 12/70, Amended and Renumbered from OAR 150-316.367(2) to OAR 150-316.367(3), 12/31/85

Petitioning Department to Equally Split Joint Liability

OAR 150-316.368 (1) A tax liability incurred by spouses filing a joint tax return is joint and several. Each spouse is responsible for the entire liability. However, the department may split a joint tax liability equally between two separated or divorced spouses. Either spouse may file a petition to split the joint liability equally between the spouses. In order to split the liability, the department must be satisfied that payment of the entire liability by the petitioning spouse will cause undue hardship on the petitioner and petitioner's household. Mere inconvenience is insufficient to establish hardship. A statement in the divorce decree is also insufficient to relieve either spouse of the liability.

(2) The conditions listed below may constitute hardship. The examples given are not intended to be all-inclusive.

(a) Annual household income of the petitioning spouse, number of dependents and limited assets within the household are such that petitioner could not, in the department's opinion, pay the entire liability within five years.

Example 1: The petitioning spouse receives social security income with no other income and only minimal assets.

Example 2: The petitioning spouse earns $20,000 annually, is not receiving child or spousal support, and is the sole support of three adolescent dependents. Household assets are minimal. The liability owed jointly with the petitioner's ex-spouse is $4,000.

(b) Major medical problems or a prolonged illness of either the petitioning spouse or a family member that either severely limits petitioning spouse's earning ability or creates an extreme financial burden on household resources.

Example 3: Petitioning spouse or family member has a major illness and has been forced to retire. The only household income is from social security.

Example 4: The petitioning spouse has a major illness and family is living on disability and attempting to meet high medical costs.

(3) Included within the petition must be:

(a) An explanation of how payment of the entire liability will cause undue hardship on the petitioner and petitioner's household,

(b) The current address of the non-petitioning spouse (if known),

(c) A completed Statement of Financial Condition for Individuals (form number 150-860-009),

(d) A copy of the legal separation or divorce decree, and

(e) An explanation of how the petitioner will pay the remaining liability.

(4) Following review of the petition, the department will either:

(a) Accept the petition, cause the liability to be split equally between spouses and notify both spouses of the action, or

(b) Notify the petitioning spouse the petition has not been accepted.

(5) Acceptance by the department of the petition is discretionary. If the department denies a petition to split a joint liability, the petitioner may appeal that denial to the Oregon Tax Court. The appeal must be made within 60 days of the date the order was served.

Hist: Filed 10/15/93 and Eff. 12/31/93; Amended 12/31/94

Innocent Spouse Provision

150-316.369(2) (1) The definition of substantial understatement of tax and grossly erroneous items will be the same as under section 6013(e) of the Internal Revenue Code and the regulation issued thereunder.

(2) If a taxpayer claims a refund, the taxpayer shall provide proof that the innocent spouse requirements under IRC Section 6013(e) have been met or that innocent spouse relief was granted by the Internal Revenue Service. The innocent spouse must also provide proof that he or she made a payment to the Department of Revenue. When these conditions are met, a refund will be issued.

[**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 10/05/83 and Eff. 12/31/83, Amended 12/31/85

Liability of Fiduciaries

150-316.382 A fiduciary is required to file a return reporting all of the income of the estate or trust even though such income may not in whole or in part be taxable to the estate or trust. If an estate or trust is exempt from filing under federal Internal Revenue Code regulations, it is also exempt from filing for Oregon unless notice to file is given by the Oregon Department of Revenue. The fiduciary also is required to pay the taxes on the income taxable to the estate or trust. Liability for the payment of the tax attaches to the person of the estate's personal representative up to and after discharge, where prior to distribution and discharge, personal representative failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax obligation. Liability for the tax also follows the estate itself. When by reason of the distribution of the estate and the discharge of the personal representative it appears that collection of tax cannot be made from the personal representative, legatees or distributees must account for their proportionate share of the tax due and unpaid to the extent of the distributive share received by them. See ORS 314.310. The same considerations apply in the case of trusts. See also ORS 316.387.

Hist: Eff. 1/69, Amended 12/19/75, Filed and Eff. 2/11/82 (Temp.), 5/5/82 (Perm.)

Decedent's Estate: Request for a Final Tax Determination

150-316.387(1) (1) The representative of a decedent's estate has an affirmative duty to file any returns which the decedent failed to file or was unable to file (e.g., the return required for the part of the tax year prior to death, or returns required for previous tax years which weren't filed due to the final illness of the decedent) and to pay the indicated tax, penalties and interest, if any, from the funds of the estate. The state has no duty to watch for printed notices to creditors or to file a creditor's claim with the decedent's representative.

(2) The representative of a decedent's estate may make an election for a final tax determination of any returns required to be filed under chapter 316 during the period of estate administration from a decedent or a decedent's estate. The election must be in writing and may be made by filing Department of Revenue Form 150-101-151 "Election for Final Tax Determination." The election is applicable to: (a) all individual income tax returns filed by the decedent for which the statute of limitations is open for adjustment at the time the election is filed; (b) the decedent's final individual income tax return; (c) any individual income tax returns the representative of a

decedent's estate is required to file on behalf of the decedent because the decedent failed to file the required returns prior to their death; and, (d) any fiduciary income tax returns filed during the period of estate administration. The election must be filed with the return(s) for which the election is applicable.

(3) The Department of Revenue may give notice of deficiency as described in ORS 305.265 within 18 months after a written election for final tax determination is made by the representative of the decedent's estate. If the Department of Revenue fails to give notice of deficiency within the 18 month period, the statute of limitations for the returns covered by the election for final tax determination will expire, except as described in paragraph (4). The Department of Revenue has no affirmative duty to respond to the election for final tax determination in any way other than the giving of notice of deficiency within 18 months.

(4) The limitations to the giving of a notice of deficiency provided in this section shall not apply in the following circumstances: (a) if the department finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return, notice of deficiency may be given at any time within five years after the return was filed; (b) if the department finds that false or fraudulent returns were filed, or that no returns were filed but returns were required to be filed, notice of deficiency, or notice of assessment in the case of failure to file, may be given at any time after the department makes that finding; (c) if the Commissioner of Internal Revenue makes a correction resulting in a change of the decedent's or the estate of the decedent's tax, then notice of deficiency may be given within one year after the department is notified of such federal correction, or within the applicable 18-month or five-year period, whichever period expires later.

(5) The representative of a decedent's estate may choose to close the estate administration at the earliest date practicable, even though the period for giving notice of deficiency has not expired. If the department then gives notice of deficiency, the transferees of the money or property of the estate shall be liable for the tax, penalties and interest imposed against the decedent or the decedent's estate.

Hist: Eff. 1/69, Amended 12/70, 11/73, 12/19/75, 4/3/87 (Temp.); 6/5/87 (Perm.); Amended 12/31/89, 12/31/92, 12/31/95

Decedents' Estate: Application for Discharge from Personal Liability for Tax on Decedent's Income

150-316.387(4) (1) The representative of a decedent's estate may make written application to the department for discharge from personal liability for tax on the decedent's income. This application must be made after filing the decedent's final individual income tax return, or any individual income tax returns the representative of a decedent's estate is required to file on behalf of the decedent because the decedent failed to file the required returns prior to their death.

(2) The written application must include the following information: (a) the name of the decedent; (b) the decedent's Social Security Number; (c) a list of the tax years for which the representative of a decedent's estate filed individual income tax returns on behalf of the decedent during the period of estate administration. The representative of a decedent's estate must also provide a copy of the document which shows they were appointed to represent the estate.

(3) The discharge becomes effective nine months after the department receives the application for discharge, if the representative of a decedent's estate has received no notification of tax liability during that time, or if notification of tax liability was received and paid during that time.

(4) The discharge does not apply to tax liability resulting from assets of the decedent's estate which are still in the possession or control of the representative of a decedent's estate.

(5) The failure of a representative of a decedent's estate to make application under this subsection does not affect the protection available to the representative under ORS 116.113(2), 116.123 and 116.213.

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

Requirement of Copy of Federal Return

150-316.457 Unless especially requested in individual cases, no copy of the federal income tax return need be filed with Form 40S ("short form").

Beginning with tax year 1994, a copy of the federal Form 1040, 1040A, 1040EZ, or 1040PC, whichever is applicable, must always be filed with Forms 40, 40P and 40N or the returns shall be deemed incomplete. No other federal forms or schedules are required to be filed with the Oregon return. Copies of federal forms and schedules must be made available to the department on request. If partnership income is reported on the return, a copy of the federal partnership return must be filed with the department by one of the partners.

Hist: Eff. 1/69; Amended 12/31/89, 12/31/94

PAYMENT OF ESTIMATED TAX

Estimated Tax

150-316.563 (1) The declaration of estimated tax shall contain information and be in the form prescribed by the Department of Revenue. Federal forms are not acceptable.

(2) A taxpayer may amend the declaration of estimated tax by recalculating the estimated tax due for the year, subtracting the payments already made and dividing the balance by the remaining payment dates.

(3) Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. Where taxpayers establish to the satisfaction of the department that the facts warrant a refund, a refund of estimated taxes can be made prior to the filing of the tax return. Examples of fact situations which will be considered sufficient to warrant a refund are as follows:

(a) Estimated tax payments were made by an individual who will not be required to file a return for the tax year for which the estimated tax payments were made.

(b) The estimated tax payments were intended for the Internal Revenue Service but were sent to the Department of Revenue in error.

The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient cause to refund such excess prior to the filing of the Oregon tax return.

(4) Estimated tax payments cannot be used to pay additional tax liabilities for prior or current tax years, regardless of whether the liability is created by the taxpayer filing an amended return or by adjustment of the return by the department.

Example 1: Douglas has made estimated tax payments for 1993 totaling $2,000. His 1991 tax return was audited and a deficiency of $500 was imposed. No part of the $2,000 payments may be used to pay the deficiency.

(5) Interest shall be computed on excess estimated tax payments starting 45 days after the return is filed, or 45 days after the due date of the return, whichever is later.

(6) An individual with a taxable year of less than 12 months may be required to file a declaration of estimated tax and pay estimated tax.

(a) For short taxable years beginning on or after January 1, 1982 no declaration is needed if the short taxable year is:

(A) Less than four months.

(B) At least four months but less than six months and the requirements of ORS 316.563 are met after the first day of the fourth month.

(C) At least six months but less than nine months and the requirements to file are met after the first day of the sixth month.

(D) At least nine months and the requirements to file are met after the first day of the ninth month.

(b) If the taxpayer is required to file the declaration, the declaration must be filed:

(A) The 15th day of the fourth month if the requirements to file are met before the second day of the fourth month.

(B) The 15th day of the sixth month if the requirements to file are first met after the first day of the fourth month but before the second day of the sixth month.

(C) The 15th day of the ninth month if the requirements to file are first met after the first day of the sixth month but before the second day of the ninth month.

(D) The 15th day of the first month of the succeeding year if the requirements to file are first met after the first day of the ninth month but before the last day of the year unless the return for such tax year is filed on or before the last day of the first month of the succeeding year.

(c) The estimated tax shall be paid in equal installments. The amount of each installment depends on the length of the short taxable year and the date during the year when the requirements to file and pay estimated tax are first met.

Example 2. Tom has a short taxable year beginning January 1, 1982 and ending October 31, 1982. The requirements to filing a declaration of estimated tax are first met prior to April 2, 1982. The estimated tax is payable in four equal payments on April 15, June 15, September 15 and November 15, 1982. Each payment would equal one-fourth of the total estimated tax due. If, on the other hand, the requirements to filing a declaration of estimated tax were first met after April 1 but before June 2, the estimated tax would be payable in three equal payments of one-third of the total estimated tax. The payment dates would be June 15, September 15 and November 15, 1982.

Example 3. A five-month short taxable year beginning January 1, 1982, and ending May 31, 1982, and the requirements to file were met on March 31, 1982, Tom must file and pay:

½ of the estimated tax on April 15, 1982
½ of the estimated tax on June 15, 1982

Example 4. A seven-month short taxable year from April 1, 1982, through October 31, 1982, and the requirements to file are met on July 1, 1982. Tom must file and pay:

⅓ of the estimated tax on July 15, 1982
⅓ of the estimated tax on September 15, 1982
⅓ of the estimated tax on November 15, 1982

Hist: Filed and Eff. 12/31/80; Amended 12/31/81, 12/31/82, 12/31/83, 12/31/84, 12/31/85, 12/31/86; Amended and Renumbered from OAR 150-316.563(1) to 150-316.563 and to transfer some material to OAR 150-316.587(1), 12/31/87; Amended 12/31/92, 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 × $2,000). Betty's share of the estimated tax payments is $846 ($1,100 ÷ $2,600 × $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: Farmer's and Fisher's

150-316.573 For the purpose of declaring estimated tax, gross income is determined using sources within and without this state.

Example. John is a resident of the state of Washington and owns a farm which is located in Oregon. All of his other income is from nonfarm sources within the state of Washington. The total farm income from Oregon sources is $50,000. The total gross income from within and without Oregon is $90,000. Since the gross income from farming is not equal to or greater than two-thirds of John's total gross income, the exception for farmers and fishers to making estimated tax payments is not met.

Hist: Filed 10/5/87 and Eff. 12/31/87

Estimated Tax: Application of Prior Year Overpayment (Refund)

150-316.583(2) (1) *Definitions.*

(a) *Department notification.* To properly notify the department that the overpayment is to be applied against an instalment other than the first instalment, the taxpayer shall attach a statement to the income tax return showing the overpayment and indicate to which instalments the overpayment is to be applied.

(b) *Delinquent return.* If the taxpayer fails to file a return by the due date of the return and has not obtained an extension to file, the return is considered delinquent.

(2)(a) *Refunds from current year's returns.* The department shall apply overpayments occurring on or before the due date of a return against the first instalment payment of the next year's estimated tax, unless the taxpayer notifies the department that the overpayment should be applied against another instalment. The payment shall be applied as of the date which is the later of the due date of the return (without regard to extensions) or the date the overpayment was made.

Exception: The taxpayer's overpayment may not be applied to the following year's estimated tax if the taxpayer owes delinquent child or spousal support.

Example 1: The taxpayer makes all four estimated tax payments for tax year 1992. The last payment was made in January, 1993. The taxpayer filed the 1992 Oregon return on April 15, 1993. The return shows a refund due. The taxpayer requests that the refund be applied to 1993 estimated tax. The refund will be credited to the estimated tax account as of April 15, 1993.

(b) *Refunds from delinquent returns.* When the taxpayer files a delinquent return, and the tax shown due is less than the amount of withholding and prepayments, the taxpayer may apply the overpayment to an estimated tax account for a subsequent year. Overpayments shall be applied to the extent approved on review and as of the date the return is filed.

Example 2: Taxpayer files a 1992 return on October 25, 1993. The taxpayer made all four estimated tax payments for 1992. The return shows a refund due. The taxpayer requests that the refund be applied to the 1993 estimated tax account. The department processes the return and on December 13, 1993 verifies that the refund requested is correct. The overpayment is credited to the 1993 estimated tax account as of October 25, 1993.

(3) *Refunds from amended returns.* When an election is made to have an overpayment resulting from the amendment of a prior year return applied to an estimated tax account, the overpayment shall be applied to the extent approved on review and as of the date the return is filed.

Example 3: Taxpayer files an amended return for calendar year 1989 on October 15, 1990, claiming a $500 overpayment and electing to have it applied to the 1990 estimated tax account. The 1989 amended return was received by the department on October 20, 1990. The refund was reduced to

$400 and approved on November 20, 1990. The actual transfer of the $400 plus interest was made on December 1, 1990. The application date to the 1990 estimated tax account is October 15, 1990.

Hist: Filed 10/5/84 and Eff. 12/31/84; Amended 12/31/89, 12/31/91, 12/31/92, 12/31/93

Tax Used to Compute Underpayment of Estimated Tax

150-316.587(1) Any interest due for underpaying estimated taxes is to be computed using the total tax shown on the return or as adjusted in initial processing. Subsequent amendments to the tax will not affect the underpayment interest amount unless the amended return is received prior to the statutory due date of the original return.

Example 1. Mary files an Oregon income tax return on a calendar year basis. She filed a return for 1982 on February 15, 1983, showing a tax liability of $700. On April 10, 1983, she filed an amended return for 1982 showing a tax liability of $450. The return for the taxable year for purposes of computing any interest on underpayment of estimated tax is the amended return filed on April 10, 1983.

Example 2. Same facts as given in Example 1 except that Mary's amended return was filed on May 20, 1983. The original return filed on February 15, 1983, is the return for the taxable year for purposes of computing any interest on underpayment of estimated tax.

Hist: Filed 10/5/87 and Eff. 12/31/87

Estimated Tax: Waiver of Underpayment Interest Due to Casualty, Disaster or Other Unusual Circumstances

150-316.587(5)(b) (1) No interest for underpayment of estimated tax will be imposed on any portion of the underpayment that is caused by reason of casualty, disaster or other unusual circumstances where it would be against equity and good conscience to impose interest. The determination of whether unusual circumstances exist is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the effort required by the taxpayer to comply with the law and make the required installments.

(2) The following are examples of situations that shall be accepted by the department as unusual circumstances for not imposing interest.

(a) Where the failure to make the necessary estimated tax payment was caused by death or serious illness of the taxpayer, or death or serious illness in the taxpayer's immediate family.

(b) Where the taxpayer's books and records are destroyed by fire, flood or other natural disaster and therefore, the taxpayer is unable to determine the correct estimated tax payment.

(c) Where the disaster is so overwhelming that the taxpayer neglects to make the necessary estimated tax payment.

(d) Where the failure to make the necessary estimated tax payment was caused by the unavoidable and unforeseen absence of the taxpayer from the state immediately prior to the due date of the estimated tax payment.

Hist: Filed 9/13/91 and Eff. 12/31/91

Estimated Tax: Waiver of Underpayment Interest Due to Reasonable Cause

150-316.587(5)(c) (1) No interest for underpayment of estimated tax will be imposed on any portion of the underpayment if in or prior to the tax year the estimated tax payment was required to be made, the taxpayer retired after attaining age 62 or became disabled, and the underpayment was due to reasonable cause and not to willful neglect. The determination of whether the taxpayer's actions were due to reasonable cause and not willful neglect is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the effort required by the taxpayer to assess the taxpayer's proper liability.

(2) The following are examples of situations that shall be accepted by the department as reasonable cause for not imposing interest.

(a) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by the unavoidable and unforeseen absence of the taxpayer from the state immediately prior to the due date of the estimated tax payment.

(b) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by reliance on an information return or other facts, if under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. Reliance on information reported on a Form W-2, Form 1099 or other information is reasonable if the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows or has reason to know that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction.

(c) Where the failure to make the necessary estimated tax payment or failure to pay the correct amount of estimated tax was caused by incorrect professional advice and:

(A) The taxpayer relied upon the advice of an individual who the taxpayer could reasonably assume was knowledgeable and experienced in the tax involved;

(B) The taxpayer supplied the individual with complete information connected with the advice given; and

(C) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with the erroneous advice.

(d) Where the taxpayer exercised ordinary business care and prudence and nevertheless was unable to make the necessary estimated tax payment or to pay the correct amount of estimated tax.

(e) Where the taxpayer is unable to obtain records necessary to determine the amount of estimated tax due, for reasons beyond the taxpayer's control.

(f) Where the taxpayer failed to pay the tax based on erroneous written information received from an employee of the Department of Revenue.

Hist: Filed 9/13/91 and Eff. 12/31/91; Amended 12/31/92

Estimated Tax: Partnership and S Corporation Income

150-316.587(5)(d) (1) For purposes of determining if the taxpayer qualifies for an exception to the paying of interest on the underpayment of Oregon estimated tax, income of partnerships and S corporations shall be determined under Internal Revenue Code (IRC) Section 6654 as in effect on December 31, 1988, Treasury Regulation Section 1.6654-2 and all other appropriate regulations and rules.

(2) For purposes of imposing interest on underpayment of estimated tax, an exception exists for part-year and nonresidents receiving income from an S corporation. No interest will be imposed on the underpayment attributable to the shareholders pro rata share of the S corporation income if the income is for the initial year in which S corporation status is elected **and** the shareholder is a nonresident or for the prior tax year was a part-year resident for Oregon. This exception applies to tax years beginning on or after January 1, 1987. Taxpayers may request that any interest on underpayment of estimated tax that is unpaid be canceled but no refunds of interest will be made due to the above exception.

Example: Frank and Ethel move to Oregon in August, 1988. Frank is a partner in an Oregon partnership. The partnership incorporates in 1989 and elects S corporation status. For 1989, Frank and Ethel file as full-year Oregon residents and report their share of the S corporation income. No interest is imposed on any underpayment attributable to Frank's share of the S corporation income because they meet the exception. They are part-year residents for 1988 and 1989 is the initial year of election of S corporation status.

[**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 and renumbered from OAR 150-316.587(4) to OAR 150-316.587(4)-(A), 12/31/87; Amended and renumbered from OAR 150-316.587(4)-(A) to OAR 150-316.587(5), 12/31/89; Renumber from OAR 150-316.587(5) to OAR 150-316.587(5)(d), 12/31/91

Required Installments for Estimated Tax

150-316.587(8)-(A) Required installment means the amount of the installment which would be due if the estimated tax were equal to the lesser of the following amounts:

(1) *Method 1:* Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year).

Example 1: Don and Ethel are married and have three children. Don is self-employed. Ethel works part-time. They want to know if they must pay estimated tax for 1994 and how much each required installment would be. Their estimated 1994 adjusted gross income is $35,000, their estimated net itemized deductions are $3,500 and they expect to have $455 withheld from Ethel's wages. They compute their required installment as follows:

Estimated 1994 adjusted gross income		$35,000
Less:		
Estimated federal tax	$3,000	
Estimated net itemized deductions	$3,500	
Total deductions		– 6,500
Estimated Oregon taxable income		$28,500
Oregon tax		2,269
Exemption credit ($113 × 5)		– 565
Estimated political contribution credit		– 100
Oregon tax after credits		$ 1,604
Less estimated withholding		– 455
Tax after withholding		$ 1,149
Multiply their tax after withholding by 90 percent		.90
Total 1994 estimated tax		$ 1,034

This amount is more than $500. Don and Ethel must make required installments of $258.50 on each estimated payment date.

(2) *Method 2:* The required installment using Method 2 shall be the lowest amount calculated under paragraphs (2)(a), (2)(b) or (2)(c).

(a) *General rule:* Method 2 allows a taxpayer to base the required estimated tax payments on one hundred percent of the tax shown on the previous year's return. If the taxpayer did not file a previous year's return, the taxpayer cannot use the prior year's tax to calculate the required payment. The previous year's return must be filed timely, including extensions, and must cover 12 months. A return will not cover 12 months if the taxpayer has a change in accounting period during the taxable year. A taxpayer who filed as a part-year resident for the previous year qualifies to use Method 2 if the previous taxable year covers 12 months.

Example 2: Amanda's adjusted gross income in 1994 was $30,000 and her Oregon tax liability after credits was $2,000. For 1995, Amanda can use the *General rule* and pay 1995 estimated tax payments equal to 100 percent of her 1994 tax liability ($500 on each installment due date).

Example 3: Royal moved to Oregon from California on July 1, 1989 and filed as a part-year resident. His 1989 Oregon tax after credits and the State Surplus was $1,500. Even though his 1989 return shows 6 months of Oregon residency, his taxable year for 1989 was 12 full months. He qualifies to use Method 2 to determine his required installment for 1990. His required installment would be $375 ($1,500 divided by 4) due on each estimated payment date.

The *General rule* for using Method 2 is modified in these situations:

Special rules applicable to the use of Method 2:

(b) *Tax years beginning on or after January 1, 1994 and before January 1, 1996:* The *General rule* under paragraph (2)(a) above cannot be used by a taxpayer where all of the following apply:

(A) the taxpayer has adjusted gross income that is subject to Oregon taxation (AGI) for the current year exceeding $75,000 ($37,500 for married taxpayers filing separately);

(B) the taxpayer has AGI for the current year exceeding the prior year's AGI by more than $40,000 ($20,000 for married taxpayers filing separately);

(C) the taxpayer has made an estimated tax payment with respect to any of the three preceding years or was charged interest on underpayment of estimated tax in such years; and

(D) the amount computed based on 90 percent of the current year's tax is greater than the estimated payments based on 100 percent of the tax shown on the prior year's return.

Taxpayers who are prohibited from using the *General rule* under paragraph (2)(a) above may be able to use the provisions of paragraph (2)(c) to determine the required estimated tax payment for tax years beginning on or after January 1, 1995.

(c) *Tax years beginning on or after January 1, 1995:* Taxpayers may use the *General rule* under paragraph (2)(a) above, unless the adjusted gross income on the previous year's return exceeds $150,000. In that case, the *General rule* is applied by substituting "one hundred ten percent" for "one hundred percent" in paragraph (2)(a).

Example 4: Bill's adjusted gross income in 1994 was $230,000 and his Oregon tax liability after credits was $20,000. For 1995, Bill determines that he meets all of the conditions of paragraph (2)(b) above. Thus, he can't use the *General rule* to calculate his required 1995 estimated tax payments. However, using (2)(c) above, he can pay $22,000 in 1995 estimated tax payments (110 percent of his 1994 tax of $20,000).

Example 5: Cal's adjusted gross income in 1994 was $100,000. For 1995, Cal determines that he meets all of the conditions of (2)(b) above. He can't use the *General rule* to calculate his required estimated tax payments for 1995. However, under (2)(c), Cal can base his 1995 estimated tax payments on 100 percent of the prior year's tax. He isn't required to pay 110 percent of the prior year's tax because his adjusted gross income for the prior year did not exceed $150,000.

Example 6: Diane's adjusted gross income in 1994 was $200,000 and her Oregon tax liability after credits was $12,000. Her expected AGI for 1995 is $220,000 and her expected tax liability is $15,000. Diane determines that she is eligible to use either (2)(a) or (2)(c) above. Under (2)(a), she will need to pay 100 percent of her 1994 tax liability. Under (2)(c), her required installments would equal 110 percent of her 1995 tax ($20,000 × 110% = $22,000). Diane's required installments will be the lesser of (2)(a) or (2)(c), or $12,000.

(d) *Tax years beginning on or after January 1, 1996:*

The limitations on the use of Method 2 as described in paragraph (2)(b) are repealed for tax years beginning on or after January 1, 1996.

(3) *Method 3:* Ninety percent of the tax for the taxable year computed by placing on an annual basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. The tax on the annualized taxable income for each period shall be reduced by the allowable income tax credits that apply to that period.

(a) Generally, credits based on income or deductions are figured on the annualized income or deductions for each period.

(b) Credits computed as a percentage of income shall be based upon the annualized income for the period.

(c) Credits which use income as a basis for determining an applicable percentage or for otherwise limiting the allowable credit shall be based upon the total annualized income before allocation to the installment period.

Example 7: Richard and Debra are married with no dependents. They had adjusted gross income of $4,000 for the period of January 1, 1994 to March 31, 1994. For the same period, they had itemized deductions of $810. For the period of January 1, 1994 to May 31, 1994, they had adjusted gross income of $7,000 and itemized deductions of $1,300. For the period of January 1, 1994 to August 31, 1994, they had adjusted gross income of $11,000 and itemized deductions of $2,300. For the period January 1, 1994 to December 31, 1994, they had adjusted gross income of $19,000 and itemized deductions of $4,100. For purposes of computing the required installment, the following computations are necessary:

Actual income from January 1 to March 31 × 4
Actual income from January 1 to May 31 × 2.4
Actual income from January 1 to August 31 × 1.5
Actual income from January 1 to December 31 × 1.0

First Estimated Tax Payment

Annualized Adjusted Gross Income: $4,000 × 4 = $16,000
Annualized Itemized Deductions: $810 × 4 = $3,240

Annualized adjusted gross income	$16,000
Annualized itemized deductions	– 3,240
Federal tax on annualized income	– 713
Annualized taxable income	$12,047
Oregon tax	786
Less: Exemption credits ($116 × 2)	– 232
Annualized Oregon tax	$ 554

90 percent of the annualized tax for the period of January 1, 1994 to March 31, 1994 is $125 ($554 × 90 percent × ¼). Richard and Debra's first required installment would be $125.

Second Estimated Tax Payment

Annualized Adjusted Gross Income: $7,000 × 2.4 = $16,800
Annualized Itemized Deductions: $1,300 × 2.4 = $3,120

Annualized adjusted gross income	$16,800
Annualized itemized deductions	– 3,120
Federal tax on annualized income	– 833
Annualized taxable income	$12,847
Oregon tax	858
Less: Exemption credits ($116 × 2)	– 232
Annualized Oregon tax	$626

90 percent of the annualized tax for the period of January 1, 1994 to May 31, 1994 is $282 ($626 × 90 percent × 2⁄4). Richard and Debra's second required installment would be $282 less the prior installment of $125 equals $157.

Third Estimated Tax Payment

Annualized Adjusted Gross Income: $11,000 × 1.5 = $16,500
Annualized Itemized Deductions: $2,300 × 1.5 = $3,450

Annualized adjusted gross income	$16,500
Annualized itemized deductions	– 3,450
Federal tax on annualized income	– 788
Annualized taxable income	$12,262
Oregon tax	813
Less: Exemption credits ($116 × 2)	– 232
Annualized Oregon tax	$ 581

90 percent of the annualized tax for the period of January 1, 1994 to August 31, 1994 is $392 ($581 × 90 percent × ¾). Richard and Debra's third required installment would be $392 less the prior installments of $282 equals $110.

Fourth Estimated Tax Payment

Annualized Adjusted Gross Income: $19,000 × 1.0 = $19,000
Annualized Itemized Deductions: $4,100 × 1.0 = $4,100

Annualized adjusted gross income	$19,000
Annualized itemized deductions	– 4,100
Federal tax on annualized income	– 1,163
Annualized taxable income	$13,737
Oregon tax	939
Less: Exemption credits ($116 × 2)	– 232
Annualized Oregon tax	$ 707

90 percent of the annualized tax for the period of January 1, 1994 to December 31, 1994 is $636 ($707 × 90 percent). Richard and Debra's fourth required installment would be $636 less the prior installments of $392 equals $244.

Hist: Filed 9/20/88 and Eff. 12/31/88, Amended 12/31/89, 12/31/93, 12/31/94, 12/31/95

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 × $1,520	$ 1,429
Portion of 1987 tax shown on joint return attributable to Martha $100/1,580 × $1,520	$ 91

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

Estimated Tax: Single or Separate Returns to Joint Return

150-316.587(8)-(C) For estimated tax payments beginning on or after Jan. 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 joint return and the prior year's returns are single or separate returns. This is done by combining the net income tax amounts from the previous year's returns of both spouses. The previous year's returns of both spouses must be filed timely including extensions, must have a tax liability, and must cover 12 months.

Example: Al and Darlene filed separate income tax returns for the calendar year 1987, showing tax liabilities of $2,640 and $350, respectively. In 1988 they elected to file a joint return. For the purpose of determining the required instalment mentioned above, the previous year's net income tax would be $2,990 ($2,640 plus $350).

Hist: Filed 10/5/87 and Eff. 12/31/87, Amended and Renumbered from OAR 150-316.587(4)-(B) to OAR 150-316.587(8)-(C), 12/31/88

MODIFICATIONS OF TAXABLE INCOME GENERALLY

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

Modification of Federal Taxable Income: Interest and Dividends

150-316.680-(B) (1) The character of interest and dividends received by an intermediary entity which owns the underlying obligations shall flow through to a taxpayer receiving a distribution from the intermediary entity.

(2) Oregon law allows the character of the interest or dividends to flow through to the taxpayer as if the taxpayer had received the interest or dividends directly from the obligor. If federal or Oregon law allows the character of such interest or dividends to flow through to the taxpayer, then such laws shall determine whether the distributions are taxable or nontaxable for Oregon purposes.

(3) No modifications will be allowed on the taxpayer's Oregon return if the intermediary entity is the guarantor of the taxpayer's principle and interest. See *Example 6.*

Example 1: Bill and Fay invested in a mutual fund in 1987 that invests in federal Series E obligations. The mutual fund holds title to the obligations. The mutual fund qualifies under ORS 316.683 to pay state exempt-interest dividends from the fund. Because the state exempt-interest dividends are treated as an item of interest described in ORS 316.680(1)(a), Bill and Fay may subtract those dividends from federal taxable income.

Example 2: Frank is a shareholder in an S corporation (qualifying as such for Oregon purposes after 12/31/82) which purchased some federal Series E obligations. Frank's share of income from the S corporation includes interest income from the Series E obligations. Federal law, IRC §1366, allows the character of the interest to flow through to Frank. Therefore, ORS 316.680(1)(a) allows Frank to subtract his share of the Series E interest from federal taxable income.

Example 3: Mary is a shareholder in a mutual fund. The mutual fund invests solely in obligations of this state. The mutual fund qualifies under IRC §852(b)(5) to pay exempt-interest dividends. Mary received a distribution of exempt-interest dividends from the fund. The exempt-interest dividends retain the character given to them by the underlying obligations owned by the fund. Therefore, since federal and Oregon law do not tax such income, Mary is not required to make a modification to her federal taxable income for such distributions.

Example 4: Susan is a shareholder in a mutual fund. The mutual fund invests solely in obligations of states (other than Oregon). The mutual fund qualifies under Internal Revenue Code Section 852(b)(5) to pay exempt-interest dividends. Susan received a distribution of the federally exempt-interest dividends from the fund. Since exempt-interest dividends retain the character given to them by the underlying obligations owned by the fund, and ORS 316.680(2) requires interest from other states' obligations to be added to federal taxable income, Susan shall add the amount of the distribution from the fund to her federal taxable income.

Example 5: Barbara is a shareholder in a mutual fund. The mutual fund invests solely in obligations of territories and possessions of the United States. The mutual fund qualifies under IRC §852(b)(5) to pay exempt-interest dividends. Barbara received a distribution of the exempt-interest dividends from the fund. The exempt-interest dividends retain the character given to them by the underlying obligations owned by the fund. The dividends retain the exempt character and are not taxed by federal. Federal law also prohibits states or other authorities from taxing interest on such obligations. Barbara is not required to make any modification to her federal taxable income for the distribution.

Example 6: Leo invests $500 in an interest bearing obligation issued by an investment firm. The obligation issued by the firm is a certificate entitling Leo to $1,000 payable by the firm in 1995. Although the firm makes investments in various securities, including U.S. government obligations, none of the interest received by Leo will qualify for subtraction on the Oregon return. The investment firm is liable for making repayment of the principal and interest, not the U.S. government.

[**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 Eff2/31/85; Amended 12/31/87, 12/31/89, 12/31/94

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

Subtraction for Military Active Duty Pay

150-316.680(1)(c)-(A) The statutory deduction not to exceed $3,000 from federal taxable income is applicable only to compensation for services in the Armed Forces and may not be used in the reduction of taxable income from other sources. The $3,000 amount is in addition to any combat pay excluded from the federal return pursuant to IRC Sec. 112.

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

Pay for Active Service in Armed Forces in the Year of Enlistment and Year of Discharge

150-316.680(1)(c)-(B) (1) *Definitions.*

(a) *Armed Forces of the United States.* The term "Armed Forces of the United States" includes the Army of the United States, Navy, Air Force of the United States, Marine Corps, Coast Guard (and, when ordered by the President, the Coast and Geodetic Survey and Public Health Service) and all regular and reserve components thereof. Reserve components include the National Guard, Air National Guard, National Guard of the United States, the Air National Guard of the United States, Organized Reserve Corps, Naval Reserve, Marine Corps Reserve, and, on occasion, the Coast Guard Reserve, and the Reserve Corps of the Public Health Service.

(b) *Active service.* The term "active service performed by a member of the Armed Forces of the United States" means service in the above mentioned units when on the active list, when on active duty, or when participating in full-time training, training duty with pay or other full-time duty provided for in the National Defense Act, as amended, or in the Naval Reserve Act of 1938, as amended, or in any other provisions of federal law, including participation in encampments, maneuvers or other exercises either independently or in conjunction with the Regular Army, attendance at Army schools and small arms competitions, attendance at other armed service schools, service by National Guard officers in the National Guard Bureau and any other service defined in section 201(e) of the Career Compensation Act of 1949, Public Law 351, 81st Congress.

(c) *Inactive duty training.* On the other hand, compensation received from the federal government for "inactive duty training" performed pursuant to section 501, Public Law 351, 81st Congress (Career Compensation Act of 1949), by reserve components of the services is not exempt from gross income. Such "inactive duty training" compensation includes armory drill pay, and other part-time duty pay, and part-time hazardous duty pay. Pay received by officers of the reserve components commanding organizations having administrative functions connected therewith, which compensation is provided in section 501(c) of the Career Compensation Act of 1949 and is limited to $240 per year, is also considered "inactive duty training" compensation.

(2) *Year of entry-Year of discharge.*

Under ORS 316.680(1)(c)-(B) a person can take a subtraction equal to the full amount of active duty pay included in federal taxable income for:

(a) The initial year of enlistment or draft into the Armed Forces, and

(b) a year of discharge from the Armed Forces, and

(c) upon termination of full-time active duty from Armed Forces.

For purposes of subsection (a) of this section, the subtraction shall only be allowed once. The amount of the subtraction can not exceed the amount of active duty pay included in federal taxable income after all other subtractions or modifications.

Example 1: Brian considers Oregon his domicile. He enlists in the U.S. Armed Forces for the first time in 1984 and moves to California for his military term. In 1988, he is discharged. The U.S. Armed Forces offers him a position in Portland, Oregon. He accepts the offer and reenlists directly subsequent to the discharge and moves to Portland, Oregon. In 1992, Brian is discharged from the

Portland assignment and reenlists to Florida. Brian will qualify for a subtraction of military pay earned outside Oregon for tax year 1984 because that is his initial year of enlistment into the Armed Forces. He will also qualify for a subtraction for tax years 1988 and 1992 because both years are treated as a year of discharge.

Example 2: Same facts as in example 1, except Brian is discharged in 1992 from the Portland assignment and does not reenlist until 1993 to the Florida assignment. Brian would qualify for the subtraction in 1992 under ORS 316.680(1)(c)(B), but the amount of the subtraction would be $0 since the military compensation he earned was earned in Oregon. Brian would not qualify for the subtraction under ORS 316.680(1)(c)(B) in 1993 since 1993 was neither a year of discharge or the year of initial enlistment. Brian would only be allowed a maximum $3,000 subtraction which is provided under ORS 316.680(1)(c)(A).

(3) *Effective Year.* The date of the enlistment order shall be considered the tax year of initial enlistment.

[**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 11/73; Renumbered from OAR 150-316.067(1)(e) to OAR 150-316.680(1)(e), 12/31/83, 12/31/87; Amended and Renumbered from OAR 150-316.680(1)(e) to OAR 150-316.680(1)(c)-(B), 12/31/92

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 Interest or Dividends of the United States Exempted by Federal Income Tax Law

150-316.680(2)(b) Interest or dividend income attributable to obligations of any authority, commission, instrumentality or territorial possession of the United States, which by the laws of the United States is exempt from federal income taxation but not from state income taxation, shall be added to federal taxable income.

Costs incurred to carry the income-producing securities may be deducted, to the extent those costs are not already deducted in arriving at federal taxable income.

Hist: Eff. 1/69, Amended 12/70; Renumbered from OAR 150-316.067(2)(b) to OAR 150-316.680(2)(b), 12/31/83, 12/31/84, 12/31/85

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

Gain or Loss Upon the Sale of State and Municipal Bonds of Other States (Foreign States)

150-316.680(5) (1) Holders of state and municipal bonds of other states (foreign states) shall determine the gain or loss upon the sale or disposition of the bonds by following the federal rules for taxable securities under Internal Revenue Code sections 1271 to 1283 inclusive.

(2) *Adjusted Issue Price:* The adjusted issue price or basis of the bonds shall be the issue price increased by the total amount of original issue discount (OID) included in Oregon taxable income using the rules for federal taxable securities in section 1272 of the Internal Revenue Code and corresponding regulations. See OAR 150-316.680(2)(a) for example.

[**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

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

Pool of Assets that Qualify to Pay State Exempt-Interest Dividends

150-316.683(1) As used in ORS 316.683(1), a “pool of assets” means funds that are managed by financial institutions acting in a fiduciary capacity for the benefit of trust beneficiaries. Financial institutions shall include, but not be limited to banks, savings associations, or credit unions. The pool of assets need not be incorporated as a regulated investment company in order to pay state exempt-interest dividends to its beneficiaries.

Hist: Filed 9/20/88 and Eff. 2/31/88

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

Adjustment of Federal Tax Liability

150-316.685(2) The federal tax liability accrued shall be the correct federal tax based on all information on the return. If, during processing, the Department recomputes and adjusts the federal tax liability, the adjusted tax shall be the amount accrued for that year.

Example 1: Because of a computation error on their joint federal return, A and B overstated their federal tax liability on both their federal and Oregon returns. When the Department processed the return, the federal tax liability was recomputed and reduced from the $500 reported on the return to $300. The $300 is the 1979 tax accrued and deducted in 1979. If the taxpayers receive a federal refund for the same $200, that amount should not be added to income in the year received.

Example 2: On their 1979 return, A and B claimed a federal tax subtraction of $1,000, which was the amount of federal tax withheld from their wages. Their federal tax liability was actually $2,500. When the Department processes the return, the federal tax deduction shall be increased to $2,500.

Example 3: A and B claimed a federal tax deduction of $5,000 for 1979. When their Oregon return was processed, the Department computed their correct federal tax liability to be $6,000. Their 1979 federal tax accrued in 1979 is $6,000.

In 1980, they are required to pay the additional federal tax of $1,000. Since the taxpayers have already received a benefit for the additional 1979 tax, they cannot deduct it in 1980.

Hist: Filed and Eff. 12/18/79 (Temp.) 5/20/80 (Perm.); Renumbered from OAR 150-316.072(2) to OAR 150-316.685(2), 12/31/83

Election to Include Child's Unearned Income—Addition Required

150-316.687 An addition to federal taxable income is required for taxpayers who elect to include a minor child's unearned income on their federal return. For federal purposes, unearned income in excess of a dependent's standard deduction, but less than twice that amount, is taxed at a special rate on a separate schedule and is not included in taxable income of the parent. For Oregon, this amount must be added to federal taxable income. The excess unearned income already included in the parent's federal taxable income requires no addition to the parent's return.

Example (1): Bob and Phyllis file a joint federal return for tax year 1997. Their son Ray has $1,700 interest income from a trust account. Bob and Phyllis elect to include Ray's unearned income in excess of the $650 exclusion on their 1997 federal return. For federal purposes, $650 is taxed at a special rate and $400 is included in taxable income. For Oregon, Bob and Phyllis must add $650 to federal taxable income. This is the $650 of Ray's unearned income that was taxed at the special federal rate. Since the remaining $400 is included in federal taxable income, no addition is required for this amount.

Example (2): Assume the same facts above, except that Ray's unearned income is only $750. For federal purposes, Bob and Phyllis exclude the first $650. The remaining $100 is taxed at the special federal rate. For Oregon, Bob and Phyllis must add $100 to federal taxable income.

Hist: Filed 9/20/89 and Eff. 12/31/89; Amended 12/31/92, 12/31/97

Modification of Federal Taxable Income: Itemized vs. Standard Deduction

150-316.695(1) (1) The election of an Oregon taxpayer to itemize or claim a standard deduction is independent of the federal election. Beginning on or after January 1, 1978, a taxpayer may claim the greater of the Oregon standard deduction or net itemized deductions.

(2) The standard deduction is zero for Oregon taxpayers in the following cases:

(a) married persons filing separate returns and their spouse itemizes;

(b) nonresident aliens;

(c) individuals making a return for a period of less than 12 months on account of a change in annual accounting period;

(d) estates and trusts;

(e) a common trust fund;

(f) a partnership.

(3) Taxpayer claimed as a dependent.

(a) For a taxpayer who can be claimed as a dependent on another person's return, the standard deduction claimed by the dependent is limited to the lesser of:

(A) the amount allowed to a dependent under the Internal Revenue Code Section 63(c)(5) for the tax year; or

(B) the standard deduction amount as provided in ORS 316.695.

(b) In addition to the standard deduction, a taxpayer claimed as a dependent on another person's return can also claim the additional deduction amounts under ORS 316.695(7) if they are blind or age 65 or older.

Example 1: Brian is 17 and works part-time. He earned $2,000 wages and $1,300 interest income in 1997. Brian is claimed as a dependent on his parents' 1997 return. His federal standard deduction is the greater of $650 or his earned income. Brian's $2,000 federal standard deduction, based on earned income, is limited by the Oregon standard deduction for a single person of $1,800. Therefore, Brian's standard deduction for 1997 would be $1,800.

Example 2: Assume the same facts as in *Example 1,* except that Brian is blind. Brian's total deduction is equal to $3,000 ($1,800 standard deduction + $1,200 additional deduction for being blind).

[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 and Eff. 12/31/80; Renumbered from OAR 150-316.068(1) to OAR 150-316.695(1), 12/31/83, 12/31/87, 12/31/89, 12/31/97

Modification of Federal Taxable Income: Oregon Income Tax Claimed as an Itemized Deduction

150-316.695(1)(c)-(A) 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:

$$\frac{\text{Itemized deductions left after being phased-out}}{\text{Total itemized deductions subject to the phase-out under IRC Section 68}} \times \text{Oregon income tax included on Schedule A}$$

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) × 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

$$\frac{\text{Itemized deductions left after being phased-out}}{\text{Itemized deductions subject to the phase-out}} \times \text{Oregon tax claimed as an itemized deduction} = \frac{\$65{,}500}{\$77{,}500} = 84\% \times \$36{,}000 = \$30{,}426$$

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

Modification of Federal Taxable Income: Previously Taxed Contributions to Pension or Annuity

150-316.695(2) If part of the contributions toward the purchase of a pension or annuity was taxed by the state of Oregon and not taxed by the federal government, that part taxed by Oregon shall be subtracted from federal taxable income on the Oregon return.

The subtraction allowed by this section shall be taken each year to the extent any amount is included in federal taxable income until the total amount taxed by Oregon and not taxed by the federal government in years beginning prior to January 1, 1969, has been recovered. Thereafter, the distribution will be taxed for Oregon income tax purposes in the same manner and amount as taxed for federal purposes.

Example (1). A retired employee began receiving benefits from a pension plan on January 1, 1975. In tax years beginning prior to January 1, 1969, Oregon taxed $3,000 of the contributions to the pension plan. None of the contributions were taxed for federal purposes. The taxpayer is receiving $2,000 each year, all of which is taxable for federal purposes. In 1975 the taxpayer will subtract $2,000 and in 1976 $1,000 from federal taxable income in arriving at Oregon taxable income. In subsequent years, Oregon will tax the same amount taxed for federal purposes.

This section applies to tax years ending on or after September 13, 1975.

Hist: Filed and Eff. 12/19/75; Renumbered from OAR 150-316.068(3) to OAR 150-316.695(3), 12/31/83, 12/31/88; Renumbered from OAR 150-316.695(3) to OAR 150-316.695(2), 12/31/91

Basis of Depreciable Assets Moved into Oregon

150-316.707(1)-(A) (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 ($4/12 \times 1/4 \times 6{,}000$).

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 ($4/12 \times 1/4 \times \$6{,}000$)	$ 500

1984 (12⁄12 × 1⁄4 × $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

Property Subject to Accelerated Cost Recovery System

150-316.707(1)-(B) (1) *General.*

(a) In general, the Accelerated Cost Recovery System (ACRS) is available to recovery property placed in service in tax years beginning on or after January 1, 1985. "Recovery Property" means tangible property of a character subject to the allowance for depreciation. This property must be used in a trade or business or be held for the production of income.

(b) Property is considered placed in service when it is in a condition or state of readiness and availability for a specifically assigned function whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity. Where property was placed in service for personal use in a tax year which begins before 1985 and is thereafter converted to business or income producing use, the property is not recovery property for Oregon purposes.

Example: Beth Muhlenberg purchased her personal residence in 1978. She is a calendar year taxpayer. On November 15, 1985 she converted her residence to rental property. The residence is considered to be placed in service when it is in a condition of readiness for a specifically assigned function whether in a trade or business, for the production of income, in a personal activity, etc. This occurred in 1978. Thus, the rental property is not considered recovery property for Oregon purposes.

(2) *Property Excluded from ACRS Treatment.*

(a) Recovery property does not include property which is placed in service by the taxpayer prior to the taxpayer's tax year which begins in 1985.

(b) Recovery property does not include property which is the subject of transactions referred to in Internal Revenue Code (IRC) Section 168(e)(4). For purposes of this rule, the following dates shall be substituted for dates used in IRC Sections 168(e)(4):

(A) For "after December 31, 1980" substitute "in taxable years beginning on or after January 1, 1985;"

(B) For "1980" substitute "the taxpayer's tax year which begins in 1984;" and

(C) For "January 1, 1981" substitute "the taxpayer's tax year which begins in 1985."

(c) Recovery property does not include property which is described in IRC Sections 168(e)(2), 168(e)(3), and 168(e)(5).

Example 1: Dr. Randall Farwell purchased and placed in service $20,000 of dental equipment on January 18, 1984. Dr. Farwell is a calendar year taxpayer. The equipment is IRC Section 1245 class property. On June 1, 1985, Dr. Farwell decides to sell the equipment to Laura Ryan by contract under which Dr. Farwell will lease back and use the same dental equipment. Laura Ryan, is precluded from using the ACRS method because Dr. Farwell used the same equipment in a tax year prior to 1985.

Example 2: Dee Brinlee purchased a house which she used as rental property in 1979. Dee is a calendar year taxpayer. Since 1984, she has been trying to sell her rental house. On July 2, 1985, she sold her rental house to her daughter Jennifer. Jennifer uses the house as rental property. The house is not recovery property to Jennifer since Jennifer bought the property from a "related person" who used it in tax years prior to January 1, 1985.

Example 3: In 1980 through 1984, Gary Humphrey was in business as a sole proprietorship. Gary is a calendar year taxpayer and incorporates his business during 1985 with Gary as the sole shareholder. The depreciable personal and real property, having an adjusted basis of $50,000, was transferred to the corporation in a nontaxable transfer under IRC Section 351. Since the adjusted basis of the transferred property is carried over to the corporation, the corporation may not use ACRS with respect to the $50,000 transferred basis.

[**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

Adjustment to Income for Basis Differences

150-316.707(1)-(C) On the return for the first taxable year beginning after December 31, 1995, federal taxable income shall be increased or decreased by an amount equal to the difference between the property's adjusted federal basis as determined for regular tax purposes and its adjusted Oregon basis due to the use of different federal and Oregon depreciation methods, periods, or conventions, as defined by IRC 168. If the adjusted Oregon basis is less than the adjusted federal basis, the modification shall be an addition. If the adjusted Oregon basis is greater than the adjusted federal basis, the modification shall be a subtraction. For tax years beginning after December 31, 1996, no modifications to depreciation expense shall be made as a result of using different depreciation methods, periods, or conventions prior to January 1, 1996.

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

Exchange or Disposition of Assets

150-316.716 Follow the rules under OAR 150-316.707.

Hist: Filed 10/5/83 and Eff. 12/31/83

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 × .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

Definition for Severely Disabled Exemption

150-316.752 A "physical or mental condition" means an impairment of the body which is of such gravity as to prevent a person from engaging in normal activity without the aid of special equipment or assistance.

Examples of severe disabilities include cerebral palsy, multiple sclerosis, and brain damage. These disabilities may or may not be permanent. Disabilities due to surgery, hospitalization, disease, or injury or acute infectious diseases do not qualify where a person can be expected to resume a normal life within a generally accepted recovery period.

If the disabled person was employed in a substantially gainful occupation, the fact that a physical or mental condition will not permit the resumption in the same occupation will not, in and of itself, qualify the taxpayer for the exemption.

Example:

A baseball player was injured in an accident and was unable to resume that occupation. Subsequently, the player was employed full time as a sales representative of a sports company. The player received disability compensation from the former employer. The taxpayer is not eligible for the exemption.

"Orthopedic or medical equipment" means special equipment approved and recommended by a physician. The equipment should alleviate some or all of the difficulties which result from the physical or mental condition and contribute to the person's mobility and independence. Examples of such equipment includes, but are not limited to, wheelchairs, special braces, prosthesis or special crutches. Special equipment does not include: glasses, ordinary crutches, hearing aids and protective gloves.

Hist: Filed 12/6/82 and Eff. 12/31/82; Renumbered from OAR 150-316.135 to OAR 150-316.752, 12/31/83, 12/31/89, 12/31/97

Exemption for Blind and Severely Disabled

150-316.758 (1) Oregon allows a personal exemption credit (in the amount determined under ORS 316.085) multiplied by the number of personal exemptions claimed under IRC Section 151. If a taxpayer or spouse qualifies for the additional standard deduction for blindness as defined under ORS 316.695(8)(d), the taxpayer or spouse also qualifies for the credit for severely disabled as defined under ORS 316.752(1)(c).

(2) The additional personal exemption will be allowed even if the taxpayer can be claimed on another taxpayer's return and is unable to claim their own personal exemption.

Example: Sam is 23 years old and blind. He qualifies as a dependent on his parents' return. Because Sam is over the age of 17, his parents cannot claim the additional exemption for their dependent disabled child allowed under ORS 316.099. Sam invests in a partnership and is required to file a tax return for federal and state purposes. Since his parents are eligible to claim him on their return, he cannot claim his own personal exemption. Sam is allowed to claim the additional exemption for being severely disabled allowed under ORS 316.758 and the additional standard deduction for being blind.

[**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, 12/31/94, 12/31/96

Substantiation for Permanently Severely Disabled

150-316.771 (1) Upon audit, taxpayers who are permanently severely disabled shall have available a letter from a physician, which substantiates their disability. The letter must:

(a) State the nature and extent of the physical disability in layman's terms, and

(b) Confirm that the disability is of a permanent nature according to the requirements for permanent severe disability stated below.

(2) "Permanently severely disabled" taxpayer means a taxpayer who:

(a) Meets and continues to meet the qualifications for severely disabled under ORS 316.752, and

(b) Has a disability that is reasonably certain to continue throughout the life of the taxpayer, and

(c) Has a disability of such a character that there is no likelihood of improvement.

Hist: Filed 12/6/82 and Eff. 12/31/82; Renumbered from OAR 150-316.138 to OAR 150-316.771, 12/31/83; Amended 12/31/94

Exempt Income of Native Americans

150-316.777 (1) ORS 316.777 exempts from Oregon taxation certain income earned by an enrolled member of a federally recognized Indian tribe. To qualify under these provisions, the tribal member must reside in "Indian country" and the income must be derived from sources within Indian country.

(2) "Indian country" means any federally recognized Indian reservation or other land that has been set aside for the residence of tribal Indians under federal protection.

(3) Income derived from sources within Indian country includes:

(a) Wages earned for work performed in Indian country;

(b) Income from a business or real estate located in Indian country;

(c) Retirement income, if the contributions to the plan were derived from or connected with services performed in Indian country;

(d) Unemployment compensation, if the benefits are received as a result of work performed in Indian country;

(e) Interest, dividends, capital gain from the sale of stock, and other income from intangibles, regardless of where the bank accounts, etc., are located.

(4) A tribal member whose wages are exempt from Oregon tax must furnish the member's employer with an extract from the tribal rolls as proof of enrolled status to be exempted from Oregon personal income tax withholding. Any employer of a qualified exempt tribal member who has documentary proof under this rule shall retain this proof as part of the employer's payroll records.

(5) A tribal member who resides outside of Indian country does not qualify to exclude income from Oregon tax under the provisions of ORS 316.777. The person is subject to the statutes and rules governing Oregon residents and nonresidents and is taxed accordingly.

(6) The following examples illustrate the provisions of this rule:

Example 1: Margaret, an enrolled member of the Warm Springs Tribe, lives and works on the reservation of the Confederated Tribes of the Umatilla Indian Reservation. Under ORS 316.777, her income is exempt from state income tax.

Example 2: Claire, an enrolled member of the Coquille Indian Tribe, resides on reservation land in Oregon and works as an accountant for the city of Coos Bay. Claire is taxable by Oregon because she resides on, but does not work on, Indian country in Oregon.

Example 3: Charles, an enrolled member of the Umatilla Tribe, resides on the reservation of the Confederated Tribes of the Umatilla Indians. For six months of each year, he works on a fishing trawler off the Alaska coast. During the remaining six months, he is employed as a forester by the Blue Mountain Timber Company. None of his work is performed in Indian country. Although Charles is a citizen of the Umatilla Tribe, and resides on the Umatilla reservation, he is also considered to be a resident of Oregon. Charles is taxable on the income he earns fishing in Alaska and on his wages from the timber company, because none of that income is "sourced" to Indian country.

Charles is not taxable on interest, dividends and other intangible income he receives, because that income is considered to be "sourced" to the reservation on which he resides.

Example 4: Using the facts in *Example 3,* assume that Charles has retired and is receiving a pension from the lumber company. His pension income is subject to state tax, because the contributions made to the plan were not related to services performed in Indian country.

Example 5: William, an enrolled member of the Navajo Indian Tribe, is a resident of the Navajo reservation in Arizona. During the summer months, he temporarily lives and works on the reservation of the Burns Paiute Tribe in Oregon. Under ORS 316.777, William is taxable by Oregon on his wages. Although he works on Indian country in Oregon, he has not become an Oregon resident. Thus, he does not reside and work on Indian country in Oregon.

Hist: Filed 10/7/85 and Eff. 12/31/85; Amended 12/31/94, 12/31/96

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 3½ 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 3½ 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.

Hist: Filed 9/13/91 and Eff. 12/31/91; Amended 12/31/94

Road Construction Worker's Travel Expenses

150-316.806 (1) As used in ORS 316.806(1), the term "construction job site" includes a roadway.

(2) As used in ORS 316.806(2), the term "structure" includes a road or railway.

Hist: Filed 9/22/86 and Eff. 12/31/86

Substantiation Required

150-316.818 Upon audit, the taxpayer may be required to provide the same substantiation that would be necessary for a travel expense deduction allowable under IRC 162(a).

Hist: Filed and Eff. 11/6/78 (Temp.), 12/31/78 (Perm.); Renumbered from OAR 150-316.059 to OAR 150-316.818, 12/31/83

Substantiation Required

150-316.832(2) Upon audit, the taxpayer may be required to provide the same substantiation that would be necessary for a travel expense deduction allowable under IRC 162(a).

Hist: Filed and Eff. 12/31/79; Renumbered from OAR 150-316.063(2) to OAR 150-316.832(2), 12/31/83

(Miscellaneous)

Valuation of Forest Land or "Farm Use" Land for Oregon Inheritance Tax Purposes

150-316.844 (1) Real property appraised under ORS 308.370 as land for farm use and passing by reason of death, is valued for purposes of Oregon inheritance tax as farm use land and the value used is the same as appraised for ad valorem purposes. ORS 308.370 provides for the assessment of farmland as "farm use" rather than "the highest and best use." See OAR 150-118.155.

(2) For deaths occurring on or after October 3, 1979, land which received special assessment as forest land or land classified under the Western Oregon small tract option tax law is valued as provided in ORS 118.155(3) and (4).

(3) The valuation for Oregon inheritance tax purposes may not be the same as the valuation for federal estate tax purposes. The difference in values may result in a required modification under this section. Federal will value the land at fair market value upon the date of death of the decedent under IRC Section 1014 or the alternate valuation date under IRC Section 2032.

(4) If the real property is subsequently disposed of, the difference in taxable gain or loss computed from the disposition using the federal valuation and the taxable gain or loss that would have been computed using the valuation for Oregon inheritance tax purposes, must be added to federal taxable income as gain or reduction of loss. The addition to a fiduciary return is not included as part of the fiduciary adjustment. It is a separate adjustment to federal net income of the fiduciary. In the case of forest land and Western Oregon small tract option land, the addition is applicable only to dispositions occurring on or after November 1, 1981.

(5) The adjustment to federal taxable income is required not only when gain or loss is realized by the beneficiary on the inherited property, but is also required when:

(a) Gain or loss is realized on other property which, in the computation of its basis, the basis of the inherited property is used. Examples of this type of property is that received as a result of a fully or partially nontaxed exchange or involuntary conversion where there has been a proper reinvestment.

(b) A taxpayer, other than the beneficiary, may realize gain or loss on the disposition of inherited property, or property the basis of which is computed in whole or in part with respect to such inherited property, when the basis of the beneficiary is used. For example: property under this section received as a gift from a donor who acquired it by inheritance. The adjustment must be made to the donee's tax return at the time the donee disposes of the property in a manner that results in a taxable event.

(6) This rule applies to gains and losses from disposition of property acquired from a decedent, or from property the basis of which is computed in whole or in part with respect to property acquired from a decedent, whose death occurred before January 1, 1987.

[**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. 11/73, Amended 12/19/75, 12/31/81, 12/31/82; Renumbered from OAR 150-316.081 to OAR 150-316.844, 12/31/83, 12/31/87, 12/31/88

Individual Pension and Retirement Plans

150-316.863 A plan (Individual Retirement Account, IRA; Self-employment Account, HR 10 or KEOGH; or Simplified Employe Account, SEP) shall not be disqualified for Oregon income tax purposes solely as the result of an increase to the percentage allowable or maximum allowable contribution amount for federal tax purposes. A taxpayer may still deduct, for Oregon tax purposes, the lesser of the percentage allowable or maximum allowable contribution under the federal rules in effect for tax years beginning on or before December 31, 1984. This difference in allowable deductions for federal and state purposes requires that the taxpayer add or subtract the difference from federal taxable income.

Hist: Filed 10/5/83 and Eff. 12/31/83, Amended and Renumbered from OAR 318.020 (Note) to OAR 316.863, 12/31/85

Commercial Domicile of Small Business Corporation Defined

150-316.871(3) (1) A small business corporation's commercial domicile is in Oregon if the primary place from which the trade or business of the corporation is directed or managed is in Oregon.

(2) Factors which will be considered in determining whether a small business corporation's primary place of business is in Oregon include the following:

(a) Proportion of revenues from sales of products or services in Oregon to sales outside Oregon.

(b) The value of fixed assets in Oregon as compared to outside Oregon.

(c) Where employes perform services.

(d) Where principal accounting records are kept.

Hist: Filed 10/7/85 and Eff. 12/31/85; Renumbered from OAR 150-316.048(NOTE) to OAR 150-316.871(3), 12/31/91

Qualifying Assets and Reinvestment

150-316.873 *In general*. Taxpayers may elect to defer the taxation of gain from the disposition of certain assets for Oregon tax purposes. To qualify for deferral, the gain must be realized from the sale or other disposition of qualifying assets. In addition, reinvestment shall occur, either directly or indirectly, in a "qualified business activity" as described in paragraph (2) of this rule.

(1) *Qualifying assets.* The asset sold or otherwise disposed of must be a capital asset. For purposes of ORS 316.873, "capital asset" means tangible or intangible property held by the taxpayer, except that it does not include:

(a) accounts or notes receivable acquired in the ordinary course of business;

(b) inventory or stock in trade, unless the assets are sold in a bulk sale and not in the ordinary course of a trade or business;

(c) a copyright, a literary, musical or artistic composition, a letter or memorandum or similar property as described in IRC 1221(3); or

(d) publications of the United States Government as described in IRC 1221(5).

(e) property held for investment purposes. Expansion shares are not considered investment property for purposes of ORS 316.873. "Expansion share" means a unit of ownership which meets all of the following requirements:

(A) the unit must be issued either directly to the taxpayer, or to a partnership, limited liability company (LLC) or S corporation. If the share is issued to one of these entities and not directly to the taxpayer, then the taxpayer must be a member of the partnership, LLC or S corporation at the time the share is issued.

(B) a unit of ownership in a business which has no publicly traded units at the time the unit is issued.

(C) a unit of ownership which is issued in exchange for money or property to be used in business operations. Money received by the business in exchange for the unit cannot be used by the business to purchase previously issued shares or other security interests.

(D) a unit of ownership which has unlimited voting rights and the right to receive the assets of the business upon dissolution. If the unit of ownership does not have these characteristics, the holder of the share must have the option of converting it into a share with those characteristics.

(E) at the time the first equity investment is made by the taxpayer, the revenues of the business for the preceding twelve months were less than $5 million. Revenue means gross income from the sales of goods and services before reduction for cost of goods sold.

(F) at the time the unit of ownership is issued, the sum of the net equity of the business plus all dividends and distributions made by the business does not exceed the total of all previous equity investments made in the business. "Expansion share" does not include an option to acquire shares of a corporation. However, shares acquired pursuant to the exercise of the option may be expansion shares if they meet the requirements previously described.

Taxpayers who elect to defer gain on the sale of expansion shares shall, upon request of the department, provide written verification from the issuer of the shares that the shares qualify as expansion shares.

(2) *Reinvestment of proceeds.* Reinvestment of the proceeds from the sale or other disposition of a qualifying capital asset shall be made, either directly or indirectly, in a qualified business asset. Reinvestment shall be made as follows:

(a) The reinvestment shall be made within six months of the date of sale or other disposition of the capital asset, and before January 1, 2000.

(b) For gain derived from a sale or disposition occurring in tax years beginning on or after January 1, 1997, reinvestment of the proceeds of the sale or other disposition shall be made by:

(A) acquisition of a qualified business asset. For purposes of this rule, a "qualified business asset" is a capital asset that is held for use in Oregon in a qualified business activity. "Qualified business activity" means a business that meets all of the following requirements:

(i) the business is owned by an individual, a partnership, a limited liability company or an S corporation or C corporation;

(ii) the principal place from which the trade or business of the taxpayer is directed or managed is located in Oregon;

(iii) the total of all full-time equivalent employees and independent contractors located outside of Oregon does not exceed the total of all full-time equivalent employees and independent contractors located in Oregon;

(iv) the business activity is one of the Standard Industrial Classifications listed in ORS 316.873;

(v) any interest or dividend income, annuities, or royalties earned by the business are earned only as an incidental effect of managing the business' funds and are not derived in the ordinary course of business.

(B) acquisition of an ownership interest in a business that conducts a qualified business activity;

(C) acquisition of an interest in a qualified investment fund. For purposes of this rule, a "qualified investment fund" means a partnership, a limited liability company or an S corporation. The entity shall be formed solely to acquire capital assets to be held for use in this state in a qualified business activity, or to acquire ownership interests in a business conducting qualified business activities. The fund may acquire investment property only on an interim or incidental basis, and not as a regular part of its ongoing operations.

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

Hist: Filed 10/13/95 and Eff. 12/31/95; Amended 12/31/96

Amount of Gain Eligible for Deferral

150-316.874 (1) *Gain eligible for deferral.* The amount of gain eligible for deferral under these provisions shall be the entire gain determined for federal income tax purposes, with any modifications required by Chapter 316.

(a) For sales or other dispositions occurring in tax years beginning on or after January 1, 1997, the amount of gain considered to be reinvested shall be in the same proportion that the proceeds from the sale, less federal income tax attributable to deferred gain, are reinvested.

Example 1: On January 1, 1997, Joe sold an asset for $110,000 with a basis of $10,000, resulting in capital gain of $100,000. Federal income tax attributable to deferred gain equals $28,000. Joe reinvested $50,000 of the proceeds in a qualifying business asset. He may elect to defer $60,976 of the $100,000 gain for Oregon tax purposes. (Proceeds of $110,000 less federal tax of $28,000 = $82,000; ($50,000 ÷ 82,000) × $100,000 = $60,976.) In order to defer the entire $100,000 of gain, Joe would have to reinvest a minimum of $82,000. (Proceeds of $110,000 less federal tax of $28,000 = $82,000; ($82,000 ÷ 82,000) × $100,000 = $100,000 of deferred gain).

Example 2: Same facts as *Example 1,* except the federal basis is $10,000 and the Oregon basis is $20,000, resulting in Oregon gain of $90,000. Joe may elect to defer $54,878 of gain for Oregon tax purposes (Proceeds of $110,000 less federal tax of $28,000 = $82,000; ($50,000 ÷ 82,000) × $90,000 = $54,878.)

(b) For purposes of this rule, "federal income tax attributable to deferred gain" shall be the difference between:

(A) the amount of federal income tax calculated on federal taxable income including the deferred gain, and

(B) federal income tax calculated after omitting the amount of deferred gain from federal taxable income.

Example 3: Juan included $20,000 of gain on the sale of a qualifying asset in federal taxable income. Juan also claimed capital losses on his federal return, resulting in a deductible capital loss of $3,000. Juan calculated a tax liability of $10,000 on his federal return; omitting the deferred gain from federal taxable income does not change the federal tax. Thus, the amount of federal tax attributable to deferred gain is zero.

(2) *Installment sales.* Gain reported using the installment method may be deferred for Oregon tax purposes. The reinvestment requirements shall apply as if the gain had been fully reported in the year of sale. The federal tax attributable to deferred gain shall be determined in the same manner as described in paragraph (1)(b) of this rule, as if the gain had been fully taxable for federal purposes in the year of sale.

Example 4: On January 5, 1997, Kathy sold real property used in her business at a gain of $100,000. She is reporting the gain on the installment method. She will include $20,000 of the gain in federal taxable income each year over the next five years. Kathy elects to defer the entire gain for Oregon tax purposes. Kathy must reinvest the sales proceeds, less the applicable federal tax, within six months of the date of sale in order to defer all of the gain. To determine the required reinvestment, Kathy first calculates what her 1997 federal tax liability would have been if all of the qualifying gain had been included in federal taxable income. Second, she calculates what her 1997 federal tax liability would have been if none of the qualifying gain had been included in federal taxable income. The difference between the two amounts is the "federal income tax attributable to deferred gain." In Kathy's case, the difference between the two amounts is $25,000. Assuming Kathy realized $200,000 of proceeds on the sale, she must reinvest at least $175,000 ($200,000 of proceeds less $25,000 of federal income tax attributable to deferred gain) on or before July 5, 1997. Kathy will subtract $20,000 on the Oregon return for each of the next five years.

Example 5: Assume the same facts as *Example 4*, except that Kathy reinvests only $70,000 of the proceeds realized from the sale. On her Oregon return, Kathy may subtract 40 percent of the $20,000 gain reported each year for federal purposes, for a total deferral of $40,000 ($200,000 of proceeds less federal tax of $25,000 = $175,000; ($70,000 ÷ 175,000) × $100,000 = $40,000).

Example 6: Assume the same facts as *Example 5*, except that Kathy sells the replacement asset for $100,000 in 1999. She elects to defer gain on the sale of the replacement asset, and also to continue the gain deferral on the original sale. Kathy determines the federal income tax attributable to the 1999 sale is $10,000. She must reinvest at least $90,000 to fully defer the gain of $30,000 (Proceeds of $100,000 less $10,000 federal tax = $90,000; ($90,000 ÷ 90,000) × $30,000 gain). Kathy must also invest at least $40,000 to continue the gain deferral on the original asset sale. If she reinvests at least $130,000, she may claim a subtraction of $54,000 on her Oregon return ($40,000 total deferred gain, less $16,000 previously subtracted ($20,000 of installment gain × 40 percent × 2 years) = $24,000; $24,000 + 30,000 = $54,000)).

(4) *Continued deferral on subsequent dispositions.* If a taxpayer has deferred gain under these provisions and later disposes of the qualifying asset or interest, the taxpayer may elect to continue nonrecognition of the gain by making a new investment in one or more qualified business interests or qualified business assets. For purposes of this rule, an investment in a qualified investment fund, as defined by ORS 316.843, is considered to be an investment in a qualified business interest or a qualified business asset. Gain will qualify for continued deferral only to the extent that an amount equal to the total of all previously deferred gain is reinvested. Reinvestment shall be made within six months of the sale or disposition and before January 1, 2000. The reporting requirements described in ORS 316.877 shall apply to the new investment.

Hist: Filed 10/13/95 and Eff. 12/31/95; Amended 12/31/96, 12/31/97

Nonqualifying Gains

150-316.876 The following items of gain do not qualify for deferral under the provisions of ORS 316.873–316.884:

(a) Gain from the sale of property which was received as compensation for services performed by the taxpayer. The amount of gain which will not qualify for deferral is limited to the fair market value of the property when received by the taxpayer. Gain in excess of that amount will qualify for deferral if all other requirements are met.

(b) Gain from the sale of inventory, unless the sale is a bulk sale and not one made in the ordinary course of business.

(c) Gain from the sale of property which is not held for the production of income.

(d) Gain treated as ordinary income under any provision of the Internal Revenue Code. If the sale of an asset results in recognition of both ordinary income and capital gain, the capital gain portion will qualify for deferral if all other requirements are met.

(e) Gain from the sale of investment property, except that gain derived from the sale of expansion shares will qualify for deferral. See ORS 316.873 and rules thereunder for the definition of expansion shares.

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

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

Declaration of Intent to Reinvest

150-316.877 (1) *Filing a declaration of intent to reinvest.* A taxpayer who elects to defer gain for Oregon tax purposes shall file with the Department of Revenue a declaration of intent to reinvest. The declaration shall be filed for the tax year in which the sale or other disposition occurs and shall contain the following information:

(a) a statement that the taxpayer is making an election under ORS 316.877 to defer gain on the sale of a capital asset;

(b) identification of the taxpayer electing to defer gain, including the name and taxpayer identification number;

(c) identification of the source of the amount realized from the disposition of a qualifying asset, including the name, taxpayer identification number, and industry classification of the company sold (e.g. Standard Industrial Classification code), if applicable;

(d) identification of amounts realized from the sale of expansion shares, if applicable;

(e) date of disposition of qualifying assets;

(f) the total amount realized from the disposition of qualifying assets;

(g) the adjusted basis of the qualifying assets;

(h) the amount of gain qualifying for deferral under these provisions;

(i) the amount of federal tax attributable to the deferred gain;

(j) the amount of gain the taxpayer is electing to defer;

(k) the date of reinvestment, if applicable;

(l) the amount reinvested in a qualified business asset, qualified business interest or qualified investment fund, if applicable; and

(m) identification of the qualifying reinvestment, including the name, taxpayer identification number and industry classification of the company in which reinvestment will be made, if applicable.

(2) *Reporting requirements upon reinvestment.*

A taxpayer who elects to defer gain under these provisions shall certify to the department that the reinvestment described in the declaration of intent to reinvest has occurred. If the reinvestment did not occur as described in the original declaration of intent to reinvest, the taxpayer must file a corrected declaration with the department, and any amended returns necessary to reflect the correct amount of gain deferred.

(3) *Partnerships, S corporations and Limited liability companies.*

(a) *In general.* When gain is realized on the sale of an asset by a partnership, S corporation or limited liability company (LLC) an election to defer qualifying gain may be made either at the entity or the owner level. The election shall be made in the manner described in paragraphs (1) and (2) of this rule. If deferral is elected by the partnership, S corporation or LLC, the amount of gain qualifying for deferral shall be reported as an Oregon modification on the Schedule K-1 and shall be identified as reinvested gain qualifying for deferral. The partnership, S corporation or LLC shall notify the owners when an event occurs requiring recognition of previously deferred gain. If an election to defer qualifying gain is made at the entity level, the owner may claim the subtraction on the original return or on an amended return. Taxpayers may choose to opt out of the election made by the partnership, S corporation or LLC by not claiming the subtraction on the owner's return. Taxpayers who do not claim the deferral shall, upon request of the department, provide written documentation sufficient to verify that the gain has not been deferred under these provisions. Taxpayers who treat the deferred gain in a manner inconsistent with the treatment made by the entity shall report the inconsistent treatment on the declaration filed with the department.

(b) *Election by owners.* A partner, shareholder or a member of an LLC may elect to defer gain on the sale of assets when the gain is recognized at the entity level. The entity shall report to the owners the amount of gain that qualifies for deferral under the provisions of this rule. For purposes of determining when reinvestment must be made, the date on which the entity's tax year ends is deemed to be the date of the asset sale.

Example 1: Jones & Sons, LLC, sold qualifying business assets but did not elect to defer gain on the sale. The members of the company may independently elect to defer gain on the sale of the assets made by the company. The company must report to the members the amount of gain attributed to the sale of qualified assets. Owners who elect to defer gain must reinvest the gain within six months of the last day of the company's tax year.

Hist: Filed 10/13/95 and Eff. 12/31/95; Amended 12/31/96

Basis of Assets Acquired

150-316.878 A taxpayer who elects to defer gain under ORS 316.873–316.884 shall not reduce the basis of the acquired property by the amount of the deferred gain. The property shall retain its cost basis for purposes of computing depreciation and gain or loss on the sale of the asset.

Example: On January 5, 1997, Kathy sold real property used in her business at a gain of $100,000. Kathy elects to defer the entire gain for Oregon tax purposes. On April 1, 1997, Kathy purchases a building for $500,000 to use in a qualified business activity. Her basis for depreciating the building for federal and state purposes will be $500,000. Assume Kathy sells the new building on January 1, 1999 and does not elect to continue the gain deferral for Oregon. Kathy will use a cost basis of $478,085 ($500,000 cost less accumulated depreciation of $21,915) to calculate any gain or loss on the sale. No adjustment will be made to the gain or loss for Oregon tax purposes. On the Oregon return, Kathy will report an addition of $100,000 to Oregon taxable income for the previously deferred gain.

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

Recognition of Previously Deferred Gain

150-316.879 Gain which has been deferred under the provisions of ORS 316.873-316.884 shall be reported as an adjustment to federal taxable income when any of the following occur:

(1) an asset ceases to be a capital asset held for use in Oregon in a qualified business activity and no qualifying reinvestment is made.

(2) an investment fund ceases to be a qualified investment fund. However, if an investment fund holds an interest in a qualified business activity which is later disqualified, the investment fund will have twelve months to dispose of its interest in that business. If the investment fund does not dispose of the interest within twelve months, the owners of the fund must include the previously deferred gain as an adjustment to income on the tax return for the year in which the twelve month period expires. The amount of the gain to be included in income shall be that portion of gain which is attributable to the investment in the disqualified business. A taxpayer who does not own a controlling interest in the fund may continue to defer gain by meeting the reinvestment and reporting requirements.

Example: Hank deferred gain of $20,000 by paying $100,000 for a 10 percent interest in a qualified investment fund. The fund purchased Company A at a cost of $400,000 and Company B at a cost of $600,000. Both companies were qualified business activities at the time of purchase. In year 2, Company B transferred all operations to Washington. If the investment fund does not dispose of the investment in Company B within twelve months, Hank must include $12,000 ($20,000 × ($600,000 ÷ $1,000,000)) in income, unless he meets the reinvestment and reporting requirements. Hank is not required to divest himself of ownership in the fund. He may continue to defer gain by reinvesting at least $12,000 from other sources in another qualifying investment.

(3) The business ceases day-to-day operations or ceases to be a qualified business. However, a taxpayer who does not own a controlling interest may continue to defer the gain by meeting the reinvestment and reporting requirements.

(4) The value of the business assets is less than 50 percent of the value of assets at the time of investment by the taxpayer, due to capital assets being withdrawn from the business, or due to proceeds from the sale or other disposition of capital assets being withdrawn from the business.

(5) A disposition of the asset or interest due to the death or disability of the taxpayer. However, if a related party succeeds to the taxpayer's interest in a qualified business interest or asset,

that party may elect to continue the deferral of gain recognition. See ORS 316.882 and OAR 150-316.882.

Hist: Filed 10/13/95 and Eff. 12/31/95; Amended 12/31/96

Transfer of Asset on Death or Disability; Election of Successor to Defer Gain

150-316.882 A taxpayer who has deferred taxation of gain under the provisions of ORS 316.873–316.884 shall generally recognize gain on the sale or disposition of the asset. However, if a related party succeeds to the taxpayer's interest due to the death or disability of the taxpayer, that party may elect to continue the deferral of gain recognition. The election is available to a successor who is a related party as defined in Section 267(c)(4) of the Internal Revenue Code. If a related party makes the election, the following requirements shall apply:

(1) The election shall be made using the provisions in ORS 316.877.

(2) For purposes of computing gain or loss on a subsequent sale or other disposition, the basis of acquired property shall be the basis as determined for federal tax purposes.

Example: Molly owned an Oregon business. In 1996, she sold the business and elected to defer qualifying gain of $100,000 by reinvesting $500,000 in stock of a qualified Oregon C Corporation. In 1997, Molly's daughter, Diane, acquired all of the stock at her mother's death, and elected to continue the gain deferral. The stock had a fair market value of $700,000 at Molly's death. In 1999, Diane sold the stock for $900,000. Diane will recognize a capital gain of $200,000 on her federal return ($900,000 proceeds less $700,000 basis). Diane did not elect to continue the gain deferral for Oregon tax purposes. Diane shall include in 1999 Oregon taxable income the $100,000 of gain deferred by Molly on the sale of her business. If Diane had not made the election in 1997 to continue gain deferral, Molly would have recognized $100,000 of gain on her final return.

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

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

Treatment of Gain on Assets Sold After December 31, 1995 and Before January 1, 1997

150-316.884 For purposes of ORS 316.873–316.884, the following requirements apply to gain derived from sales or dispositions occurring in tax years beginning on or after January 1, 1996 and before January 1, 1997.

(1) The amount of gain eligible to be deferred is the lesser of the gain realized for Oregon tax purposes or the amount reinvested.

Example: On January 1, 1996, Joe sold a qualifying asset for $110,000 with a federal basis of $10,000, and an Oregon basis of $20,000. Joe reinvested $50,000 of the proceeds in a qualified business activity. The amount of gain Joe may elect to defer is the lesser of the gain realized for Oregon tax purposes ($90,000) or the amount reinvested ($50,000).

(2) Reinvestment in a qualified business activity, as described in ORS 316.873, shall consist of:

(a) acquisition of an ownership interest in a C corporation which conducts a qualified business activity; or

(b) investment in a qualified business activity in which the taxpayer materially participates, as defined in IRC 469 and its regulations.

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

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

Frivolous Return Penalty

150-316.992(5) (1) A $250 penalty shall be assessed if a taxpayer takes a "frivolous position" in respect to preparing the taxpayer's return. A return is considered frivolous if a taxpayer does not provide information on which the substantial correctness of the self-assessment may be judged or if the return contains information that on its face indicates that the self-assessment is substantially incorrect.

(2) Some additional examples where a "frivolous position" is considered to have been taken include but are not limited to:

(a) An argument that wages or salary are not included in taxable income. This can occur when the taxpayer alters lines on the return to recharacterize wages or salary as nontaxable or takes deductions on Schedule C equal to income and characterizes the deductions as the total of business expenses or cost of goods sold.

(b) An argument that the law directs "taxpayers" to file a return and they aren't a taxpayer.

(c) An argument that by filing a return their rights of nonself-incrimination under the Fifth Amendment to the United States Constitution will be violated. An example of this is when a taxpayer writes "object" or "object—self-incrimination" in the amount columns or across the face of the return.

(d) An argument that requiring a taxpayer to file a return violates their right to prohibition of involuntary servitude provided in the Thirteenth Amendment to the United States Constitution.

(e) Submitting a return that may show an address, be signed and have W-2's attached but has zeros, object, Fifth Amendment or self-incriminating written in the columns or on the face of the return.

(f) An argument that the tax system is discriminatory.

(g) An argument that the taxpayer's right to free speech as provided by the First Amendment to the United States Constitution has been violated by requiring a return or by providing the information required on the return.

(h) An argument that a check which can only be redeemed in Federal Reserve Notes is not taxable income. The taxpayer's argument is that only gold and silver can be taxed and that Federal Reserve Notes are not income because they can't be redeemed for gold or silver. Also, that the Federal Reserve Notes should be considered accounts receivable that do not have to be reported as income until they are paid in gold or silver.

(i) An argument that a graduated tax is unconstitutional.

(j) Taking unauthorized deductions or credits based on a percentage of the national debt used for defense (war tax) or abortions.

(k) Taking unauthorized deductions or credits based on the declining value of the dollar to reflect the difference between the face value and the fair market value of Federal Reserve Notes.

Hist: Filed 4/5/88 and Eff. 6/1/88