

Enrolled House Bill 2157

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Revenue)

CHAPTER

AN ACT

Relating to connection to federal tax law; creating new provisions; amending ORS 238A.005, 238A.125, 238A.150, 238A.170, 238A.230, 238A.370, 238A.400, 238A.410, 238A.415, 238A.430, 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 316.013, 317.010, 317.018, 317.097, 458.670 and 657.010; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 238A.005 is amended to read:

238A.005. For the purposes of this chapter:

- (1) "Active member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan who is actively employed in a qualifying position.
- (2) "Actuarial equivalent" means a payment or series of payments having the same value as the payment or series of payments replaced, computed on the basis of interest rate and mortality assumptions adopted by the board.
- (3) "Board" means the Public Employees Retirement Board.
- (4) "Eligible employee" means a person who performs services for a participating public employer, including elected officials other than judges. "Eligible employee" does not include:
 - (a) Persons engaged as independent contractors;
 - (b) Aliens working under a training or educational visa;
 - (c) Persons, other than workers in the Industries for the Blind Program under ORS 346.190, provided sheltered employment or make-work by a public employer;
 - (d) Persons categorized by a participating public employer as student employees;
 - (e) Any person who is an inmate of a state institution;
 - (f) Employees of foreign trade offices of the Economic and Community Development Department who live and perform services in foreign countries under the provisions of ORS 285A.075 (1)(g);
 - (g) An employee actively participating in an alternative retirement program established under ORS 353.250 or an optional retirement plan established under ORS 341.551;
 - (h) Employees of the Oregon University System who are actively participating in an optional retirement plan offered under ORS 243.800;
 - (i) Any employee who belongs to a class of employees that was not eligible on August 28, 2003, for membership in the system under the provisions of ORS chapter 238 or other law;
 - (j) Any person who belongs to a class of employees who are not eligible to become members of the Oregon Public Service Retirement Plan under the provisions of ORS 238A.070 (2);

(k) Any person who is retired under ORS 238A.100 to 238A.245 or ORS chapter 238 and who continues to receive retirement benefits while employed; and

(L) Judges.

(5) "Firefighter" means:

(a) A person employed by a local government, as defined in ORS 174.116, whose primary job duties include the fighting of fires;

(b) The State Fire Marshal, the chief deputy state fire marshal and deputy state fire marshals; and

(c) An employee of the State Forestry Department who is certified by the State Forester as a professional wildland firefighter and whose primary duties include the abatement of uncontrolled fires as described in ORS 477.064.

(6) "Fund" means the Public Employees Retirement Fund.

(7)(a) "Hour of service" means:

(A) An hour for which an eligible employee is directly or indirectly paid or entitled to payment by a participating public employer for performance of duties in a qualifying position; and

(B) An hour of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave during which an employee does not perform duties but for which the employee is directly or indirectly paid or entitled to payment by a participating public employer for services in a qualifying position, as long as the hour is within the number of hours regularly scheduled for the performance of duties during the period of vacation, holiday, illness, incapacity, jury duty, military duty or authorized leave.

(b) "Hour of service" does not include any hour for which payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation laws.

(8) "Inactive member" means a member of the pension program or the individual account program of the Oregon Public Service Retirement Plan whose membership has not been terminated, who is not a retired member and who is not employed in a qualifying position.

(9) "Individual account program" means the defined contribution individual account program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(10) "Member" means an eligible employee who has established membership in the pension program or the individual account program of the Oregon Public Service Retirement Plan and whose membership has not been terminated under ORS 238A.110 or 238A.310.

(11) "Participating public employer" means a public employer as defined in ORS 238.005 that provides retirement benefits for employees of the public employer under the system.

(12) "Pension program" means the defined benefit pension program of the Oregon Public Service Retirement Plan established under ORS 238A.025.

(13) "Police officer" means a police officer as described in ORS 238.005.

(14) "Qualifying position" means one or more jobs with one or more participating public employers in which an eligible employee performs 600 or more hours of service in a calendar year, excluding any service in a job for which benefits are not provided under the Oregon Public Service Retirement Plan pursuant to ORS 238A.070 (2).

(15) "Retired member" means a pension program member who is receiving a pension as provided in ORS 238A.180 to 238A.195.

(16)(a) "Salary" means the remuneration paid to an active member in return for services to the participating public employer, including remuneration in the form of living quarters, board or other items of value, to the extent the remuneration is includable in the employee's taxable income under Oregon law. Salary includes the additional amounts specified in paragraph (b) of this subsection, but does not include the amounts specified in paragraph (c) of this subsection, regardless of whether those amounts are includable in taxable income.

(b) "Salary" includes the following amounts:

(A) Payments of employee and employer money into a deferred compensation plan that are made at the election of the employee.

(B) Contributions to a tax-sheltered or deferred annuity that are made at the election of the employee.

(C) Any amount that is contributed to a cafeteria plan or qualified transportation fringe benefit plan by the employer at the election of the employee and that is not includable in the taxable income of the employee by reason of 26 U.S.C. 125 or 132(f)(4), as in effect on [August 29, 2003] **December 31, 2008**.

(D) Any amount that is contributed to a cash or deferred arrangement by the employer at the election of the employee and that is not included in the taxable income of the employee by reason of 26 U.S.C. 402(e)(3), as in effect on [August 29, 2003] **December 31, 2008**.

(E) Retroactive payments made to an employee to correct a clerical error, pursuant to an award by a court or by order of or pursuant to a conciliation agreement with an administration agency charged with enforcing federal or state law protecting the employee's rights to employment or wages, which shall be allocated to and deemed paid in the periods in which the work was done or in which the work would have been done.

(F) The amount of an employee contribution to the individual account program that is paid by the employer and deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(a).

(G) The amount of an employee contribution to the individual account program that is not paid by the employer under ORS 238A.335.

(H) Wages of a deceased member paid to a surviving spouse or dependent children under ORS 652.190.

(c) "Salary" does not include the following amounts:

(A) Travel or any other expenses incidental to employer's business which is reimbursed by the employer.

(B) Payments made on account of an employee's death.

(C) Any lump sum payment for accumulated unused sick leave, vacation leave or other paid leave.

(D) Any severance payment, accelerated payment of an employment contract for a future period or advance against future wages.

(E) Any retirement incentive, retirement bonus or retirement gratuitous payment.

(F) Payment for a leave of absence after the date the employer and employee have agreed that no future services in a qualifying position will be performed.

(G) Payments for instructional services rendered to institutions of the Department of Higher Education or the Oregon Health and Science University when those services are in excess of full-time employment subject to this chapter. A person employed under a contract for less than 12 months is subject to this subparagraph only for the months covered by the contract.

(H) The amount of an employee contribution to the individual account program that is paid by the employer and is not deducted from the compensation of the employee, as provided under ORS 238A.335 (1) and (2)(b).

(I) Any amount in excess of \$200,000 for a calendar year. If any period over which salary is determined is less than 12 months, the \$200,000 limitation for that period shall be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12. The board shall adopt rules adjusting this dollar limit to incorporate cost-of-living adjustments authorized by the Internal Revenue Service.

(17) "System" means the Public Employees Retirement System.

SECTION 2. ORS 238A.125 is amended to read:

238A.125. (1) Upon retiring at normal retirement age, a vested pension program member shall be paid an annual pension for the life of the member as follows:

(a) For service as a police officer or firefighter, 1.8 percent of final average salary multiplied by the number of years of retirement credit attributable to service as a police officer or firefighter.

(b) For service as other than a police officer or firefighter, 1.5 percent of final average salary multiplied by the number of years of retirement credit attributable to service as other than a police officer or firefighter.

(2) Notwithstanding any provision of ORS 238A.100 to 238A.245, the annual benefit payable to a member under the pension program and under any other tax-qualified defined benefit plan maintained by the participating public employer may not exceed the applicable limitations set forth in 26 U.S.C. 415(b), as in effect on [August 29, 2003] **December 31, 2008**. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

(3) The board shall make no actuarial adjustment in a member's pension calculated under this section by reason of the member's retirement after normal retirement age.

SECTION 3. ORS 238A.150 is amended to read:

238A.150. (1) Notwithstanding any other provision of ORS 238A.100 to 238A.245, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subsequently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to accrue retirement credit, credit toward the probationary period required by ORS 238A.100 and credit toward the vesting requirements of ORS 238A.115 under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing benefits and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on [August 29, 2003] **December 31, 2008**. Benefits and service credit under rules adopted by the board pursuant to this subsection may not exceed benefits and service credit required under federal law for periods of service in the uniformed services.

SECTION 4. ORS 238A.170 is amended to read:

238A.170. (1) An active member of the pension program who is 70-1/2 years of age or older must retire not later than April 1 of the calendar year following the calendar year in which the member terminates employment with all participating public employers. An inactive member of the pension program must retire not later than April 1 of the calendar year following the calendar year in which the member attains 70-1/2 years of age.

(2) Notwithstanding any other provision of ORS 238A.100 to 238A.245, the entire interest of a member of the pension program must be distributed over a time period commencing no later than the required beginning date set forth in subsection (1) of this section, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on [August 29, 2003] **December 31, 2008**. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements.

SECTION 5. ORS 238A.230 is amended to read:

238A.230. (1) If a member of the pension program who is vested dies before the member's effective date of retirement, the Public Employees Retirement Board shall pay the death benefit provided for in this section to the spouse of the member or to any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits.

(2)(a) The death benefit to be paid under this section shall be for the life of the spouse or other person who is constitutionally required to be treated in the same manner as a spouse, and shall be the actuarial equivalent of 50 percent of the pension that would otherwise have been paid to the deceased member.

(b) For the purpose of paragraph (a) of this subsection, the amount of the pension that would otherwise have been paid to the deceased member shall be calculated:

(A) As of the date of death if the member dies after the earliest retirement date for the member under ORS 238A.165; or

(B) As if the member became an inactive member on the date of death and thereafter retired at the earliest retirement date if the member dies before the earliest retirement date for the member under ORS 238A.165.

(3) The death benefit provided under this section is first effective on the first day of the month following the date of death of the member. The surviving spouse or other person entitled to the death benefit may elect to delay payment of the death benefit, but payment must commence no later than December 31 of the calendar year in which the member would have reached 70-1/2 years of age.

(4) Notwithstanding any other provision of ORS 238A.100 to 238A.245, distributions of death benefits under the pension program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on [August 29, 2003] **December 31, 2008**. The board shall adopt rules implementing those minimum distribution requirements.

SECTION 6. ORS 238A.370 is amended to read:

238A.370. Notwithstanding any other provision of ORS 238A.300 to 238A.415, the annual addition to the employee and employer accounts of a member of the individual account program for a calendar year, together with the annual additions to the accounts of the member under any other defined contribution plan maintained by the participating public employer for a calendar year, may not exceed the lesser of \$40,000, or 100 percent of the member's compensation for that calendar year. For purposes of this section, "annual addition" has the meaning given that term in 26 U.S.C. 415(c)(2), as in effect on [August 29, 2003] **December 31, 2008**, and "compensation" has the meaning given the term "participant's compensation" in 26 U.S.C. 415(c)(3), as in effect on [August 29, 2003] **December 31, 2008**. The Public Employees Retirement Board shall adopt rules for the administration of this limitation, including adjustments in the annual dollar limitation to reflect cost-of-living adjustments authorized by the Internal Revenue Service.

SECTION 7. ORS 238A.400 is amended to read:

238A.400. (1) Upon retirement on or after the earliest retirement date, as described in ORS 238A.165, a member of the individual account program shall receive in a lump sum the amounts in the member's employee account, rollover account and employer account to the extent the member is vested in those accounts under ORS 238A.320.

(2) In lieu of a lump sum payment under subsection (1) of this section, a member of the individual account program may elect to receive the amounts in the member's employee account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, in substantially equal installments paid over a period of 5, 10, 15 or 20 years, or over a period that is equal to the anticipated life span of the member as actuarially determined by the Public Employees Retirement Board. Installments may be made on a monthly, quarterly or annual basis. In no event may the period selected by the member exceed the time allowed by the minimum distribution requirements described in subsection (5) of this section. The board shall by rule establish the manner in which installments will be adjusted to reflect investment gains and losses on the unpaid balance during the payout period elected by the member under this subsection. The board by rule may establish minimum monthly amounts payable under this subsection. The board may require that a lump sum payment, or an installment schedule different than the schedules provided for in this subsection, be used to pay the vested amounts in the member's accounts if those amounts are not adequate to generate the minimum monthly amounts specified by the rule.

(3) A member of the individual account program electing to receive installments under subsection (2) of this section must designate a beneficiary or beneficiaries. In the event the member dies before all amounts in the employee and vested employer accounts are paid, all remaining installment payments shall be made to the beneficiary or beneficiaries designated by the member. A beneficiary may elect to receive a lump sum distribution of the remaining amounts.

(4) A member who is entitled to receive retirement benefits under ORS chapter 238 may receive vested amounts in the member's employee account, rollover account and employer account in the

manner provided by this section when the member retires for service under the provisions of ORS chapter 238.

(5) Notwithstanding any other provision of ORS 238A.300 to 238A.415, the entire interest of a member of the individual account program must be distributed over a time period commencing no later than the latest retirement date set forth in ORS 238A.170, and must be distributed in a manner that satisfies all other minimum distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that section, as in effect on [January 1, 2008] **December 31, 2008**. The board shall adopt rules implementing those minimum distribution requirements.

SECTION 8. ORS 238A.410 is amended to read:

238A.410. (1) If a member of the individual account program dies before retirement, the amounts in the member's employee account, rollover account and employer account, to the extent the member is vested in those accounts under ORS 238A.320, shall be paid in a lump sum to the beneficiary or beneficiaries designated by the member for the purposes of this section.

(2) If a member of the individual account program is married at the time of death, or there exists at the time of death any other person who is constitutionally required to be treated in the same manner as a spouse for the purpose of retirement benefits, the spouse or other person shall be the beneficiary for purposes of the death benefit payable under this section unless the spouse or other person consents to the designation of a different beneficiary or beneficiaries before the designation has been made and the consent has not been revoked by the spouse or other person as of the time of the member's death. Consent and revocation of consent must be in writing, acknowledged by a notary public, and submitted to the Public Employees Retirement Board in accordance with rules adopted by the board. If the member's spouse is designated as the member's beneficiary and the marriage of the member and spouse is subsequently dissolved, the former spouse shall be treated as predeceasing the member for purposes of this section, unless the member expressly designates the former spouse as beneficiary after the effective date of the dissolution or the former spouse is required to be designated as a beneficiary under the provisions of ORS 238.465.

(3) For purposes of this section and ORS 238A.400 (3), if a member fails to designate a beneficiary, or if the person or persons designated do not survive the member, the death benefit provided for in this section shall be paid to the following person or persons, in the following order of priority:

(a) The member's surviving spouse or other person who is constitutionally required to be treated in the same manner as a spouse;

(b) The member's surviving children, in equal shares; or

(c) The member's estate.

(4) The entire amount of a deceased member's vested accounts must be distributed by December 31 of the fifth calendar year after the year in which the member died. Notwithstanding any other provision of this chapter, distributions of death benefits under the individual account program must comply with the minimum distribution requirements of 26 U.S.C. 401(a)(9) and the regulations implementing that section, as in effect on [August 29, 2003] **December 31, 2008**. The Public Employees Retirement Board shall adopt rules implementing those minimum distribution requirements.

SECTION 9. ORS 238A.415 is amended to read:

238A.415. (1) Notwithstanding any other provision of ORS 238A.300 to 238A.415, an eligible employee who leaves a qualifying position for the purpose of performing service in the uniformed services, and who subsequently returns to employment with a participating public employer with reemployment rights under federal law, is entitled to credit toward the probationary period required by ORS 238A.300, credit toward the vesting requirements of ORS 238A.320 and contributions under rules adopted by the Public Employees Retirement Board pursuant to subsection (2) of this section.

(2) The board shall adopt rules establishing contributions and service credit for any period of service in the uniformed services by an employee described in subsection (1) of this section. For the purpose of adopting rules under this subsection, the board shall consider and take into account all federal law relating to benefits and service credit for any period of service in the uniformed services, including 26 U.S.C. 414(u), as in effect on [August 29, 2003] **December 31, 2008**. Contributions and service credit under rules adopted by the board pursuant to this subsection may not exceed

contributions and service credit required under federal law for periods of service in the uniformed services.

SECTION 10. ORS 238A.430 is amended to read:

238A.430. (1) To the extent required by law, and except as otherwise provided by rules adopted by the Public Employees Retirement Board under subsection (4) of this section, any portion of a distribution of benefits described in subsection (2) of this section shall, at the election of and in lieu of distribution to the distributee, be paid directly to an eligible retirement plan specified by the distributee.

(2) The provisions of subsection (1) of this section apply to a distribution of any benefit under the pension program or the individual account program except:

(a) A distribution that is one of a series of substantially equal periodic payments made at least annually for the life or life expectancy of the distributee, or for the joint lives or life expectancies of the distributee and a designated beneficiary;

(b) A distribution that is one of a series of substantially equal periodic payments made at least annually for a specified period of 10 years or more; and

(c) A distribution to the extent that the distribution is required under 26 U.S.C. 401(a)(9).

(3) The provisions of subsection (1) of this section apply to any portion of a distribution of benefits under the pension program or the individual account program even though the portion consists of after-tax employee contributions that are not includable in gross income. Any portion of a distribution that consists of after-tax employee contributions that are not includable in gross income may be transferred only to an individual retirement account or annuity described in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution **or defined benefit** plan described in 26 U.S.C. 401(a) or [403(a)] **403(b)** that agrees to account separately for amounts transferred, including accounting separately for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income. The amount transferred shall be treated as consisting first of the portion of the distribution that is includable in gross income, determined without regard to 26 U.S.C. 402(c)(1).

(4) The board shall adopt rules implementing the direct rollover requirements of 26 U.S.C. 401(a)(31) and the regulations implementing that section, and may adopt administrative exceptions to the direct rollover requirements to the extent permitted by 26 U.S.C. 401(a)(31) and the regulations implementing that section.

(5) All references in this section to federal laws and regulations are to the laws and regulations in effect on [August 29, 2003] **December 31, 2008**.

(6) For purposes of this section:

(a) "Distributee" means a member, a member's surviving spouse or a member's alternate payee under ORS 238.465.

(b) "Eligible retirement plan" means:

(A) An individual retirement account described in 26 U.S.C. 408(a);

(B) An individual retirement annuity described in 26 U.S.C. 408(b), other than an endowment contract;

(C) A qualified trust under 26 U.S.C. 401(a), that is a defined contribution **or defined benefit** plan and permits the acceptance of rollover contributions;

(D) An annuity plan described in 26 U.S.C. 403(a);

(E) An eligible deferred compensation plan described in 26 U.S.C. 457(b) that is maintained by an eligible governmental employer described in 26 U.S.C. 457(e)(1)(A) and that agrees to account separately for amounts transferred into such plan from the distributing plan; or

(F) An annuity contract described in 26 U.S.C. 403(b).

SECTION 11. ORS 305.230, as amended by section 1, chapter 45, Oregon Laws 2008, is amended to read:

305.230. (1) Notwithstanding ORS 9.320:

(a) Any person who is qualified to practice law or public accountancy in this state, any person who has been granted active enrollment to practice before the Internal Revenue Service and who

is qualified to prepare tax returns in this state or any person who is the authorized employee of a taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer before a tax court magistrate or the Department of Revenue in any conference or proceeding with respect to the administration of any tax.

(b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, [2007] **2008**, may represent the corporation in any proceeding before a tax court magistrate or the department in the same manner as if the shareholder were a partner and the S corporation were a partnership. The S corporation must designate in writing a tax matters shareholder authorized to represent the S corporation.

(d) An individual who is licensed as a real estate broker or principal real estate broker under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the department in any conference or proceeding with respect to the administration of any ad valorem property tax.

(e) A general partner who has been designated by members of a partnership as their tax matters partner under ORS 305.242 may represent those partners in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(f) Any person authorized under rules adopted by the department may represent a taxpayer before the department in any conference or proceeding with respect to any tax. Rules adopted under this paragraph, to the extent feasible, shall be consistent with federal law that governs representation before the Internal Revenue Service, as federal law is amended and in effect on December 31, [2007] **2008**.

(g) Any person authorized under rules adopted by the tax court may represent a taxpayer in a proceeding before a tax court magistrate.

(2) A person may not be recognized as representing a taxpayer pursuant to this section unless there is first filed with the magistrate or department a written authorization, or unless it appears to the satisfaction of the magistrate or department that the representative does in fact have authority to represent the taxpayer. A person recognized as an authorized representative under rules or procedures adopted by the tax court shall be considered an authorized representative by the department.

(3) A taxpayer represented by someone other than an attorney is bound by all things done by the authorized representative, and may not thereafter claim any proceeding was legally defective because the taxpayer was not represented by an attorney.

(4) Prior to the holding of a conference or proceeding before the tax court magistrate or department, written notice shall be given by the magistrate or department to the taxpayer of the provisions of subsection (3) of this section.

SECTION 12. ORS 305.494, as amended by section 2, chapter 45, Oregon Laws 2008, is amended to read:

305.494. Notwithstanding ORS 9.320, any shareholder of an S corporation as defined in section 1361 of the Internal Revenue Code, as amended and in effect on December 31, [2007] **2008**, may represent the corporation in any proceeding before the Oregon Tax Court in the same manner as if the shareholder were a partner and the S corporation were a partnership.

SECTION 13. ORS 305.690, as amended by section 3, chapter 45, Oregon Laws 2008, is amended to read:

305.690. As used in ORS 305.690 to 305.753, unless the context otherwise requires:

(1) "Biennial years" means the two income tax years of individual taxpayers that begin in the two calendar years immediately following the calendar year in which a list is certified under ORS 305.715.

(2) "Commission" means the Oregon Charitable Checkoff Commission.

(3) "Department" means the Department of Revenue.

(4) "Eligibility roster" means a list, prepared under ORS 305.715 and maintained by the commission in chronological order based on the date of form listing or date of eligibility determination, whichever is later, of charitable and governmental entities seeking inclusion on the Oregon individual income tax return forms.

(5) "Form listed" or "form listing" means being listed on the Oregon individual income tax return form.

(6) "Instruction listing" means being listed on the Department of Revenue instructions for tax return checkoff contribution.

(7) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, [2007] **2008**.

SECTION 14. ORS 307.130, as amended by section 4, chapter 45, Oregon Laws 2008, is amended to read:

307.130. (1) As used in this section:

(a) "Art museum" means a nonprofit corporation organized to display works of art to the public.

(b) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, [2007] **2008**.

(c) "Nonprofit corporation" means a corporation that:

(A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or

(B) Is organized and operated as described under section 501(c) of the Internal Revenue Code.

(d) "Volunteer fire department" means a nonprofit corporation organized to provide fire protection services in a specific response area.

(2) Upon compliance with ORS 307.162, the following property owned or being purchased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

(a) Except as provided in ORS 748.414, only such real or personal property, or proportion thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions.

(b) Parking lots used for parking or any other use as long as that parking or other use is permitted without charge for no fewer than 355 days during the tax year.

(c) All real or personal property of a rehabilitation facility or any retail outlet thereof, including inventory. As used in this subsection, "rehabilitation facility" means either those facilities defined in ORS 344.710 or facilities which provide individuals who have physical, mental or emotional disabilities with occupational rehabilitation activities of an educational or therapeutic nature, even if remuneration is received by the individual.

(d) All real and personal property of a retail store dealing exclusively in donated inventory, where the inventory is distributed without cost as part of a welfare program or where the proceeds of the sale of any inventory sold to the general public are used to support a welfare program. As used in this subsection, "welfare program" means the providing of food, shelter, clothing or health care, including dental service, to needy persons without charge.

(e) All real and personal property of a retail store if:

(A) The retail store deals primarily and on a regular basis in donated and consigned inventory;

(B) The individuals who operate the retail store are all individuals who work as volunteers; and

(C) The inventory is either distributed without charge as part of a welfare program, or sold to the general public and the sales proceeds used exclusively to support a welfare program. As used in this paragraph, "primarily" means at least one-half of the inventory.

(f) The real and personal property of an art museum that is used in conjunction with the public display of works of art or used to educate the public about art, but not including any portion of the art museum's real or personal property that is used to sell, or hold out for sale, works of art, reproductions of works of art or other items to be sold to the public.

(g) All real and personal property of a volunteer fire department that is used in conjunction with services and activities for providing fire protection to all residents within a fire response area.

(h) All real and personal property, including inventory, of a retail store owned by a nonprofit corporation if:

(A) The retail store deals exclusively in donated inventory; and

(B) Proceeds of the retail store sales are used to support a not-for-profit housing program whose purpose is to:

(i) Acquire property and construct housing for resale to individuals at or below the cost of acquisition and construction; and

(ii) Provide loans bearing no interest to individuals purchasing housing through the program.

(3) An art museum or institution shall not be deprived of an exemption under this section solely because its primary source of funding is from one or more governmental entities.

(4) An institution shall not be deprived of an exemption under this section because its purpose or the use of its property is not limited to relieving pain, alleviating disease or removing constraints.

SECTION 15. ORS 307.147, as amended by section 5, chapter 45, Oregon Laws 2008, is amended to read:

307.147. (1) For purposes of this section:

(a) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, [2007] **2008**.

(b) "Nonprofit corporation" means a corporation that:

(A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or

(B) Is organized and operated as described under section 501(c) of the Internal Revenue Code.

(c) "Senior services center" means property that:

(A) Is owned or being purchased by a nonprofit corporation;

(B) Is actually and exclusively used to provide services and activities (including parking) primarily to or for persons over 50 years of age;

(C) Is open generally to all persons over 50 years of age;

(D) Is not used primarily for fund-raising activities; and

(E) Is not a residential or dwelling place.

(2) Upon compliance with ORS 307.162, a senior services center is exempt from ad valorem property taxation.

SECTION 16. ORS 308A.450, as amended by section 6, chapter 45, Oregon Laws 2008, is amended to read:

308A.450. As used in ORS 308A.450 to 308A.465:

(1) "Conservation easement" has the meaning given that term in ORS 271.715.

(2) "Holder" has the meaning given that term in ORS 271.715.

(3) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, [2007] **2008**.

(4) "Lot" has the meaning given that term in ORS 92.010.

(5) "Parcel" has the meaning given that term in ORS 92.010, as further modified by ORS 215.010.

SECTION 17. ORS 310.140, as amended by section 7, chapter 45, Oregon Laws 2008, is amended to read:

310.140. The Legislative Assembly finds that section 11b, Article XI of the Oregon Constitution, was drafted by citizens and placed before the voters of the State of Oregon by initiative petition. Section 11b, Article XI of the Oregon Constitution, uses terms that do not have established legal meanings and require definition by the Legislative Assembly. Section 11b, Article XI of the Oregon Constitution, was amended by section 11 (11), Article XI of the Oregon Constitution. This section is intended to interpret the terms of section 11b, Article XI of the Oregon Constitution, as originally adopted and as amended by section 11 (11), Article XI of the Oregon Constitution, consistent with the intent of the people in adopting these provisions, so that the provisions of section 11b, Article XI of the Oregon Constitution, may be given effect uniformly throughout the State of Oregon, with

minimal confusion and misunderstanding by citizens and affected units of government. As used in the revenue and tax laws of this state, and for purposes of section 11b, Article XI of the Oregon Constitution:

(1) "Actual cost" means all direct or indirect costs incurred by a government unit in order to deliver goods or services or to undertake a capital construction project. The "actual cost" of providing goods or services to a property or property owner includes the average cost or an allocated portion of the total amount of the actual cost of making a good or service available to the property or property owner, whether stated as a minimum, fixed or variable amount. "Actual cost" includes, but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition, permits, engineering, financing, reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirements.

(2) "Assessment for local improvement" means any tax, fee, charge or assessment that does not exceed the actual cost incurred by a unit of government for design, construction and financing of a local improvement.

(3) "Bonded indebtedness" means any formally executed written agreement representing a promise by a unit of government to pay to another a specified sum of money, at a specified date or dates at least one year in the future.

(4) "Capital construction":

(a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent prior to June 20, 1997, means the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, that is expected to have a useful life of more than one year, and includes, but is not limited to:

(A) Acquisition of land, or a legal interest in land, in conjunction with the capital construction of a structure.

(B) Acquisition, installation of machinery or equipment, furnishings or materials that will become an integral part of a structure.

(C) Activities related to the capital construction, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with the construction.

(D) Acquisition of existing structures, or legal interests in structures, in conjunction with the capital construction.

(b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given that term in paragraph (a) of this subsection, except that "capital construction":

(A) Includes public safety and law enforcement vehicles with a projected useful life of five years or more; and

(B) Does not include:

(i) Maintenance and repairs, the need for which could be reasonably anticipated;

(ii) Supplies and equipment that are not intrinsic to the structure; or

(iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, construction, remodeling or renovation of a structure, or the repair of a structure that is required because of damage or destruction of the structure.

(5) "Capital improvements":

(a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any bonded indebtedness approved by electors before December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, means land, structures, facilities, personal property that

is functionally related and subordinate to real property, machinery, equipment or furnishings having a useful life longer than one year.

(b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given that term in paragraph (a) of this subsection, except that "capital improvements":

(A) Includes public safety and law enforcement vehicles with a projected useful life of five years or more; and

(B) Does not include:

(i) Maintenance and repairs, the need for which could be reasonably anticipated;

(ii) Supplies and equipment that are not intrinsic to the structure; or

(iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, construction, remodeling or renovation of a structure, or the repair of a structure that is required because of damage or destruction of the structure.

(6) "Direct consequence of ownership" means that the obligation of the owner of property to pay a tax arises solely because that person is the owner of the property, and the obligation to pay the tax arises as an immediate and necessary result of that ownership without respect to any other intervening transaction, condition or event.

(7)(a) "Exempt bonded indebtedness" means:

(A) Bonded indebtedness authorized by a specific provision of the Oregon Constitution;

(B) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements that was issued as a general obligation of the issuing governmental unit on or before November 6, 1990;

(C) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements that was issued as a general obligation of the issuing governmental unit after November 6, 1990, with the approval of the electors of the issuing governmental unit; or

(D) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements, if the issuance of the bonds is approved by voters on or after December 5, 1996, in an election that is in compliance with the voter participation requirements of section 11 (8), Article XI of the Oregon Constitution.

(b) "Exempt bonded indebtedness" includes bonded indebtedness issued to refund or refinance any bonded indebtedness described in paragraph (a) of this subsection.

(8)(a) "Incurred charge" means a charge imposed by a unit of government on property or upon a property owner that does not exceed the actual cost of providing goods or services and that can be controlled or avoided by the property owner because:

(A) The charge is based on the quantity of the goods or services used, and the owner has direct control over the quantity;

(B) The goods or services are provided only on the specific request of the property owner; or

(C) The goods or services are provided by the government unit only after the individual property owner has failed to meet routine obligations of ownership of the affected property, and such action is deemed necessary by an appropriate government unit to enforce regulations pertaining to health or safety.

(b) For purposes of this subsection, an owner of property may control or avoid an incurred charge if the owner is capable of taking action to affect the amount of a charge that is or will be imposed or to avoid imposition of a charge even if the owner must incur expense in so doing.

(c) For purposes of paragraph (a)(A) of this subsection, an owner of property has direct control over the quantity of goods or services if the owner of property has the ability, whether or not that ability is exercised, to determine the quantity of goods or services provided or to be provided.

(9)(a) "Local improvement" means a capital construction project, or part thereof, undertaken by a local government, pursuant to ORS 223.387 to 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or a part of the improvement:

(A) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties;

(B) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and

(C) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least 10 years.

(b) For purposes of paragraph (a) of this subsection, the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the special benefit.

(10) "Maintenance and repairs, the need for which could be reasonably anticipated":

(a) Means activities, the type of which may be deducted as an expense under the provisions of the federal Internal Revenue Code, as amended and in effect on December 31, [2007] **2008**, that keep the property in ordinarily efficient operating condition and that do not add materially to the value of the property nor appreciably prolong the life of the property;

(b) Does not include maintenance and repair of property that is required by damage, destruction or defect in design, or that was otherwise not reasonably expected at the time the property was constructed or acquired, or the addition of material that is in the nature of the replacement of property and that arrests the deterioration or appreciably prolongs the useful life of the property; and

(c) Does not include street and highway construction, overlay and reconstruction.

(11) "Projected useful life" means the useful life, as reasonably estimated by the unit of government undertaking the capital construction or capital improvement project, beginning with the date the property was acquired, constructed or reconstructed and based on the property's condition at the time the property was acquired, constructed or reconstructed.

(12) "Routine obligations of ownership" means a standard of operation, maintenance, use or care of property established by law, or if established by custom or common law, a standard that is reasonable for the type of property affected.

(13) "Single assessment" means the complete assessment process, including preassessment, assessment or reassessment, for any local improvement authorized by ORS 223.387 to 223.399, or a local ordinance or resolution that provides the procedure to be followed in making local assessments for benefits from a local improvement upon lots that have been benefited by all or part of the improvement.

(14) "Special benefit only to specific properties" shall have the same meaning as "special and peculiar benefit" as that term is used in ORS 223.389.

(15) "Specific request" means:

(a) An affirmative act by a property owner to seek or obtain delivery of goods or services;

(b) An affirmative act by a property owner, the legal consequence of which is to cause the delivery of goods or services to the property owner; or

(c) Failure of an owner of property to change a request for goods or services made by a prior owner of the property.

(16) "Structure" means any temporary or permanent building or improvement to real property of any kind that is constructed on or attached to real property, whether above, on or beneath the surface.

(17) "Supplies and equipment intrinsic to a structure" means the supplies and equipment that are necessary to permit a structure to perform the functions for which the structure was constructed, or that will, upon installation, constitute fixtures considered to be part of the real property that is comprised, in whole or part, of the structure and land supporting the structure.

(18) "Tax on property" means any tax, fee, charge or assessment imposed by any government unit upon property or upon a property owner as a direct consequence of ownership of that property, but does not include incurred charges or assessments for local improvements. As used in this subsection, "property" means real or tangible personal property, and intangible property that is part

of a unit of real or tangible personal property to the extent that such intangible property is subject to a tax on property.

SECTION 18. ORS 310.630, as amended by section 8, chapter 45, Oregon Laws 2008, is amended to read:

310.630. As used in ORS 310.630 to 310.706:

(1) "Contract rent" means rental paid to the landlord for the right to occupy a homestead, including the right to use the personal property located therein. "Contract rent" does not include rental paid for the right to occupy a homestead that is exempt from taxation, unless payments in lieu of taxes of 10 percent or more of the rental exclusive of fuel and utilities are made on behalf of the homestead. "Contract rent" does not include advanced rental payments for another period and rental deposits, whether or not expressly set out in the rental agreement, or payments made to a nonprofit home for the elderly described in ORS 307.375. If a landlord and tenant have not dealt with each other at arm's length, and the Department of Revenue is satisfied that the contract rent charged was excessive, it may adjust the contract rent to a reasonable amount for purposes of ORS 310.630 to 310.706.

(2) "Department" means the Department of Revenue.

(3) "Fuel and utility payments" includes payments for heat, lights, water, sewer and garbage made solely to secure those commodities or services for the homestead of the taxpayer. "Fuel and utility payments" does not include telephone service.

(4) "Gross rent" means contract rent paid plus the fuel and utility payments made for the homestead in addition to the contract rent, during the calendar year for which the claim is filed.

(5) "Homestead" means the taxable principal dwelling located in Oregon, either real or personal property, rented by the taxpayer, and the taxable land area of the tax lot upon which it is built.

(6) "Household" means the taxpayer, the spouse of the taxpayer and all other persons residing in the homestead during any part of the calendar year for which a claim is filed.

(7) "Household income" means the aggregate income of the taxpayer and the spouse of the taxpayer who reside in the household, that was received during the calendar year for which the claim is filed. "Household income" includes payments received by the taxpayer or the spouse of the taxpayer under the federal Social Security Act for the benefit of a minor child or minor children who are members of the household.

(8) "Income" means "adjusted gross income" as defined in the federal Internal Revenue Code, as amended and in effect on December 31, [2007] **2008**, even when the amendments take effect or become operative after that date, relating to the measurement of taxable income of individuals, estates and trusts, with the following modifications:

(a) There shall be added to adjusted gross income the following items of otherwise exempt income:

(A) The gross amount of any otherwise exempt pension less return of investment, if any.

(B) Child support received by the taxpayer.

(C) Inheritances.

(D) Gifts and grants, the sum of which are in excess of \$500 per year.

(E) Amounts received by a taxpayer or spouse of a taxpayer for support from a parent who is not a member of the taxpayer's household.

(F) Life insurance proceeds.

(G) Accident and health insurance proceeds, except reimbursement of incurred medical expenses.

(H) Personal injury damages.

(I) Sick pay which is not included in federal adjusted gross income.

(J) Strike benefits excluded from federal gross income.

(K) Worker's compensation, except for reimbursement of medical expense.

(L) Military pay and benefits.

(M) Veteran's benefits.

(N) Payments received under the federal Social Security Act which are excluded from federal gross income.

- (O) Welfare payments, except as follows:
 - (i) Payments for medical care, drugs and medical supplies, if the payments are not made directly to the welfare recipient;
 - (ii) In-home services authorized and approved by the Department of Human Services; and
 - (iii) Direct or indirect reimbursement of expenses paid or incurred for participation in work or training programs.
- (P) Nontaxable dividends.
- (Q) Nontaxable interest not included in federal adjusted gross income.
- (R) Rental allowance paid to a minister that is excluded from federal gross income.
- (S) Income from sources without the United States that is excluded from federal gross income.
- (b) Adjusted gross income shall be increased due to the disallowance of the following deductions:
 - (A) The amount of the net loss, in excess of \$1,000, from all dispositions of tangible or intangible properties.
 - (B) The amount of the net loss, in excess of \$1,000, from the operation of a farm or farms.
 - (C) The amount of the net loss, in excess of \$1,000, from all operations of a trade or business, profession or other activity entered into for the production or collection of income.
 - (D) The amount of the net loss, in excess of \$1,000, from tangible or intangible property held for the production of rents, royalties or other income.
 - (E) The amount of any net operating loss carryovers or carrybacks included in federal adjusted gross income.
 - (F) The amount, in excess of \$5,000, of the combined deductions or other allowances for depreciation, amortization or depletion.
 - (G) The amount added or subtracted, as required within the context of this section, for adjustments made under ORS 316.680 (2)(d) and 316.707 to 316.737.
 - (c) "Income" does not include any of the following:
 - (A) Any governmental grant which must be used by the taxpayer for rehabilitation of the homestead of the taxpayer.
 - (B) The amount of any payments made pursuant to ORS 310.630 to 310.706.
 - (C) Any refund of Oregon personal income taxes that were imposed under ORS chapter 316.
 - (9) "Payments for heat" means those payments made to secure the commodities or services to be used as the principal source of heat for the homestead of the taxpayer and includes payments for natural gas, oil, firewood, coal, sawdust, electricity, steam or other materials that are capable of use as a primary source of heat for the homestead.
 - (10) "Statement of gross rent" means a declaration by the applicant, under penalties of false swearing, that the amount of contract rent and fuel and utility payments designated is the actual amount both incurred and paid during the year for which elderly rental assistance is claimed.
 - (11) "Taxpayer" means an individual who is a resident of this state on December 31 of the year for which elderly rental assistance is claimed and whose homestead, as of the same December 31 and during all or a portion of the year ending on the same December 31, is rented and while rented is the subject, directly or indirectly, of property tax levied by this state or a political subdivision or of payments made in lieu of taxes.

SECTION 19. ORS 310.800, as amended by section 9, chapter 45, Oregon Laws 2008, is amended to read:

- 310.800. (1) As used in this section:
- (a) "Authorized representative" means a senior citizen who is authorized by a tax-exempt entity to perform charitable or public service on behalf of a senior citizen who has entered into a contract under subsection (2) of this section.
 - (b) "Homestead" means an owner-occupied principal residence.
 - (c) "Senior citizen" means a person who is 60 years of age or older.
 - (d) "Tax-exempt entity" means an entity that is exempt from federal income taxes under section 501(c) of the Internal Revenue Code, as amended and in effect on December 31, [2007] 2008.

(e) "Taxing unit" means any county, city or common or union high school district, community college service district or community college district within this state with authority to impose ad valorem property taxes.

(2) A tax-exempt entity may establish a property tax work-off program pursuant to which a senior citizen may contract to perform charitable or public service in consideration of payment of property taxes extended against the homestead of the senior citizen and billed to the senior citizen. For purposes of ORS chapters 316 and 656, and notwithstanding ORS 670.600 or other law, a senior citizen who enters into a contract under this subsection shall be considered an independent contractor and not a worker or employee with respect to the services performed pursuant to the contract. Nothing in this section precludes a taxing unit from being considered an employer, for purposes of unemployment compensation under ORS chapter 657, of a senior citizen who enters into a contract under this section.

(3) A taxing unit may enter into an agreement with a tax-exempt entity that has established a property tax work-off program. Pursuant to the agreement the taxing unit may accept, as volunteer and public service, the services of a senior citizen who has entered into a contract described in subsection (2) of this section or an authorized representative.

(4) A taxing unit may provide funds or make grants to any tax-exempt entity that has established a property tax work-off program for use to carry out the program.

SECTION 20. ORS 311.689, as amended by section 10, chapter 45, Oregon Laws 2008, is amended to read:

311.689. (1) Notwithstanding ORS 311.668 or any other provision of ORS 311.666 to 311.701, if the individual or, in the case of two or more individuals electing to defer property taxes jointly, all of the individuals together, or the spouse who has filed a claim under ORS 311.688, has federal adjusted gross income that exceeds \$32,000 for the tax year that began in the previous calendar year, then for the tax year next beginning, the amount of taxes for which deferral is allowed shall be reduced by \$0.50 for each dollar of federal adjusted gross income in excess of \$32,000.

(2) Prior to June 1 of each year, and notwithstanding ORS 314.835, the Department of Revenue shall review returns filed under ORS chapter 314 and 316 to determine if subsection (1) of this section is applicable for a homestead for the tax year next beginning. If subsection (1) of this section is applicable, the department shall notify by mail the taxpayer or spouse electing deferral, and the taxes otherwise to be deferred for the tax year next beginning shall be reduced as provided in subsection (1) of this section or, if federal adjusted gross income in excess of \$32,000 exceeds the amount of property taxes by a factor of two, the property taxes shall not be deferred.

(3) If the taxpayer or spouse does not file a return for purposes of ORS chapters 314 and 316 and the department has reason to believe that the federal adjusted gross income of the taxpayer or spouse exceeds \$32,000 for the tax year that began in the previous calendar year, the department shall notify by mail the taxpayer or spouse electing deferral. If, within 30 days after the notice is mailed, the taxpayer or spouse does not file a return under ORS chapter 314 or 316 or otherwise satisfy the department that federal adjusted gross income does not exceed \$32,000, the department shall again notify the taxpayer or spouse, and the taxes otherwise to be deferred for the tax year next beginning shall not be deferred.

(4) For tax years beginning on or after July 1, 2002, the federal adjusted gross income limit set forth in subsections (1) to (3) of this section shall be recomputed by multiplying \$32,000 by the indexing factor described in ORS 311.668 (7)(a)(A), and rounding the amount so computed to the nearest multiple of \$500.

(5) Nothing in this section shall affect the continued deferral of taxes that have been deferred for tax years beginning prior to the tax year next beginning or the right to deferral of taxes for a tax year beginning after the tax year next beginning if subsection (1) is not applicable for that tax year for the homestead.

(6) As used in this section, "federal adjusted gross income" means federal adjusted gross income of the individual or, in the case of two or more individuals electing to defer property tax jointly, the combined federal adjusted gross income of the individuals, or the federal adjusted gross income of

the spouse who has filed a claim under ORS 311.688, all as determined for the tax year beginning in the calendar year prior to which a determination is required under subsection (2) of this section. "Federal adjusted gross income" shall be determined under the Internal Revenue Code, as amended and in effect on December 31, [2007] **2008**, without any of the additions, subtractions or other modifications or adjustments required under ORS chapter 314 or 316.

(7)(a) If, after an initial determination under this section has been made by the department, upon audit or examination or otherwise, it is discovered that the taxpayer or spouse had federal adjusted gross income in excess of the limitation provided under subsection (1) of this section, the department shall determine the amount of taxes deferred that should not have been deferred and give notice to the taxpayer or spouse of the amount of taxes that should not have been deferred. The provisions of ORS chapters 305 and 314 shall apply to a determination of the department under this section in the same manner as those provisions are applicable to an income tax deficiency. The amount of deferred taxes that should not have been deferred shall bear interest from the date paid by the department until paid at the rate established under ORS 305.220 for deficiencies. A deficiency shall not be assessed under this section if notice required under this section is not given to the taxpayer or spouse within three years after the date that the department has paid the deferred taxes to the county. Upon payment of the amount assessed as deficiency, and interest, the department shall execute a release in the amount of the payment and the release shall be conclusive evidence of the removal and extinguishment of the lien under ORS 311.666 to 311.701 to the extent of the payment.

(b) If, after an initial determination under this section has been made by the department, upon claim for refund, audit or examination or otherwise, it is discovered that the taxpayer or spouse had federal adjusted gross income in the amount of or less than the limitation provided under subsection (1) of this section, the department shall determine the amount of taxes deferred that should have been deferred and give notice to the taxpayer or spouse of the amount of taxes that should have been deferred. The provisions of ORS chapters 305 and 314 shall apply to a determination of the department under this section in the same manner as those provisions are applicable to an income tax refund. The amount of the taxes that should have been deferred shall bear interest from the date paid by the taxpayer to the county at the rate established under ORS 305.220 for refunds until paid. Claim for refund under this paragraph must be filed within three years after the earliest date that the taxpayer or spouse is notified by the department that the taxes are not deferred.

(8) This section applies to all tax-deferred property, notwithstanding that election to defer taxes is made under ORS 311.666 to 311.701 before or after October 3, 1989.

SECTION 21. ORS 314.011, as amended by section 11, chapter 45, Oregon Laws 2008, is amended to read:

314.011. (1) As used in this chapter, unless the context requires otherwise, "department" means the Department of Revenue.

(2) As used in this chapter:

(a) Any term has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined in this chapter.

(b) Except where the Legislative Assembly has provided otherwise, a reference to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect[:]

[(A)] on December 31, [2007; or] **2008**.

[(B) *If related to the definition of taxable income, as applicable to the tax year of the taxpayer.*]

(c) With respect to ORS 314.105, 314.256 (relating to proxy tax on lobbying expenditures), 314.260 (1)(b), 314.265 (1)(b), 314.302, 314.306, 314.330, 314.360, 314.362, 314.385, 314.402, 314.410, 314.412, 314.525, 314.742 (7), 314.750 and 314.752 and other provisions of this chapter, [*except those described in paragraph (b) of this subsection,*] any reference to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended on or before December 31, [2007] **2008**, even when the

amendments take effect or become operative after that date, except where the Legislative Assembly has specifically provided otherwise.

(3) Insofar as is practicable in the administration of this chapter, the department shall apply and follow the administrative and judicial interpretations of the federal income tax law. When a provision of the federal income tax law is the subject of conflicting opinions by two or more federal courts, the department shall follow the rule observed by the United States Commissioner of Internal Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of the department to audit the return of any taxpayer or to determine any fact relating to the tax liability of any taxpayer.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section refer to rules or regulations prescribed by the Secretary of the Treasury, then such rules or regulations shall be regarded as rules adopted by the department under and in accordance with the provisions of this chapter, whenever they are prescribed or amended.

(5)(a) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section are later corrected by an Act or a Title within an Act of the United States Congress designated as an Act or Title making technical corrections, then notwithstanding the date that the Act or Title becomes law, those portions of the Internal Revenue Code, as so corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section and shall take effect, unless otherwise indicated by the Act or Title (in which case the provisions shall take effect as indicated in the Act or Title), as if originally included in the provisions of the Act being technically corrected. If, on account of this subsection, any adjustment is required to an Oregon return that would otherwise be prevented by operation of law or rule, the adjustment shall be made, notwithstanding any law or rule to the contrary, in the manner provided under ORS 314.135.

(b) As used in this subsection, "Act or Title" includes any subtitle, division or other part of an Act or Title.

SECTION 22. ORS 315.004, as amended by section 12, chapter 45, Oregon Laws 2008, is amended to read:

315.004. (1) Except when the context requires otherwise, the definitions contained in ORS chapters 314, 316, 317 and 318 are applicable in the construction, interpretation and application of the personal and corporate income and excise tax credits contained in this chapter.

(2)(a) For purposes of the tax credits contained in this chapter, any term has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined for purposes of construing, interpreting and applying the credit.

(b) With respect to the tax credits contained in this chapter, any reference to the laws of the United States or to the Internal Revenue Code means the laws of the United States relating to income taxes or the Internal Revenue Code as they are amended on or before December 31, [2007] **2008**, even when the amendments take effect or become operative after that date.

(3) Insofar as is practicable in the administration of this chapter, the Department of Revenue shall apply and follow the administrative and judicial interpretations of the federal income tax law. When a provision of the federal income tax law is the subject of conflicting opinions by two or more federal courts, the department shall follow the rule observed by the United States Commissioner of Internal Revenue until the conflict is resolved. Nothing contained in this section limits the right or duty of the department to audit the return of any taxpayer or to determine any fact relating to the tax liability of any taxpayer.

(4) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section refer to rules or regulations prescribed by the Secretary of the Treasury, then such rules or regulations shall be regarded as rules adopted by the department under and in accordance with the provisions of this chapter, whenever they are prescribed or amended.

(5)(a) When portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section are later corrected by an Act or a Title within an Act of the United

States Congress designated as an Act or Title making technical corrections, then notwithstanding the date that the Act or Title becomes law, those portions of the Internal Revenue Code, as so corrected, shall be the portions of the Internal Revenue Code incorporated by reference as provided in subsection (2) of this section and shall take effect, unless otherwise indicated by the Act or Title (in which case the provisions shall take effect as indicated in the Act or Title), as if originally included in the provisions of the Act being technically corrected. If, on account of this subsection, any adjustment is required to an Oregon return that would otherwise be prevented by operation of law or rule, the adjustment shall be made, notwithstanding any law or rule to the contrary, in the manner provided under ORS 314.135.

(b) As used in this subsection, "Act or Title" includes any subtitle, division or other part of an Act or Title.

SECTION 23. ORS 316.012, as amended by section 13, chapter 45, Oregon Laws 2008, is amended to read:

316.012. Any term used in this chapter has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or the term is specifically defined in this chapter. Except where the Legislative Assembly has provided otherwise, any reference in this chapter to the laws of the United States or to the Internal Revenue Code refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect[.]

[*(1)*] on December 31, [*2007*; or] **2008**.

[*(2)* *If related to the definition of taxable income, as applicable to the tax year of the taxpayer.*]

SECTION 24. ORS 317.010, as amended by section 14, chapter 45, Oregon Laws 2008, is amended to read:

317.010. As used in this chapter, unless the context requires otherwise:

(1) "Centrally assessed corporation" means every corporation the property of which is assessed by the Department of Revenue under ORS 308.505 to 308.665.

(2) "Department" means the Department of Revenue.

(3)(a) "Consolidated federal return" means the return permitted or required to be filed by a group of affiliated corporations under section 1501 of the Internal Revenue Code.

(b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5).

(4) "Doing business" means any transaction or transactions in the course of its activities conducted within the state by a national banking association, or any other corporation; provided, however, that a foreign corporation whose activities in this state are confined to purchases of personal property, and the storage thereof incident to shipment outside the state, shall not be deemed to be doing business unless such foreign corporation is an affiliate of another foreign or domestic corporation which is doing business in Oregon. Whether or not corporations are affiliated shall be determined as provided in section 1504 of the Internal Revenue Code.

(5) "Excise tax" means a tax measured by or according to net income imposed upon national banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing and business corporations for the privilege of carrying on or doing business in this state.

(6) "Financial institution" or "financial corporation" means a bank or trust company organized under ORS chapter 707, national banking association or production credit association organized under federal statute, building and loan association, savings and loan association, mutual savings bank, and any other corporation whose principal business is in direct competition with national and state banks.

(7) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise, refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect[.]

[*(a)*] on December 31, [*2007*; or] **2008**.

[*(b)* *If related to the definition of taxable income, as applicable to the tax year of the taxpayer.*]

(8) "Oregon taxable income" means taxable income, less the deduction allowed under ORS 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and ORS 317.650 to 317.665.

(9) "Oregon net loss" means taxable loss, except as otherwise provided with respect to insurers in subsection (11) of this section and ORS 317.650 to 317.665.

(10) "Taxable income or loss" means the taxable income or loss determined, or in the case of a corporation for which no federal taxable income or loss is determined, as would be determined, under chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States relating to the determination of taxable income or loss of corporate taxpayers, with the additions, subtractions, adjustments and other modifications as are specifically prescribed by this chapter except that in determining taxable income or loss for any year, no deduction under ORS 317.476 or 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of income from transactions or activities carried on both within and without the state) applies, to derive taxable income or loss, the following shall occur:

(a) From the amount otherwise determined under this subsection, subtract nonbusiness income, or add nonbusiness loss, whichever is applicable.

(b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon apportionment percentage defined under ORS 314.280, 314.650 or 314.670, whichever is applicable. The resulting product shall be Oregon apportioned income or loss.

(c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to 314.645. The resulting figure is "taxable income or loss" for those corporations carrying on taxable transactions or activities both within and without Oregon.

(11) As used in ORS 317.122 and 317.650 to 317.665, "insurer" means any domestic, foreign or alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its attorney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or interinsurance exchange. However, "insurer" does not include title insurers or health care service contractors operating pursuant to ORS 750.005 to 750.095.

SECTION 25. ORS 317.097, as amended by section 6, chapter 29, Oregon Laws 2008, and section 15, chapter 45, Oregon Laws 2008, is amended to read:

317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall be allowed to a lending institution in an amount equal to the difference between:

(a) The amount of finance charge charged by the lending institution during the taxable year at an annual rate less than the market rate for a loan that is made before January 1, 2020, that complies with the requirements of this section; and

(b) The amount of finance charge that would have been charged during the taxable year by the lending institution for the loan for housing construction, development, acquisition or rehabilitation measured at the annual rate charged by the lending institution for nonsubsidized loans made under like terms and conditions at the time the loan for housing construction, development, acquisition or rehabilitation is made.

(2) The maximum amount of credit for the difference between the amounts described in subsection (1)(a) and (b) of this section may not exceed four percent of the average unpaid balance of the loan during the tax year for which the credit is claimed.

(3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth

succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(4) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan shall be:

(a) Made to an individual or individuals who own the dwelling, participate in an owner-occupied community rehabilitation program and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income;

(b)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition or rehabilitation of housing; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the:

(i) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Full amount of savings from the reduced interest rate provided by the lending institution is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project;

(c)(A) Made to a qualified borrower;

(B) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed; or

(d)(A) Made to a qualified borrower;

(B) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and

(C) Accompanied by a written certification by the Housing and Community Services Department that the housing preserved by the loan:

(i) Is or will be occupied by households earning less than 80 percent of the area median income; and

(ii) Has a rent assistance contract with the United States Department of Housing and Urban Development or the United States Department of Agriculture that will be maintained by the qualified borrower.

(5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this section shall be treated the same as a loan that meets the criteria stated in subsection (4) of this section.

(6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan also shall be accompanied by a written certification by the Housing and Community Services Department that:

(a) Specifies the period, as determined by the Housing and Community Services Department, during which the loan is eligible for the tax credit under subsection (1) of this section; and

(b) States that the loan is within the limitation imposed by subsection (7) of this section.

(7)(a) The Housing and Community Services Department may certify loans that are eligible under subsection (4) of this section if the total credits attributable to all loans eligible for credits under subsection (1) of this section and then outstanding do not exceed \$17 million for any fiscal year. In making loan certifications, the Housing and Community Services Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax credits in those areas of the state that are determined by the State Housing Council to have the greatest need for affordable housing.

(b) The certification under subsection (6) of this section shall state the period for which the credit will be allowed, which may not exceed 20 years.

(8) The applicant's receipt of a credit under section 42 of the Internal Revenue Code does not affect the credit allowed under this section.

(9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a qualified assignee with or without the lending institution's retaining servicing of the loan so long as a designated lending institution maintains records annually verified by a loan servicer that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

(10) As used in this section:

(a) "Annual rate" means the yearly interest rate specified on the note, and not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed by the lending institution, and other charges related to the cost of obtaining credit.

(c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008, any mortgage banking company that maintains an office in this state or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, [2007] **2008**.

(f) "Preservation project" means housing that was previously developed as affordable housing with a contract for rent assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity.

(g) "Qualified assignee" means any investor participating in the secondary market for real estate loans.

(h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan described in subsection (4) of this section. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(i) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.

(11) Notwithstanding any other provision of law, a lending institution that is a community development corporation organized under the Oregon Nonprofit Corporation Law may transfer any part or all of any tax credit arising under subsection (1) of this section to one or more other lending institutions that are stockholders or members of the community development corporation or that otherwise participate through the community development corporation in the making of one or more loans that generate the tax credit under subsection (1) of this section.

(12) The lending institution shall file an annual statement with the Housing and Community Services Department, specifying that it has conformed with all requirements imposed by law to qualify for this tax credit.

(13) The Housing and Community Services Department and the Department of Revenue may adopt rules to carry out the provisions of this section.

SECTION 26. ORS 458.670, as amended by section 16, chapter 45, Oregon Laws 2008, is amended to read:

458.670. As used in this section and ORS 458.675 to 458.700, unless the context requires otherwise:

(1) "Account holder" means a resident of this state who:

(a) Is 12 years of age or older;

(b) Is a member of a lower income household; and

(c) Has established an individual development account with a fiduciary organization.

(2) "Fiduciary organization" means an organization selected under ORS 458.695 to administer state moneys directed to individual development accounts and that is:

(a) A nonprofit, fund raising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, [2007] **2008**; or

(b) A federally recognized Oregon Indian tribe that is located, to a significant degree, within the boundaries of this state.

(3) "Financial institution" means:

(a) An organization regulated under ORS chapters 706 to 716, 722 or 723; or

(b) In the case of individual development accounts established for the purpose described in ORS 458.685 (1)(c), a financial institution as defined in ORS 348.841.

(4) "Individual development account" means a contract between an account holder and a fiduciary organization, for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into the financial institution by the fiduciary organization, to allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.

(5) "Lower income household" means a household having an income equal to or less than 80 percent of the median household income for the area as determined by the Housing and Community Services Department. In making the determination, the department shall give consideration to any data on area household income published by the United States Department of Housing and Urban Development.

(6) "Resident of this state" has the meaning given that term in ORS 316.027.

SECTION 27. ORS 657.010, as amended by section 17, chapter 45, Oregon Laws 2008, is amended to read:

657.010. As used in this chapter, unless the context requires otherwise:

(1) "Base year" means the first four of the last five completed calendar quarters preceding the benefit year.

(2) "Benefits" means the money allowances payable to unemployed persons under this chapter.

(3) "Benefit year" means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consecutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of the individual's last preceding benefit year except that the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the Director of the Employment Department may, by regulation, prescribe.

(5) "Contribution" or "contributions" means the taxes, as defined in subsection (13) of this section, that are the money payments required by this chapter, or voluntary payments permitted, to be made to the Unemployment Compensation Trust Fund.

(6) "Educational institution," including an institution of higher education as defined in subsection (9) of this section, means an institution:

(a) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher;

(b) That is accredited, registered, approved, licensed or issued a permit to operate as a school by the Department of Education or other government agency, or that offers courses for credit that are transferable to an approved, registered or accredited school;

(c) In which the course or courses of study or training that it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and

(d) In which the course or courses of study or training are offered on a regular and continuing basis.

(7) "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

(8) "Hospital" means an organization that has been licensed, certified or approved by the Department of Human Services as a hospital.

(9) "Institution of higher education" means an educational institution that:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program that is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(10) "Internal Revenue Code" means the federal Internal Revenue Code, as amended and in effect on December 31, [2007] **2008**.

(11) "Nonprofit employing unit" means an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(12) "State" includes, in addition to the states of the United States of America, the District of Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be considered a state on and after the day on which the United States Secretary of Labor first approves the Virgin Islands' law under section 3304(a) of the Federal Unemployment Tax Act as amended by Public Law 94-566.

(13) "Taxes" means the money payments to the Unemployment Compensation Trust Fund required, or voluntary payments permitted, by this chapter.

(14) "Valid claim" means any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150.

(15) "Week" means any period of seven consecutive calendar days ending at midnight, as the director may, by regulation, prescribe. The director may by regulation prescribe that a "week" shall be "in," "within," or "during" the calendar quarter that includes the greater part of such week.

SECTION 28. (1) **Except as provided in subsections (2) and (3) of this section, the amendments to statutes by sections 1 to 27 of this 2009 Act apply to transactions or activities occurring on or after January 1, 2009, in tax years beginning on or after January 1, 2009.**

(2) **The effective and applicable dates, and the exceptions, special rules and coordination with the Internal Revenue Code, as amended, relative to those dates, contained in the Economic Stimulus Act of 2008 (P.L. 110-185), the Heroes Earnings Assistance and Relief Tax Act of 2008 (P.L. 110-245), the Food, Conservation, and Energy Act of 2008 (P.L. 110-246), the Housing and Economic Recovery Act of 2008 (P.L. 110-289), the Emergency Economic Stabilization Act of 2008, the Energy Improvement and Extension Act of 2008 and the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (P.L. 110-343) and the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and other federal law amending the Internal Revenue Code apply for Oregon personal income and corporate excise and income tax purposes, to the extent they can be made applicable, in the same manner as they are applied under the Internal Revenue Code and related federal law.**

(3)(a) **If a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 2009, and the deficiency or any portion thereof is attributable to any retroactive treatment under the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 317.010, 317.097, 458.670 and 657.010 by sections 11 to 27 of this 2009 Act, then any interest or penalty assessed under ORS chapter 305, 314, 315, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled.**

(b) If a refund is due any taxpayer for a tax year beginning before January 1, 2010, and the refund or any portion thereof is due the taxpayer on account of any retroactive treatment under the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 317.010, 317.097, 458.670 and 657.010 by sections 11 to 27 of this 2009 Act, then notwithstanding ORS 305.270 or 314.415 or other law, the refund or portion thereof shall be paid without interest.

(c) Any changes required because of the amendments to ORS 305.230, 305.494, 305.690, 307.130, 307.147, 308A.450, 310.140, 310.630, 310.800, 311.689, 314.011, 315.004, 316.012, 317.010, 317.097, 458.670 and 657.010 by sections 11 to 27 of this 2009 Act for a tax year beginning before January 1, 2010, shall be made by filing an amended return within the time prescribed by law.

(d) If a taxpayer fails to file an amended return under paragraph (c) of this subsection, the Department of Revenue shall make any changes under paragraph (c) of this subsection on the return to which the changes relate within the period specified for issuing a notice of deficiency or claiming a refund as otherwise provided by law with respect to that return, or within one year after a return for a tax year beginning on or after January 1, 2009, and before January 1, 2010, is filed, whichever period expires later.

SECTION 29. ORS 316.013 is amended to read:

316.013. Unless the context requires otherwise and notwithstanding ORS 316.012, whenever, in the calculation of Oregon taxable income, reference to the taxpayer's federal adjusted gross income is required to be made, the taxpayer's federal adjusted gross income shall be as determined under the provisions of the Internal Revenue Code as they may be in effect [*for the tax year of the taxpayer*] **on December 31, 2008**, without any of the additions, subtractions or other modifications or adjustments required under this chapter and other laws of this state applicable to personal income taxation.

SECTION 30. ORS 317.018 is amended to read:

317.018. It is the intent of the Legislative Assembly:

(1) To make the Oregon corporate excise tax law, insofar as it relates to the measurement of taxable income, identical to the provisions of the federal Internal Revenue Code, as in effect and applicable [*for the tax year of the taxpayer*] **on December 31, 2008**, to the end that taxable income of a corporation for Oregon purposes is the same as it is for federal income tax purposes, subject to Oregon's jurisdiction to tax, and subject to the additions, subtractions, adjustments and modifications contained in this chapter.

(2) To achieve the results desired under subsection (1) of this section by application of the various provisions of the federal Internal Revenue Code relating to the definitions for corporations, of income, deductions, accounting methods, accounting periods, taxation of corporations, basis and other pertinent provisions relating to gross income. It is not the intent of the Legislative Assembly to adopt federal Internal Revenue Code provisions dealing with the computation of tax, tax credits or any other provisions designed to mitigate the amount of tax due.

(3) To impose on each corporation doing business within this state an excise tax for the privilege of carrying on or doing that business measured by its federal taxable income as adjusted in this chapter.

SECTION 31. This 2009 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fifth Legislative Assembly adjourns sine die.

Passed by House February 4, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate February 12, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
Secretary of State