OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
04/25/2018 2:50 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Corporate tax: Establishes repatriation tax credit pursuant to 2018 Oregon Laws, chapter 101.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/22/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Lois Williams
503-945-8029
RulesCoordinator.dor@oregon.gov

955 Center St NE
Salem,OR 97301

Filed By:
Lois Williams
Rules Coordinator

NEED FOR THE RULE(S):

150-317-0651 Repatriation Tax Credit. Prescribes method for taxpayers to compute the repatriation tax credit under 2018 Oregon Laws, chapter 101 based on the lesser of tax attributable to the 2014-2016 listed jurisdiction addition or the 2017 repatriation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2018 Oregon Laws, chapter 101 which is available online at https://www.oregonlegislature.gov

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact associated with this new rule. The statute implemented is what causes the impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies or the counties, and a de minimis impact on the public. The changes are intended to be clarifying or interpretive in nature and do not affect the cost to comply.

2a. Oregon has approximately 120,500 small businesses with fewer than 250 employees(*) that employ 64% of the state's workforce. Oregon has approximately 99,300 small businesses with fewer than 100 employees. Based on this information, we estimate Oregon has approximately 97,000 small businesses with fewer than 50 employees who are subject to this rule. However, it is anticipated that a very small number of small businesses will be affected by this rule because approximately 300 taxpayers reported a listed jurisdiction addition in 2014 through 2016. Most, if not all, of the taxpayers who reported a listed jurisdiction addition in 2014 through 2016 have more than 50 employees.

(*)Oregon Employment Department https://www.qualityinfo.org/-/most-oregon-employers-have-fewer-than-10-employees?utm_campaign=November2016&utm_medium=email&utm_source=newsletter&utm_content=Oregon%20Statewide
2b. There should be a de minimis effect on those small businesses subject to the rule, as it is intended to be clarifying or interpretive in nature and does not significantly affect projected reporting, recordkeeping, or other administrative activities or costs. For small businesses that will claim the repatriation, projected reporting, recordkeeping, and other administrative activities or costs should not be significantly different from their current practice under the listed jurisdiction addition law.
3c. None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department of Revenue communicated with small business liaison groups such as the Oregon State Bar Tax Section and the Oregon Society of Certified Public Accountants to obtain their input into how this rule will impact their clients, some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for this rule; however, we did seek and receive input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rules; therefore, a committee is unlikely to provide further benefit.

OAR 150-317-0651

***Example 1*:**

XYZ Corporation computed the following amounts of tax with the listed jurisdiction addition:

2014	2015	2016
$100	$100	$100

XYZ Corporation computed the following amounts of tax without the listed jurisdiction addition:

2014	2015	2016
$0	$200	$25

The sum total amount of Oregon tax for all tax years with the listed jurisdiction addition was $300 ($100 + $100 + $100). The sum total amount of Oregon tax without the listed jurisdiction was $225 ($0 + $200 + $25). Accordingly, the total Oregon tax attributable to the listed jurisdiction addition was $75 ($300 - $225).

***Example 2*:**

ALPHA CORP, a US Corporation, is a 100% shareholder in two foreign corporations, BETA CORP and GAMMA CORP. BETA CORP is incorporated in the Cayman Islands (a listed jurisdiction under ORS 317.716). GAMMA CORP is incorporated in France. ALPHA, BETA, and GAMMA form one unitary group.

ALPHA CORP had total taxable income of $2,000,000 in tax year 2014, $1,500,000 in 2015, and $2,000,000 in 2016. This income included the following income or loss amounts from BETA CORP: $1,000,000 in tax year 2014, ($500,000) in tax year 2015, and $1,000,000 in tax year 2016. ALPHA's apportionment percentage was .8 percent in tax years 2014, 2015, and 2016. ALPHA's Oregon apportionment percentage for tax years 2014, 2015, and 2016 would be 1.0 percent if BETA CORP's taxable income or loss were not included in ALPHA CORP's taxable income under ORS 317.716. ALPHA CORP had $11,000,000 taxable income in 2017 before Oregon modifications. ALPHA CORP included repatriated earnings and profits from BETA CORP and GAMMA CORP on ALPHA CORP's 2017 Oregon tax return. This 2017 repatriation added $10,000,000 to ALPHA CORP's other taxable income of $1,000,000 and did not change ALPHA's apportionment factor, which was 1.0 percent for tax year 2017. ALPHA CORP's taxable income for 2017 after modifications under ORS 317.267 attributable to the 2017 repatriation was $3,000,000 ($11,000,000 less $8,000,000 subtraction under ORS 317.267(2)).

For all tax years, all taxable income was apportionable as business income.

Solely for purposes of this example, assume a flat Oregon corporate tax rate of 6.6 percent.

Step 1- Compute the tax attributable to the repatriation

ALPHA CORP computes the tax attributable to the repatriation as follows

2017 with repatriation	**2017 without repatriation**
$3,000,000 net income	$1,000,000 net income
*1.0% apportionment factor	*1.0% apportionment factor
$30,000 income attributed to Oregon	$10,000 income attributed to Oregon
*6.6% tax rate	*6.6% tax rate
$1,980 Oregon tax	$660 Oregon tax

Accordingly, Oregon tax attributable to the repatriation is $1,320. ($1,980 - $660)

Step 2- Compute the tax attributable to the listed jurisdiction addition

ALPHA CORP computes the tax attributable to the listed jurisdiction addition as follows:

2014 with listed jurisdiction	**2014 without listed jurisdiction**
$2,000,000 net income	$1,000,000 net income
*0.8% apportionment factor	*1.0% apportionment factor
$16,000 income attributed to Oregon	$10,000 income attributed to Oregon
*6.6% tax rate	*6.6% tax rate
$1,056 Oregon tax	$660 Oregon tax
2015 with listed jurisdiction	**2015 without listed jurisdiction**
$1,500,000 net income	$2,000,000 net income
*0.8% apportionment factor	*1.0% apportionment factor
$12,000 income attributed to Oregon	$20,000 income attributed to Oregon
*6.6% tax rate	*6.6% tax rate
$792 Oregon tax	$1,320 Oregon tax
2016 with listed jurisdiction	**2016 without listed jurisdiction**
$2,000,000 net income	$1,000,000 net income
*0.8% apportionment factor	*1.0% apportionment factor
$16,000 income attributed to Oregon	$10,000 income attributed to Oregon
*6.6% tax rate	*6.6% tax rate
$1,056 Oregon tax	$660 Oregon tax

Step 3- total tax attributable to the listed jurisdiction addition

The sum of the tax with the listed jurisdiction addition for 2014 to 2016 is $2,904 ($1,056 + $792 + $1,056). The sum of the tax without the listed jurisdiction addition for 2014 to 2016 is $2,640 ($660 + $1,320 + $660). Total tax attributable to the listed jurisdiction addition for tax years 2014, 2015, and 2016 is $264 ($2,904 - $2,640).

Step 4- Determine the amount of the repatriation tax credit

The repatriation tax credit equals the lesser of the two following amounts.

Tax attributable to Listed Jurisdiction additions (Step 3)	$264
Tax attributable to repatriation (Step 1)	$1,320

Accordingly, the repatriation tax credit equals $264.

ADOPT: 150-317-0651

RULE SUMMARY: Prescribes method for taxpayers to compute the repatriation tax credit under 2018 Oregon Laws, chapter 101 based on the lesser of tax attributable to the 2014-2016 listed jurisdiction addition or the 2017 repatriation.

CHANGES TO RULE:

150-317-0651
Repatriation Tax Credit
(1)(a) For tax years beginning on or after January 1, 2017, and before January 1, 2018 (the 2017 tax year), a repatriation tax credit is allowed under ORS chapter 317 or 318 for Oregon tax attributable to income reported under section 965 of the Internal Revenue Code as post-1986 deferred foreign income. The amount of the credit equals the lesser of the amount of Oregon tax for the 2017 tax year attributable to the section 965 mandatory repatriation or the total amount of Oregon tax for the 2014, 2015, and 2016 tax years attributable to the addition required under ORS 317.716, if any. ¶
(b) No tax credit is available unless an addition under ORS 317.716 was required for at least one of tax years 2014, 2015, or 2016. ¶
(c) The method for determining the amount of Oregon tax attributable to the section 965 mandatory repatriation is set forth in section (2) below. The method for determining the total amount of Oregon tax attributable to the addition required by ORS 317.716 for tax years 2014, 2015, and 2016 is set forth in section (3) below.¶
(2)(a) The amount of Oregon tax for the 2017 tax year attributable to the mandatory repatriation under section 965 equals the excess of the Oregon tax for tax year 2017 determined with the section 965 mandatory repatriation, over the Oregon tax for tax year 2017 determined without the section 965 mandatory repatriation.¶
(b) The Oregon tax for the 2017 tax year determined with the section 965 mandatory repatriation is calculated by including in taxable income under ORS 317.010(10) income reported under section 965(a) as post-1986 deferred foreign income, modifying taxable income with respect to the repatriation income as provided in ORS 317.267(1) and (2), and computing Oregon tax before the allowance of any Oregon tax credit. The resulting tax amount before the allowance of any Oregon tax credit is the Oregon tax for tax year 2017 determined with the section 965 mandatory repatriation.¶
(c) The Oregon tax for tax year 2017 determined without the section 965 mandatory repatriation is calculated as if IRC section 965 did not apply, by excluding from taxable income the amount of the section 965 mandatory repatriation from income, applying ORS 317.267(1) and (2) without regard to the mandatory repatriation, and computing Oregon tax before the allowance of any Oregon tax credit. The resulting tax amount before the allowance of any Oregon tax credit is the Oregon tax for tax year 2017 determined without the section 965 mandatory repatriation.¶
(3)(a) The total amount of Oregon tax attributable to the addition required under ORS 317.716 for all tax years beginning on or after January 1, 2014, and before January 1, 2017 (the listed jurisdiction addition for tax years 2014, 2015, and 2016) equals the excess of the total Oregon tax for tax years 2014, 2015, and 2016 determined with the listed jurisdiction addition for those three years, over the total Oregon tax for tax years 2014, 2015, and 2016 determined without the listed jurisdiction addition for those three years. ¶
(b) The total Oregon tax for tax years 2014, 2015, and 2016 determined with the listed jurisdiction addition is the sum of the Oregon tax for each tax year in which an addition under ORS 317.716 was required (an applicable year) and included on a taxpayer's return as filed or adjusted. The amount of tax for each applicable year is computed by including taxable income or taxable loss of any corporation in a listed jurisdiction that was part of the same unitary group as the taxpayer (within the meaning of ORS 317.705(2)) in the applicable year and computing Oregon tax before the allowance of any Oregon tax credit. The resulting tax amount before the allowance of any Oregon tax credit is the Oregon tax for the applicable year determined with the addition required under ORS 317.716. This calculation is based on a taxpayer's 2014, 2015 and 2016 returns as filed or adjusted. ¶
(c) The total Oregon tax for tax years 2014, 2015, and 2016 determined without the listed jurisdiction addition is the sum of the Oregon tax for each applicable year described in subsection (b). The amount of tax for each

applicable year is computed by excluding taxable income or loss of any corporation in a listed jurisdiction otherwise required to be added under ORS 317.716 and included on a taxpayer's return as filed or adjusted. Any receipts of a corporation in a listed jurisdiction included in the sales factor for purposes of subsection (b) must be removed from the sales factor for purposes of computing the total Oregon tax determined without the listed jurisdiction addition. The resulting tax amount before the allowance of any Oregon tax credit is the Oregon tax for the applicable year determined without the addition under ORS 317.716. ¶
(d) The total amount of Oregon tax attributable for tax years 2014, 2015, and 2016 under (3)(a) equals the sum total of tax computed under (3)(b) minus the sum total of tax computed under (3)(c). ¶
[See PDF link below.]¶
[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]
Statutory/Other Authority: ORS 305.100
Statutes/Other Implemented: 2018 Oregon Laws, chapter 101

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

OAR 150-317-0651

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