

Enrolled House Bill 2452

Sponsored by COMMITTEE ON REVENUE (at the request of Department of Revenue)

CHAPTER

AN ACT

Relating to tax requirements applicable to pass-through entities; creating new provisions; and repealing ORS 314.760.

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

SECTION 1. As used in sections 1 to 4 of this 2005 Act:

(1) “Distributive income” means the net amount of income, gain, deduction or loss of a pass-through entity for the tax year of the entity.

(2) “Lower-tier pass-through entity” means a pass-through entity, an ownership interest of which is held by another pass-through entity.

(3) “Nonresident” means:

(a) An individual who is not a resident of this state;

(b) A corporation, partnership or other business entity that has a commercial domicile, as defined in ORS 314.610, that is outside this state; or

(c) A trust that is not a resident trust or qualified funeral trust under ORS 316.282.

(4) “Owner” means a person that owns an interest in a pass-through entity.

(5) “Pass-through entity” means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions or credits from the entity for federal income tax purposes. “Pass-through entity” does not include any trust, as defined in ORS 128.005, except a form of trust that the Department of Revenue has determined by rule to have been established or maintained primarily for tax avoidance purposes.

(6) “Upper-tier pass-through entity” means a pass-through entity that owns an interest in another pass-through entity.

SECTION 2. (1) A pass-through entity having distributive income attributable to Oregon sources shall file a composite return of personal income and corporate income and excise tax on behalf of owners that elect to be included in the composite return filed by the entity.

(2) A pass-through entity shall file a composite return under this section only if one or more owners that are nonresidents make an election under this section.

(3) The election shall be made by owners in the time, form and manner prescribed by the Department of Revenue.

(4) The composite return shall report the share of distributive income of each electing owner, the share of distributive income from Oregon sources of each electing owner, the amount of tax withheld under section 3 of this 2005 Act on behalf of each electing owner and any other information required by the department. The composite return shall be filed with the department in the time, form and manner prescribed by the department.

(5)(a) An electing owner may file a nonresident personal income tax return or a corporate excise or income tax return for the tax year of the electing owner in which the electing owner's share of distributive income reported on the composite return is properly reportable.

(b) An electing owner that files a return under this subsection shall receive credit for any tax paid on behalf of the owner by the pass-through entity.

SECTION 3. (1) A pass-through entity shall withhold tax as prescribed in this section if:

(a) The pass-through entity has distributive income from Oregon sources; and

(b) One or more owners of the entity are nonresidents and do not have other Oregon source income.

(2) For each taxpayer described in subsection (1)(b) of this section who is subject to tax under ORS chapter 316, the entity shall withhold tax at the highest marginal rate applicable for the tax year under ORS 316.037. The withheld tax shall be computed based on the taxpayer's share of the entity's distributive income from Oregon sources for the entity's tax year.

(3) For each corporation described in subsection (1)(b) of this section, the entity shall withhold tax at the rate applicable for the tax year under ORS 317.061 and 318.020. The tax shall be computed based on the corporation's share of the entity's distributive income from Oregon sources for the entity's tax year.

(4) A pass-through entity that is required to withhold tax under this section shall file a withholding return or report with the Department of Revenue setting forth the share of Oregon source distributive income of each nonresident owner, the amount of tax withheld under this section and any other information required by the department. The return shall be filed with the department on the form and in the time and manner prescribed by the department. Taxes withheld under this section shall be paid to the department in the time and manner prescribed by the department.

(5) A pass-through entity that is required to withhold tax under this section shall furnish a statement to each owner on whose behalf tax is withheld. The statement shall state the amount of tax withheld on behalf of the owner for the tax year of the entity. The statement shall be made on a form prescribed by the department and shall contain any other information required by the department.

(6) The department shall apply taxes withheld under this section by a lower-tier pass-through entity on distributions to an upper-tier pass-through entity to the withholding required by the upper-tier pass-through entity under this section.

(7) A pass-through entity is liable to the State of Oregon for amounts of tax required to be withheld and paid under this section. A pass-through entity is not liable to an owner of the pass-through entity for amounts required to be withheld under this section that were paid to the department as prescribed in this section.

SECTION 4. (1) A pass-through entity is not required to withhold taxes under section 3 of this 2005 Act on behalf of a nonresident owner if:

(a) The nonresident owner has a share of distributive income that is less than \$1,000 for the tax year of the pass-through entity;

(b) Withholding is not required pursuant to a rule adopted under this section;

(c) The owner makes a timely election under section 2 of this 2005 Act to have taxes on the owner's distributive share of income paid and reported on the composite return described in section 2 of this 2005 Act, and the composite return is filed by the pass-through entity;

(d) The pass-through entity is a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code, that is treated as a partnership for federal tax purposes and that agrees to file an annual information return on the form and in the time and manner prescribed by the Department of Revenue and containing the information required by the department, including but not limited to the name, address and taxpayer identification number of each person with an ownership interest in the entity that results in the person receiving Oregon source income of more than \$500; or

(e) The nonresident owner files an affidavit with the department, in the form and manner prescribed by the department, under which the nonresident owner agrees to allow the department and the courts of this state to have personal jurisdiction over the nonresident owner for the purpose of determining and collecting any taxes imposed under ORS chapter 316, 317 or 318 that are attributable to the nonresident owner's distributive share of taxable income from the pass-through entity. The department may reject the affidavit if the taxpayer fails to comply with Oregon law requiring the filing of a tax return or the payment of any tax.

(2) The department may adopt rules setting forth circumstances under which pass-through entities are not required to withhold taxes under section 3 of this 2005 Act.

SECTION 5. Sections 1 to 4 of this 2005 Act apply to tax years beginning on or after January 1, 2006.

SECTION 6. Sections 1 to 4 of this 2005 Act are added to and made a part of ORS chapter 314.

SECTION 7. A nonresident shareholder of an S corporation or a nonresident partner may not join in the filing of an Oregon multiple nonresident S corporation or partnership return for a tax year beginning on or after January 1, 2006.

SECTION 8. ORS 314.760 is repealed on January 2, 2008.

SECTION 9. Nothing in the repeal of ORS 314.760 by section 8 of this 2005 Act affects the filing of an Oregon multiple nonresident S corporation or partnership return for a tax year beginning before January 1, 2006.

Passed by House March 23, 2005

Received by Governor:

Repassed by House June 15, 2005

.....M.,....., 2005

Approved:

.....
Chief Clerk of House

.....M.,....., 2005

.....
Speaker of House

.....
Governor

Passed by Senate June 13, 2005

Filed in Office of Secretary of State:

.....
President of Senate

.....M.,....., 2005

.....
Secretary of State