

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [ 7/15/2010 ] by the  
Date prior to or same as filing date  
Department of Revenue, Personal Tax and Compliance Division 150

Agency and Division Administrative Rules Chapter Number

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to become effective [ 7/31/2010 ]. Rulemaking Notice was published in the [ June 2010 ] Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Biomass tax credit; composite tax returns; representation of limited liability companies; military pay

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 150-315.144; 150-314.778; 150-314.781; 150-314.784

**AMEND:** 150-305.230; 150-314.775; 150-314.840; 150-315.141; 150-316.014; 150-316.680(1)(c)-(A)

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 305.100; 314.840; 315.144

Other Auth.:

Stats. Implemented: ORS 305.230; 314.775, 314.778, 314.781, 314.784, 315.141, 315.144, 316.014, 316.680

**RULE SUMMARY**

150-315.141 and 150-315.144 explain 2009 statutory changes related to the biomass tax credit. The rules also explain the process by which the credit may be sold or transferred.

150-314.775, 150-314.778, 150-314.781, 150-314.784 explain how composite tax returns are filed and provide that a credit for taxes paid to another state generally cannot be claimed on the return.

150-305.230 and 150-314.840 explain who may represent a limited liability company in proceedings before the department.

150-316.014 explains the treatment of net operating losses that are carried to a year for which the taxpayer claimed amnesty.

150-316.680(1)(c)-(A) reflects legislative changes to the maximum subtraction allowed for active duty pay.

Elizabeth Harchenko

7/23/2010

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Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

## **150-305.230**

### **Representation of Taxpayers before the Department of Revenue**

(1) Application of ORS 305.230. The provisions of ORS 305.230 apply to all administrative proceedings before the Department of Revenue. Only those individuals who qualify under ORS 305.230 and this rule may represent the taxpayer.

(2) Individuals Authorized to Represent by Department Rule. The following individuals may represent the taxpayer before the department unless the individual is prohibited from representing the taxpayer by other Oregon law:

(a) An adult immediate family member of the taxpayer may represent the taxpayer.

(b) The taxpayer's registered domestic partner may represent the taxpayer.

(c) A regular full-time employee of an individual employer may represent the employer.

(d) A general partner or a regular full-time employee of a partnership may represent the partnership. For general representation rules for partnerships see OAR 150-305.242(2) and 150-305.242(5).

(e) An officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(f) Limited Liability Company (LLC) classified as a corporation. A member-manager, a non-member manager, or a regular full-time employee of the LLC may represent the LLC.

(g) Limited Liability Company classified as a partnership. Any member with management authority may represent the LLC (including a member in a member-managed LLC). Any regular, full-time employee of the LLC may represent the LLC. If the LLC has no members with management authority, then any member may represent the LLC (see ORS 63.130 and Treas. Reg. § 301.6231(a)(7)-2).

(h) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(i) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(j) An individual may represent any individual or entity that is outside the United States before department personnel when such representation takes place outside the United States.

(k) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or by rule) to sign the tax return, may represent the taxpayer during an examination of the tax year or period covered by that tax return. This provision does not permit such individuals to represent taxpayers, regardless of the circumstances, before conference officers, revenue agents, legal counsel or similar department employees.

(l) A taxpayer's authorized agent may represent the taxpayer in proceedings relating to the property tax assessment of designated utilities and companies by the Oregon Department of Revenue under ORS 308.505 through 308.665 and 308.805 through 308.820. For purposes of this rule, an "authorized agent" means a person who is authorized by a company assessed under ORS 308.505 to 308.665 and 308.805 to 308.820 to transact all business related to the filing or processing of an annual statement filed as required by ORS 308.525 or all business related to the filing of a request for a director's conference under ORS 308.595.

(m) Persons authorized to represent in an ad valorem property tax conference or proceeding under ORS 305.230(1)(d), any person licensed by the Oregon State Board of Tax Practitioners, and consulting foresters may represent a taxpayer in any proceeding with respect to taxes

imposed under ORS Chapter 321. For purposes of this rule, "consulting forester" means a person who is engaged by the taxpayer to render expert or professional advice in forest management related matters.

(n) The director may, subject to restrictions imposed under other Oregon law, authorize an individual who is not otherwise eligible under this rule to represent a taxpayer before the department. The sole fact that an individual does not qualify under another section of this rule is not an adequate reason to request special permission to represent a taxpayer.

(3) The department, in its discretion, may revoke the authority to represent a taxpayer granted under section (2) of this rule.

(4) Representation by an Oregon Tax Matters Shareholder.

(a) When the treatment of S corporation items on a shareholder's return is consistent with the treatment of that item on the S corporation return and results in a deficiency, a tax matters shareholder may be designated to represent the corporation before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(b) An S corporation that elects to designate a tax matters shareholder as its authorized representative in proceedings before the department for issues relating to the S corporation adjustments on a Notice of Deficiency must make the designation as provided in this rule.

(c) The tax matters shareholder designated for Oregon purposes may be the federal tax matters shareholder or may be another shareholder, and must be a shareholder who is:

(A) A shareholder in the S corporation at some time during the taxable year to which the Notice of Deficiency pertains; or

(B) A shareholder in the S corporation at the time the designation is made.

(d) Information required. The S corporation must designate a tax matters shareholder by filing a signed statement with the department. The statement must:

(A) Identify the shareholders making the designation by name, address, and social security number;

(B) Identify the S corporation and the designated shareholder by name, address, and taxpayer identification number;

(C) Declare that the statement is a designation of a tax matters shareholder for the taxable year to which the Notice of Deficiency relates; and

(D) Authorize the tax matters shareholder as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization. The S corporation may authorize the tax matters shareholder to represent the shareholders for issues other than S corporation issues only by making the election with this authorization.

(e) Only one tax matters shareholder may be designated and authorized to represent the corporation for each examination at the S corporation level which results in a Notice of Deficiency to the corporation or the shareholders for adjustments related to S corporation items.

(f) If a notice explaining the S corporation adjustments is mailed by the department to the tax matters shareholder with respect to any S corporation taxable year, the tax matters shareholder must supply the department with the name, address, ownership percentage and taxpayer identification number of each person who was a shareholder in the S corporation at any time during the taxable year, unless that information was provided in the S corporation return for that year.

(g) A timely request for a conference filed with the department by the tax matters shareholder will be considered as an appeal of the S corporation adjustment, and all issues regarding treatment of S corporation items will be resolved in a single conference.

(h) Shareholders who do not designate a tax matters shareholder as provided in this rule may appeal their Notice of Deficiency by following the administrative remedies under ORS 305.265 and the related rules.

(i) **Binding Actions of the Tax Matters Shareholder.** The tax matters shareholder for Oregon will bind all shareholders who have made the designation under this section to all actions of the tax matters shareholder with respect to the proceedings between the department and the shareholder whose tax liability is in dispute. When appealing on behalf of the S corporation, the tax matters shareholder may exercise any administrative remedy before the department allowed by Oregon law except that all electing shareholders are considered to have appealed under the same action. Any shareholder who has designated a tax matters shareholder may participate in any level of the administrative proceedings.

Example: Assume an S corporation with 10 shareholders has been examined and each shareholder receives a Notice of Deficiency. If 8 shareholders designate a tax matters shareholder, their appeal will be heard collectively. If the tax matters shareholder requests a conference, the conference decision will apply to all 8 shareholders (all 8 shareholders may participate). The other 2 shareholders may appeal their cases individually because they did not make the election to be represented by the tax matters shareholder.

(j) Other actions of the tax matters shareholder that are binding on the shareholders who have made the designation include, but are not limited to:

(A) Consent to the extension of the statute of limitations regarding S corporation items with respect to all electing shareholders.

(B) Making a settlement offer to the department.

(C) Acceptance of a closing agreement with the department.

(D) Consent to time and place of any appeals proceedings.

(5) When a limited liability company (LLC) has elected to be classified as a corporation and has made an S corporation election, section (4) applies to the LLC. When applying section (4) to an LLC, LLC members are treated as shareholders.

[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(1)(b).]

Stat. Auth.: ORS 305.100, 305.230

Stats. Implemented: ORS 305.230; ORS 63.810

## **150-314.775**

### **Definitions for Composite Tax Returns and Pass-through Entity Withholding**

The following definitions apply for purposes of ORS 314.775 to 314.784, this rule, and OAR 150-314.778 to 150-314.784:

(1) "Distributive income" means the net amount of income, gain, deduction, or loss of a pass-through entity for the tax year of the entity and includes those items directly related to the entity that are considered in determining the federal taxable income of the owner or, in the case of an owner that is a corporation, would be included in its federal taxable income if the corporation were an individual.

(2) "Electing owner" means a nonresident owner that elects to participate in an Oregon composite tax return filed by a pass-through entity.

(3) "Modified distributive income" means the distributive income as defined in section (1) of this rule, of a pass-through entity, with the modifications provided in ORS chapter 316 and other Oregon law that directly relate to those items taken into consideration by the pass-through entity in arriving at its distributive income. Such modifications include, but are not limited to, any Oregon modification necessary for depreciation, depletion, gain or loss difference on the sale of depreciable property, and any modification for federal tax credits, and do not include the federal tax subtraction, itemized deductions, and the Oregon standard deduction. Guaranteed payments are treated as a business income component of the entity's distributive income and attributed directly to the owner receiving the payment.

(4) "Nonelecting owner" means a nonresident owner of a pass-through entity that does not elect to participate in a composite return and who is required to file an Oregon individual income tax return.

(5) "Oregon-source distributive income" means the portion of the entity's modified distributive income that is derived from or connected with Oregon sources. For entities operating in Oregon and one or more other states, Oregon-source distributive income is determined by attributing to Oregon sources that portion of the modified distributive income of the entity, as defined in section (3) of this rule, determined in accordance with the allocation and apportionment provisions of ORS 314.280 or ORS 314.625 to 314.675.

(6) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes. Examples include:

(a) A partnership;

(b) An S corporation;

(c) A limited liability company that is treated as one of the above for tax purposes; and

(d) A trust that has been established or maintained primarily for tax avoidance purposes, including: an abusive tax shelter as defined in ORS 314.402, an entity subject to a penalty for promoting an abusive tax shelter under Internal Revenue Code (IRC) section 6700, and a tax shelter as defined under IRC section 6662 and related Treasury regulations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.775

## **150-314.778**

### **Oregon Composite Tax Return**

(1) General provisions. A pass-through entity doing business in or deriving income from sources within this state is required to file an Oregon composite tax return if requested by one or more electing owners. Estimated tax payments are required for the composite return if the total Oregon tax due for any electing owner is expected to be \$1,000 or more for an individual; or \$500 or more for a corporation.

(a) Computation of tax. Each pass-through entity filing a composite return on behalf of electing owners must calculate the tax for each electing owner. The tax liability for each electing owner on the composite return, determined without regard to the tax credits allowed under subsection (1)(b) of this rule, is calculated by applying the Oregon tax rates based on the owner's filing status to the difference between the owner's share of the entity's Oregon-source distributive income for the taxable year and the owner's self-employment tax deduction, as provided for in subsection (1)(b) of this rule. If distributive income is apportioned, the deduction must also be

apportioned by multiplying the owner's federal deduction for one-half self-employment tax (attributable to the owner's share of the entity's net earnings from self-employment) by the apportionment percentage provided in ORS 314.650-314.675. The pass-through entity will report on the Oregon composite nonresident return the tax computed for each electing owner and total amounts for all electing owners.

(b) Credits and deductions. Below is a list of items that may or may not be allowed for electing owners.

Item	Allowed	Not Allowed
Credits otherwise permitted nonresidents under ORS Chapter 315 or Chapter 316.		X
Self-employment tax deduction.	X	
State surplus refund provided under ORS 291.349, if applicable.	X	
Keogh contribution deductions.		X
Health insurance paid in connection with the partner's participation in the partnership.		X
Tax years 2010 and later: Credit for taxes paid to another state as allowed to individuals under ORS 316.131, unless allowed to Oregon residents filing a composite return in that state.		X
Tax years 2009 and earlier: Credit for taxes paid to another state as allowed to individuals under ORS 316.131, if not claimed on the taxpayer's resident state return for the taxpayer's Oregon source income.	X	

Note: If the credit for taxes paid to another state is not allowed on the Oregon composite return, the taxpayer may claim a credit for taxes paid to Oregon on the resident state return. Or the taxpayer may opt out of the composite return and claim the credit for taxes paid to another state on the Oregon nonresident return, pursuant to ORS 316.131.

(c) Losses.

(A) Net operating losses for Oregon nonresidents are computed under ORS 316.014. A pass-through entity that has filed an Oregon composite tax return on behalf of nonresident individual owners may file amended returns to carry back the Oregon net operating losses incurred by the entity. A schedule must be attached to any return filed under these provisions indicating the taxpayers affected and calculations of the loss amounts. These losses may also be carried forward. The allowed carryback and carryforward periods (including elections to forego the carryback period) are the same as provided under Internal Revenue Code section 172. The election to forego the carryback period must be made by attaching a statement to the Oregon composite return filed on or before the due date (including extensions) of the return for the loss year. Corporations are not allowed to carry back a net operating loss (ORS 317.476).

(B) Any refund of tax made pursuant to an original or amended composite return filed under these provisions will be paid to the entity, regardless of changes in ownership or changes in the identity of nonresidents participating in an Oregon composite filing.

(2) Election to participate in an Oregon composite tax return. The following provisions apply to electing owners:

(a) The owner must make a separate election for each tax year;

- (b) The owner must not have been a resident of Oregon at any time during the owner's tax year;
- (c) The owner is considered to have made the election on the date the entity files the composite return that includes the electing owner;
- (d) By making the election, the owner elects to have the owner's Oregon tax liability paid and reported by the entity; and
- (e) An electing owner is ultimately liable for tax, penalty and interest if the entity fails to file a composite tax return or pay the tax on behalf of the owner.

(3) Filing and payment requirements.

(a) Due date. The Oregon composite tax return is due the 15th day of the fourth month after the close of the tax year of the majority of the electing owners, in accordance with ORS 314.385. Example 1: Around the Bend LLC (ATB) has a tax year ending June 30<sup>th</sup>. The electing owners consist of four individuals and three corporations. Because the individuals are all calendar year taxpayers, the majority of the electing owners have a calendar tax year which ends December 31<sup>st</sup>. Therefore the composite return and any estimated payments are due using a calendar tax year. For tax year 2010, the composite return will include the income reported by ATB for their tax year ending June 30, 2010. The composite return ATB will file on behalf of its owners for 2010 is due April 15, 2011.

Example 2: Coast Around Oregon Incorporated (CAO) is an S Corporation and has a tax year ending October 31<sup>st</sup>. The electing owners consist of 15 individuals, so they are all calendar year taxpayers. For tax year 2010, the composite return will include the income reported by CAO for their tax year ending October 31, 2010. The composite return CAO will file on behalf of its owners for 2010 is due April 15, 2011.

(b) Payment of amounts due. Payment of the amount due is made by the entity on the owner's behalf and must accompany the filing of the Oregon composite tax return in accordance with ORS 314.395. The payment must include the tax due plus any penalty or interest provided by Oregon law.

(c) Extensions of time to file. If the entity is granted a federal extension of time to file the entity's return, the same extension of time applies for filing the Oregon composite return. The entity should attach a copy of the federal extension to the back of the Oregon composite return when it is filed.

Example 3: Refer to Example 1. Around the Bend LLC (ATB) filed for extension for its 2009 partnership return for its tax year ending June 30, 2010. The partnership return due date was October 15, 2010 and the extended due date was March 15, 2010. The 2010 composite return reporting this income is due April 15, 2011. Because the entity received a 5 month extension, it has until September 15, 2011 to file the composite return, even though the income is reported in a different tax year for the owners.

Example 4: Refer to Example 2. Coast Around Oregon Incorporated (CAO) filed for extension for its 2009 S-Corporation return for its tax year ending October 31, 2010. The Oregon S-corporation return due date was March 15, 2011 and the extended due date was September 15, 2011. The 2010 composite return reporting this income is due April 15, 2011. Because CAO received a 6 month extension, it has until October 17, 2011 to file the composite return, even though the income is reported in a different tax year for the owners.

(d) An electing owner may file a separate tax return without revoking the election to join a composite return. The income reported on the composite return is subtracted on the electing owner's separate return and tax is paid only on the Oregon source income not reported on the composite return.

(4) Ineligibility or revoking an election to participate in a composite return.

(a) One or more owners may revoke the election to join in the Oregon composite tax return after the Oregon composite tax return has been filed. The revocation of the election must be made within three years from the date the Oregon composite tax return was filed. To revoke a previous election, the owner must file a separate return with the department showing all items of income and deduction separately. This separate return will be treated as an original return and, if filed after the due date, any tax liability shown on the return is subject to interest and penalties in the same manner as any other delinquent original return. The decision to revoke a previous election by one or more owners has no effect on the election of the remaining owners.

(b) If any of the owners becomes ineligible, revokes an election, or declines to participate in filing an Oregon composite tax return, and the entity made tax payments on the owner's behalf, the department may transfer the tax payment to the account of the nonresident owner if the entity submits a written request to the department. The department must receive the request before the entity files the Oregon composite return and before the nonresident owner files a tax return for that tax year. The request must contain:

(A) The name and federal employer identification number of the entity that made the tax payment(s);

(B) The name and social security number of the nonresident owner; and

(C) The specific dollar amount to transfer to the account of the owner.

(c) An owner who does not or cannot elect to participate, or who revokes a prior election, is subject to withholding on the owner's share of the Oregon source distributive income under ORS 314.781 and OAR 150-314.781.

(5) Payment of tax on behalf of electing owners. An entity may be required to make quarterly tax payments to the department on behalf of all electing owners. The tax liability required to be paid is the sum of each electing owner's estimated tax liability for that quarter that is attributable to each owner's interest in the entity. In determining the electing owner's tax liability, the provisions of ORS 314.505 to 314.525 or 316.579 to 316.589 regarding calculation of estimated tax apply. The entity must remit the tax payments to the department using forms and instructions provided by the department.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.778

## **150-314.781**

### **Pass-through Entity Withholding Requirements**

(1) *Withholding requirement.* A pass-through entity with Oregon-source distributive income and one or more nonresident owners that have no other Oregon-source income, is required to withhold tax on behalf of the owner unless that owner makes an election as described in OAR 150-314.778 or meets an exception described in OAR 150-314.784. The entity must withhold tax as follows:

(a) For nonelecting owners subject to tax under ORS Chapter 316, each owner's share of Oregon-source distributive income for the taxable year multiplied by the highest percent in ORS 316.037; and

(b) For nonelecting owners subject to tax under ORS Chapter 317 or 318, each owner's share of Oregon-source distributive income for the taxable year multiplied by the rates in ORS 317.061.

(2) *Information retention requirement.* The pass-through entity must retain in its records the information listed in this section and submit it to the Department of Revenue on request:

- (a) Calculation of the amount required to be withheld pursuant to this rule;
- (b) Whether payments were submitted in addition to the quarterly withholding tax amounts required to be remitted under section (4) of this rule; and
- (c) A detailed summary of the nonelecting owner's share of the aggregate withholding tax payments made by the pass-through entity for the taxable year and the nonelecting owner's share of the aggregate additional withholding tax liability paid.

(3) *Information reporting to owner requirement.* The pass-through entity, by the due date of its information return, must provide each applicable nonelecting owner with an information statement containing the owner's share of the entity's withholding tax payments to be claimed as estimated tax payments on the owner's tax return.

(4) *Periodic remittance requirement.* The entity must remit amounts required to be withheld to the department on a periodic basis, using Oregon estimated tax payment vouchers for each nonelecting owner, or through the use of another method approved by the department. The due dates of these required payments are the same as the owner's estimated payment due dates based on the owner's tax year. The periodic withholding tax remittance amounts may be made using the sum of:

- (a) The highest marginal tax rate in ORS 316.037 multiplied by the sum of the noncorporate nonelecting owner's share of the entity's Oregon-source distributive income for the preceding taxable year (or current year's actual or estimate) and then multiplied by 25 percent; and
- (b) The rates in ORS 317.061 multiplied by the sum of the corporate nonelecting owner's share of the entity's Oregon-source distributive income for the preceding tax year (or current year's actual or estimate) and then multiplied by 25 percent.

**Example:** ABC Partners, an Oregon partnership, has 2 nonresident owners who each own 25 percent of the partnership. One is an individual, Rachel, and one is a corporation, Eli & Alexandria Inc (E&A). Because neither elects to join in filing a composite return and neither has filed an affidavit, ABC must withhold Oregon tax. ABC Partners decides to use last year's income to figure withholding. Last year's annual income for ABC was \$1,500,000. Both Rachel's and E&A's share was \$375,000.

For 2010, Rachel's pass-through entity withholding is 11 percent (the highest marginal tax rate for 2010) multiplied by \$375,000 (her share of last year's income) multiplied by 25 percent. Each period, ABC will withhold \$10,312.50 on behalf of Rachel.

To figure E&A Inc's pass-through entity withholding for 2010, an extra step is needed because of the varying tax rates for corporate taxpayers. Tax is withheld at 6.6 percent on the first \$250,000 and 7.9 percent on the additional amount. The total tax to be withheld for the first \$250,000 is \$16,500. The total tax to be withheld on the additional income is \$9,875 (\$125,000 x 7.9 percent). ABC will add both of these amounts together for a total of \$26,375, which is then multiplied by 25 percent. Each period, ABC will withhold \$6,593.75 on behalf of E&A Inc. Since both Rachel and E&A Inc are calendar year taxpayers, ABC Partners can submit their withholding at the same time. By the due date for each period, ABC Partners must send two vouchers showing how much is withheld for each nonresident owner along with a payment of \$16,906.25. If E&A Inc were a fiscal year taxpayer, then ABC would submit pass-through entity withholding by the estimated payment due dates for E&A's fiscal tax year instead.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 314.781

### **150-314.784**

#### **Exceptions to Pass-through Entity Withholding Requirements**

- (1) A pass-through entity may be required to withhold tax on behalf of an owner unless the owner makes an election as described in OAR 150-314.778 or meets an exception described in this rule.
- (2) A pass-through entity is not required to withhold income taxes for an owner if:
- (a) The owner is an electing owner as defined in OAR 150-314.775;
  - (b) The owner's share of Oregon-source distributive income from the entity is less than \$1,000;
  - (c) The owner made estimated tax payments the prior tax year based on the owner's share of Oregon-source distributive income from the entity and continues to make estimated tax payments for the current tax year;
  - (d) The entity is a publicly traded partnership, as defined in Internal Revenue Code section 7704(b), that:
    - (A) Is treated as a partnership for federal tax purposes; and
    - (B) Files an annual information report including the nonresident's name, address, social security number or taxpayer identification number, ownership percentage, and share of the federal income; or
  - (e) The owner files with the Department of Revenue a signed affidavit that contains:
    - (A) The owner's name, address, and social security number or tax identification number (i.e. federal employer identification number or Oregon business identification number);
    - (B) The entity's name and tax identification number;
    - (C) The entity's tax year and end date
    - (D) A statement that the owner agrees to file the owner's Oregon income or excise tax return and make timely payments of all taxes imposed with respect to the owner's share of the Oregon income of the entity; and
    - (E) Acknowledgement that the owner is subject to the jurisdiction of the State of Oregon for purposes of collection of unpaid income tax, penalties, and interest.
- [Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100  
Stats. Implemented: ORS 314.784

### **150-314.840**

#### **Information That May Be Furnished**

- (1) *Definitions.* For purposes of ORS 314.840 and this rule:
- (a) "Taxpayer," includes
    - (A) The executor or personal representative of a decedent's estate or a person who is appointed or authorized by law to pay the taxes of a decedent, and a trustee or other person who, by law, must pay the income taxes of a trust, and
    - (B) Any entity required to file a return with the department.
  - (b) An "authorized representative" is a person authorized to represent the taxpayer under ORS 305.230 and any of its related administrative rules.

(c) A "designee" is a person, firm, organization, or agency designated by a taxpayer to receive the taxpayer's confidential information. For entities, designations are to be made by an individual authorized by law to act for the entity.

(2) As permitted by law, the department may disclose and give access to information described in ORS 314.835 to certain categories of persons, including, but not limited to:

(a) *Department of Human Services*

(A) Under provisions of ORS 412.094, the Department of Human Services may request in writing any information contained in the department's tax files as to the location, income, and property of parents who, according to the Department of Human Services, have abandoned or deserted or are failing to support their children receiving public assistance. The request must clearly specify the information desired and must supply the information the department requires. The request must contain a certification by the Department of Human Services that the information is being requested pursuant to ORS 412.094. The information must be used only for the purposes specified by the law authorizing the disclosure.

(B) Upon written request of the Department of Human Services, the department will disclose the names, addresses and social security numbers of applicants for elderly rental assistance under ORS 310.630 to 310.706 as authorized by ORS 314.860. The department must maintain a record of all requests for such disclosure. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(b) *Division of Child Support*. Under the provisions of ORS 412.094 and 180.320, the Division of Child Support of the Department of Justice may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in paragraph (2)(a)(A) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the laws authorizing the disclosure.

(c) *District Attorneys*. Under provisions of ORS 412.094, the District Attorney of any county in the state may request any information contained in the department's tax files for the purposes and under the limitations set forth in that statute. The rules set forth in paragraph (2)(a)(A) of this rule for supplying information to the Department of Human Services will be followed in complying with any such requests. The information must be used only for the purposes specified by the law authorizing the disclosure.

(d) *Corporations*. The returns of a corporation will be open to inspection by any officer of the corporation or its authorized representative.

(e) *Partnerships and Limited Liability Partnerships (LLPs)*. The return of a partnership or LLP will be open to inspection by any person who was a partner during any part of the tax year covered by the return, provided that a showing satisfactory to the department is made that the person was a partner during the tax year covered by the return. In the event of the death of a partner, the return of the partnership or LLP will be open to inspection by the executor as defined in ORS 118.005 who is responsible for filing an inheritance tax return with respect to the deceased partner. Any person requesting information under this subsection must make known to the department the reason for the request and the use to be made of the information.

(f) *Limited Liability Companies (LLCs)*. Under ORS 63.810, an LLC is classified for tax

purposes in the same manner as it is classified for federal income tax purposes. Therefore:

(A) If an LLC is classified as a corporation for tax purposes, the returns may be disclosed as provided in subsection (2)(d) above. Any manager or member-manager will be treated in the same manner as an officer except as otherwise provided in the LLC's organizational documents.

(B) If an LLC is classified as a partnership for tax purposes, the returns may be disclosed as provided in subsection (2)(e) above.

(g) *Registered Agents.* The department may serve an entity that has a registered agent any notice, demand, or process required or permitted by law to be served on the entity by serving the notice, demand, or process to the entity's registered agent on file with the Secretary of State or as otherwise determined by law.

(3) *Conflicting Claims to a Dependency Deduction.* The returns of two taxpayers claiming the same dependent(s) will be open to inspection by those two taxpayers as allowed in ORS 305.215.

(4) *Husband and Wife Filing Separately.* If a husband and wife have filed separate tax returns, neither spouse nor authorized representative will be permitted to inspect the separate return of the other spouse or to obtain any information from it or any related report without first having obtained written consent to do so from such other spouse except as provided in section (3) above.

(5) *Taxpayer, Authorized Representative, or Designee.* Upon request and unless otherwise prohibited by an Internal Revenue Service agreement, the department will permit the taxpayer, the taxpayer's authorized representative, or the taxpayer's designee to obtain copies of the taxpayer's income tax returns filed with the department for any tax year, copies of reports filed by the taxpayer in connection with such returns, and any other information that the department considers necessary in the administration of the tax laws. Upon request and payment of the charges set forth in OAR 150-192.440, the department will furnish copies of these documents. Such requests may be made in person, in writing, or by telephone, e-mail or other generally used means of communication.

(6) *Taxpayer Authorization and Designation.* Taxpayer authorization to disclose to a designee may be in writing, verbal, or implied. See OAR 150-305.193.

(a) The department will recognize that a person is authorized to represent the taxpayer upon the filing with the department or magistrate division of a document signed by the taxpayer clearly authorizing such representation, or if the magistrate division is satisfied that the person is so authorized. If the magistrate division accepts a document signed by a person on behalf of a taxpayer, or has issued an order declaring that the person is authorized to represent the taxpayer, the department will consider the magistrate division to be satisfied that the person is an authorized representative. Unless a written authorization by the taxpayer clearly provides otherwise, the department will presume the person is authorized to represent the taxpayer only with respect to the proceeding before the department or the magistrate division and will disclose only documents and information relating to the tax years at issue in that proceeding.

(b) Only the tax information that relates to the duty of an executor, a decedent estate's personal representative, a person who is appointed by law to pay the taxes of a decedent, or a trustee or other person who, by law, must pay the income taxes of a trust may be disclosed.

(c) *Power of Attorney.* The department may accept a signed power of attorney as consent from the taxpayer to disclose confidential information. The department may accept a signed power of attorney as a taxpayer's designation to appoint another individual as their agent. The department will not accept a federal power of attorney Form 2848 unless the taxpayer has specifically indicated that it applies to the Oregon Department of Revenue.

**[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(1)(b).]

**Stat. Auth.:** ORS 305.100

Stats. Implemented: ORS 314.840; ORS 63.810; ORS 63.130

## **150-315.141**

### **Biomass Production or Collection Credit**

(1) The provisions of this rule apply to tax years beginning after December 31, 2006 and before January 1, 2010. See OAR 150-315.144 for credit transfer provisions related to tax years beginning on or after January 1, 2010.

(2) Definitions for purposes of ORS 315.141 and this rule.

(a) "Biomass collector" means a person that:

(A) Physically (including through employees or agents) collects biomass or receives biomass from another person (whether or not for consideration); and

(B) Transfers that biomass to a person that is a biofuel producer.

(b) "Agricultural producer" means a person that:

(A) Produces (including through employees or agents) biomass; and

(B) Transfers that biomass to a person that is a biofuel producer.

(c) "Biofuel producer" is a person that:

(A) Through activities in Oregon, alters the physical makeup of biomass to convert it into a biofuel;

(B) Through activities in Oregon, changes the biomass from one biofuel to another biofuel; or

(C) Uses biomass in Oregon to produce energy.

(d) "Person" means any of the following:

(A) An individual; or

(B) A legal entity (including but not limited to any domestic or foreign corporation, trust, partnership, or limited liability company), regardless of whether the entity is treated as a separate entity for income tax purposes.

(e) "Transfer" means, with respect to any biomass, a conveyance of ownership of such biomass from an agricultural producer or biomass collector to a biofuel producer. In addition to the receipt required under subsection (2)(d) of this rule, a transfer of biomass must be substantiated with:

(A) Written records, including invoices or a bill of sale, indicating that the producer or collector has conveyed ownership of the biomass to the biofuel producer;

(B) Written statements from the biofuel producer indicating a transfer has occurred; or

(C) Receipts demonstrating that the biomass was transported to a biofuel producer or an agent of the biofuel producer.

(3) Qualifications for the production or collection credit. To qualify for the credit under ORS 315.141, the taxpayer must:

(a) Be a person that is an agricultural producer or biomass collector;

(b) Own or have the contractual rights to the biomass at the time the biomass is transferred to the biofuel producer;

(c) Transfer the ownership or contractual rights in the biomass to a person that is a biofuel producer; and

(d) Obtain from the biofuel producer a written receipt, based on data recorded at the time of the transfer, stating the quantity and type of the biomass and a statement of affirmation that the biomass will be used in Oregon as a biofuel or used in Oregon to produce biofuel. The receipt and statement described in this paragraph must be kept in the taxpayer's records for five years after the tax year in which the credit is claimed.

*Example 1:* Ed owns forested property in Oregon. Ed hires Kerry to collect wood debris, which qualifies for a biomass tax credit, and delivers it to Woody Pellets, a biofuel producer. Upon

delivery, Woody Pellets issues a receipt to Ed with the quantity and a description of the biomass along with an affirmation that the biomass will be used to produce biofuel. Ed, not Kerry, is the person eligible to take the credit for the biomass because he owns the wood debris. Kerry was only hired as Ed's agent to collect and deliver the wood debris and did not have an ownership interest in the debris.

*Example 2:* Same facts as in Example 1 except that the contract between Ed and Kerry provides that Kerry will own the wood debris once it is removed from Ed's land. When Kerry later delivers the debris to Woody Pellets, Kerry, not Ed, may claim the credit because she owns the biomass being transferred. Ed is not eligible for the credit because Ed relinquished his rights in the biomass to Kerry.

*Example 3:* Ed, who owns forested property in Oregon, has decided to sell 700 of the 1,000 tons of woody biomass he has collected to Heat Pellets, Inc., a biofuel producer. Ed will transport the remaining 300 tons of woody biomass to his lumber yard where he will convert it into a biofuel. Ed is eligible to claim the credit under ORS 314.141 for the 700 tons of woody biomass he sells to Heat Pellets, Inc. Ed is not eligible to claim the credit under ORS 314.141 for the 300 tons of woody biomass he keeps and transforms into a biofuel because a transfer from a biomass collector (or agricultural producer) to a biofuel producer has not occurred.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.141

#### **150-315.144**

##### **Transfer of Biomass Credit**

(1) As provided by ORS 315.053, a person that has obtained a tax credit under ORS 315.141 may transfer the credit to:

- (a) A C corporation;
- (b) An S corporation; or
- (c) A personal income taxpayer.

(2) Transfers. The value of the credit earned under ORS 315.141 is the greater of the market value upon transfer or the minimum discounted rate established by the Department of Energy. A credit may be transferred or sold only once. In order for the transfer to be effective:

- (a) The Department of Energy must certify the credit;
- (b) The person who earned the credit must complete and submit the transfer schedule on the back of the certificate provided by the Department of Energy to be attached to the return of the person who transferred the credit (the transferor);
- (c) The person who earned the credit and the taxpayer claiming the credit must complete and file a joint statement on a form provided by the Department of Revenue to be attached to the return of the taxpayer receiving the credit (the transferee); and
- (d) The credit must be transferred on or before the due date of the tax return (including extensions) for the first tax year in which the credit may first be claimed. After that date, no portion of the credit allowed under ORS 315.141 may be transferred.

**[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(1)(b).]

**Stat. Auth.:** ORS 305.100

**Stats. Implemented:** ORS 315.144

#### **150-316.014**

## **Oregon Net Operating Losses-Treatment After 1984**

(1) Applicability of this Rule.

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

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

(2) Definitions for Purposes of this rule.

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

(b) Oregon Adjusted Gross Income (Oregon AGI). For a full-year resident, Oregon AGI is generally the same as federal AGI. For a nonresident, "Oregon AGI" means the items included in federal adjusted gross income as defined in IRC Section 62 that relate to Oregon sources without modifications.

(c) Modified Oregon Taxable Income. "Modified Oregon taxable income" means Oregon AGI reduced by the sum of the following:

(A) Oregon itemized deductions. For a resident, Oregon itemized deductions are generally the same amount as federal. For part-year and nonresident taxpayers, Oregon itemized deductions are the Oregon percentage of federal itemized deductions; or

(B) Oregon standard deduction. For part-year and nonresident taxpayers, only the Oregon percentage of the standard deductions can be used;

(C) Federal personal exemption(s); and

(D) Prohibited amounts included in Oregon AGI.

(3) Computation of an NOL for a Resident.

(a) For Oregon purposes, a resident's net operating loss is computed in the same manner as for federal purposes without Oregon modifications. Generally, the Oregon NOL is the same as the federal NOL. The only modification necessary is to subtract prohibited amounts.

(b) The computation of the Oregon NOL begins with the Oregon adjusted gross income (AGI) to arrive at modified Oregon taxable income. Then the modified Oregon taxable income is adjusted as required by IRC Section 172(d).

Example 1. Susan and Joe filed joint 2009 federal and Oregon tax returns. On their federal return, they reported wages of \$26,000, a business loss of \$50,000, a gain on the sale of stock of \$400, and interest income of \$800 from a bank. They also reported total itemized deductions of \$12,800 which were all nonbusiness and claimed personal exemptions of \$7,300. On their Oregon return, Susan and Joe also reported \$500 municipal bond interest from California that was exempt from federal income tax. Their allowable Oregon NOL is computed as follows:

Federal Tax Return		
Wages	\$26,000	
Interest income	\$800	
Schedule C loss	(50,000)	
Schedule D stock gain	<u>400</u>	
Federal AGI		(\$22,800)
Personal exemptions		(7,300)
Schedule A deductions		<u>(12,800)</u>
Federal taxable income		<u>(42,900)</u>
<b>Computation of Oregon NOL</b>		
Oregon AGI	(\$22,800)	
Personal exemptions	(7,300)	
Schedule A deductions	<u>(12,800)</u>	
Modified Oregon taxable income		(\$42,900)
Adjustments:		
Personal exemptions		7,300
Nonbusiness deductions	12,800	
Nonbusiness income	<u>(1,200)</u>	
Nonbusiness deductions in excess of nonbusiness income		<u>11,600</u>
Oregon NOL		<u>(\$24,000)</u>

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

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

Federal Tax Return		
Wages	\$26,000	
Interest from US Securities	800	
Schedule C loss	(50,000)	
Schedule D stock gain	<u>400</u>	
Federal AGI		(\$22,800)
Personal exemptions		(7,300)
Schedule A deductions		<u>(12,800)</u>
Federal taxable income		<u>(42,900)</u>
<b>Computation of Oregon NOL</b>		
Oregon AGI	(\$22,800)	
US Government Interest	(800)	
Personal exemptions	(7,300)	
Schedule A deductions	<u>(12,800)</u>	
Modified Oregon taxable income		<u>(\$43,700)</u>

Adjustments:

Personal exemptions		7,300
Nonbusiness deductions	12,800	
Nonbusiness income	<u>(1,200)</u>	
Nonbusiness deductions in excess of nonbusiness income		<u>11,600</u>
Oregon NOL		<u>(\$24,800)</u>

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

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

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

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

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

(B) Net Oregon capital loss deduction.

(C) Federal personal exemption amount.

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

Example 3. Herb and Sallie are married nonresidents and file a joint 2009 return. On their federal return, they have itemized deductions of \$14,000 (all nonbusiness) and claimed exemptions of \$10,950. They also had a business loss of \$25,000 from Oregon sources and \$1,000 non-Oregon source corporate bond interest. On their Oregon nonresident return, the Oregon percentage is zero (0). They compute their Oregon NOL as follows:

Oregon adjusted gross income	(\$25,000)	
Personal exemptions	(10,950)	
Schedule A deductions	<u>0</u>	
Modified Oregon taxable income		(\$35,950)
Adjustments:		
Personal exemptions		10,950
Nonbusiness deductions	0	
Nonbusiness income	<u>0</u>	
Nonbusiness deductions in excess of nonbusiness income		<u>0</u>
Oregon NOL		<u>(\$25,000)</u>

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

(5) Application of an NOL.

(a) General rule. An Oregon net operating loss for any loss years is applied in the same manner as the federal net operating loss as provided in IRC Section 172(b). If the loss was not attributable to

Oregon sources and was incurred while the taxpayer was a nonresident, there is no Oregon NOL to carry over even if the taxpayer later becomes an Oregon resident. In such cases, the amount of the NOL carryover that is not attributable to Oregon sources is added back on the Oregon resident tax return.

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

(b) Exceptions.

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

(B) If a taxpayer is not required to file an Oregon return for all years to which the federal NOL deduction (NOLD) is applied, the Oregon NOL is carried back to the year in which the loss may be first applied.

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

(i) For net operating losses incurred in tax years beginning on or after January 1, 2003, the carry back period is two years with a twenty year carryover period. Oregon follows any exceptions allowed under federal law for these tax years.

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

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

(iv) For net operating losses incurred in tax years beginning prior to August 6, 1997, the carryback period is three years with a fifteen year carryover period. See IRC 172 and the related regulations for exceptions to the general carryback periods for net operating losses attributable to certain casualty losses, disaster areas and farming losses.

Example 4. Joe has a net operating loss for federal and Oregon for tax year 2009. For federal purposes, Joe carried his federal NOL back to 2007. Since he carried back his loss for federal purposes, he must carry back the loss for Oregon purposes to his 2007 Oregon tax return. If he is not required to file an Oregon tax return for 2007, he may carry his Oregon NOL to his 2008 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 2009. Joe may carry his Oregon NOL over to his 2010 Oregon tax return even if the loss was carried back for federal purposes.

Example 6. As the result of a stimulus bill passed by Congress in 2009, Kerry, an Oregon resident and small business owner, is eligible to carry back her loss up to five years (instead of the normal two years). Kerry chose to carry her loss back five years on her federal return, so she must use the same five year carry back for purposes of her Oregon return.

Example 7. Devin, a Washington resident, incurs a \$25,000 NOL in 2009 from his Washington area business and elects to carry the loss forward. Devin moves to Oregon on January 1, 2010. Since the loss was incurred while Devin was a nonresident of Oregon and the loss is not from an Oregon source, there is no Oregon NOL and Devin must make an addition on his 2010 Oregon return to add back the \$25,000 NOL included in federal adjusted gross income.

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

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

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

Example 8. John and Joyce incurred losses in 2009 from partnerships and S corporations. They compute an NOL of \$12,000 and elect to carry the loss back. The 2007 return shows negative taxable income, so the 2009 NOL is first applied to 2008 where the loss is completely absorbed. John and Joyce have a federal AGI in 2008 of \$50,000. The fully absorbed 2009 NOL is applied as follows:

Federal AGI on the Oregon return to which the loss is carried	\$50,000	
Less net operating loss deduction	<u>(12,000)</u>	
Federal AGI for Oregon as revised		\$38,000
“Additions” per Oregon return	3,000	
“Subtractions” per Oregon return	(5,000)	
Standard or itemized deductions recomputed for revised federal AGI	<u>(15,000)</u>	
Total modifications		<u>(17,000)</u>
Modified Oregon taxable income		<u>\$21,000</u>

Example 9. Assume the same facts in Example 8, except that John and Joyce elect to carry forward the 2009 NOL for federal and Oregon purposes. In 2010, John and Joyce have federal AGI of \$15,000 and have reported additions of \$8,000 and subtractions of \$3,000. John and Joyce will apply the NOL to 2010 and compute the amount carried over to 2011 as follows:

Net operating loss deduction carryover		(\$12,000)
Federal AGI on Oregon return to which the loss is carried	\$15,000	
Add: capital loss/gain deductions	<u>0</u>	
Federal AGI for Oregon as revised	15,000	
Less: Prohibited amounts	<u>0</u>	
Standard or itemized deductions recomputed for revised federal AGI	<u>(12,000)</u>	
Modified Oregon taxable income (NOLD for 2010)		<u>3,000</u>
Carryover net operating loss available for 2011		<u>(\$9,000)</u>

John and Joyce's 2010 Oregon taxable income is recomputed as follows:

Federal AGI on the Oregon return to which the loss is carried	\$15,000	
Less net operating loss deduction	<u>(3,000)</u>	
Federal AGI including net operating loss deduction		<u>12,000</u>
Add “additions” per Oregon return		8,000
Less “subtractions” per Oregon return		(3,000)
Standard or itemized deductions		<u>(12,000)</u>
2009 Oregon taxable income as revised		<u>\$5,000</u>

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

Example 10. In 2008, 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 2008, neither Ron nor Valerie needed to file Oregon returns. In 2009, 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 2009 Oregon taxable income as follows:

	Federal	Oregon
Income after adjustments	\$385,000	\$235,000
Less net operating loss deduction	<u>(85,000)</u>	<u>(85,000)</u>
Modified income after adjustments	300,000	150,000
Plus "additions" per Oregon return	7,000	7,000
Less "subtractions" per Oregon return	<u>(5,850)</u>	<u>(5,850)</u>
Modified income	<u>\$301,150</u>	<u>\$151,150</u>
Oregon percentage: $\$151,150/\$301,150 = 50.2\%$		
Less standard or itemized deductions recomputed for revised federal AGI	(\$20,000)	
Federal tax subtraction	<u>(5,850)</u>	
Taxable income as revised	<u>\$275,300</u>	

Example 11. Scott and Jill live in Vancouver, Washington and Scott operates a business in Oregon. In 2008, 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 2009, Scott and Jill reported Oregon income after adjustments of \$1,600, federal income after adjustments of \$32,000, and federal itemized deductions of \$9,200. Their Oregon itemized deductions are \$460  $[(\$1,600/\$32,000) \times \$9,200]$ . Scott and Jill calculate their net operating loss deduction for 2009 and the carryover to 2010 as follows:

Net operating loss carryover	(\$6,000)
Oregon income after adjustments on return in year to which loss is carried	1,600
Add Oregon capital loss deduction	0
Modified Oregon AGI as revised	1,600
Less prohibited amounts	0
Oregon percentage of itemized deductions recomputed for revised federal AGI	(660)
Modified Oregon taxable income (NOLD for 2009)	<u>940</u>
Carryover of NOLD available for 2010	<u>(\$5,060)</u>

#### (7) Net Operating Loss Carrybacks to Amnesty Years

A net operating loss deduction (NOLD) carried back to an amnesty return (as that term is defined in OAR 150-305.100-(C)) may not result in a refund of any tax reported and paid pursuant to the amnesty program. However, if a NOLD is carried back to a year in which a taxpayer

participated in amnesty, a refund that is otherwise allowed may be granted to the extent that the taxpayer has adequate income reported outside the amnesty program to absorb the loss (or portion thereof). A NOLD resulting in a denied refund due to participation in the amnesty program does not change the net operating loss deduction calculation or the amount that can be carried to another tax year.

Example 12. Ed, an Oregon resident, qualified for amnesty in November 2009 and received penalty and interest relief for tax year 2005 under the program. Ed's original 2005 return (which was filed timely on April 17, 2006) showed a tax liability of \$20,000, which Ed paid when he filed his original 2005 return. The amended return for 2005 filed under amnesty increased his tax by an additional \$15,000 for a total of \$35,000 in Oregon tax liability. In tax year 2009 his business experienced a loss that created a net operating loss for tax year 2009. Ed elects to carry the loss back to tax year 2005 and amends his 2005 federal return. On June 1, 2010, he amends his 2005 Oregon return to claim the net operating loss deduction (NOLD). After applying the NOLD, Ed claims an Oregon refund of \$30,000 for 2005. (Ed's 2005 net tax liability has been decreased to \$5,000.) The department agrees with Ed's calculations but only allows a refund of \$20,000 because that is the amount of tax Ed paid for 2005 before the amnesty program. The refund is limited because the law prohibits refunds of tax paid under amnesty. Ed's carryover of the NOLD is not changed because of the amnesty refund denial. Even though the refund was partially denied, the NOLD has been absorbed and there is no carryforward to tax year 2006. [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(1)(b).]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.014

### **150-316.680(1)(c)-(A)**

#### **Subtraction for Military Active Duty Pay**

The statutory deduction not to exceed \$6,000 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 \$6,000 amount is in addition to any combat pay excluded from the federal return pursuant to IRC Sec. 112.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.680