

tax year 2003.

(2) *Gross receipts from deferred gain on exchanges of property.* In regard to exchanges of property qualifying for the deferral of tax on the gain or loss under section ORS 317.327 and sections 1031 or 1033 of the Internal Revenue Code, "gross receipts" means the fair market value of the property acquired on the date of exchange.

Example 2: Major Manufacturing Corporation (MMC) exchanges tangible personal property used in its business activity in Oregon for property of like kind in California during tax year 2002. The fair market value of the acquired property is \$800,000 on the date of the exchange. The gross receipts from the exchange of property are not excluded from MMC's "sales" under ORS 314.665(6)(a) or (6)(c). MMC's sales factor numerator and denominator for tax year 2002 must include \$800,000, the gross receipts from the exchange as measured in 2002.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.665 & 317.327
Hist: REV 6-2004, f. 7-30-04, cert. ef. 7-31-04

**150-314.665(6)
Sales Factor; Inclusion of Income from Disposition of Intangible Assets; Determination of Primary Business Activity**

(1) As provided in ORS 314.665, paragraph (6), the sales factor may or may not include gross receipts or net gains from the disposition of intangible assets, depending on what the taxpayer's "primary business activity" is.

(2) If a taxpayer files a separate Oregon excise tax return, the primary business activity is determined for that separate corporation. If the taxpayer files a consolidated Oregon return, the primary business activity is determined for the entire unitary group.

(3) A taxpayer's "primary business activity" is determined for a particular tax year based on consideration of criteria including, but not limited to, the following:

- (a) The stated business in the articles of incorporation.
- (b) The business category entered on the Securities and Exchange Commission Form 10-K of a publicly held corporation.
- (c) The business designation in a "mission statement."
- (d) The business activity with the greatest average investment in tangible and intangible assets from the balance sheet for the tax return.
- (e) The business designation in advertising.
- (f) The business with the greatest amount of net sales of products and services as reported under Generally Accepted Accounting Principles.
- (g) The business activity from which working capital is transferred to investments in intangible assets and to which the working capital and income is returned.

Example 1: A Corporation (A) is headquartered in Seattle Washington and manufactures and sells household appliances. A has a warehouse in Portland, Oregon. It has large amounts of temporary excess working capital each year during the summer after big spring sales and before buying raw materials in the fall. Employees of A at its headquarters invest the temporary excess working capital in short-term debt instruments that are bought and sold each week for a three month period before the invested principal and any earnings are returned to the working capital of the manufacturing business. The income from the investment activity is business income. B's primary business activity is the production and sale of tangible personal property, not the purchase of, holding of, dealing in or sales of intangible assets. A must include the net gain from sales of short-term debt instruments in its sales factor.

(4) When some criteria for a corporation indicate the primary business activity is dealing in intangible assets while other criteria indicate the primary business activity is the production or sale of tangible property or the provision of services, more weight will be given to criteria reflecting what the corporation actually did during the tax year as opposed to what the corporation did in the past or represents itself as doing.

Example 2: For the current tax year, over 60 percent of B Corporation's (B's) assets are invested in intangible oil royalty rights and over 70 percent of B's net sales come from the sale of intangible oil royalty rights. The SIC code on its last 15 corporate tax returns has been for "Oil Royalty Traders." B's 25 years old articles of incorporation and its current advertising indicate that B is in the business of selling petroleum products. B's primary business activity is the acquisition, holding and disposal of intangible assets and it must include the gross receipts from oil royalties and the sale of oil royalty rights in the sales factor on its Oregon return.

(5) The provisions of this rule do not apply to financial corporations subject to the provisions of OAR 150-314.280-(N).

Stat. Auth.: ORS 305.100
Stats. Implemented.: ORS 314.665
Hist.: REV 12-2000, f. 12-29-00, cert. ef. 12-31-00

**150-314.665(6)(a)
Sales Factor for Affiliated Group: Inclusion of Gross Receipts From Disposition or Holding of Intangible Assets**

(1) If a taxpayer's primary business activity, as defined in OAR 150-314.665(6), produces income from the disposition (*i.e.*, sale, exchange, redemption) or holding of intangible assets, and the taxpayer files an Oregon consolidated return (See OAR 150-317.715(3)(b)), the gross receipts from the disposition or holding of the intangible assets must be included in the sales factor numerator and denominator if:

(a) The taxpayer is the only member of a unitary affiliated group that is subject to Oregon taxation of income; or

(b) The taxpayer is one of a number of members of a unitary affiliated group subject to Oregon taxation of income, and the unitary group as a whole is engaged in a primary business activity that produces income from the disposition or holding of intangible assets.

(2) If the taxpayer filing an Oregon consolidated return is a member of a unitary group that includes one or more corporations not subject to Oregon taxation, and the nonsubject corporations' primary business activity produces income from the disposition or holding of intangible assets, the gross receipts from that activity must be excluded from the sales factor.

Stat. Auth.: ORS 305.100
Stats. Implemented.: ORS 314.665
Hist.: REV 1-2001, f. 7-31-01, cert. ef. 8-1-01

**150-314.665(6)(b)
Sales Factor: Definition of Net Gains**

For purposes of including net gains from the sale, exchange, or redemption of intangible assets not derived from the taxpayer's primary business activity in the sales factor under ORS 314.665(6)(b), "net gains" means the excess of gains over losses from asset sales. If the net of gains and losses results in a negative amount, the correct amount for factor purposes is zero.

Example 1: Heavy Equipment Manufacturing Corporation (Heavy) sold two short-term investments in commercial paper during calendar tax year 2000. The first sale resulted in a net gain of \$100,000, and the second resulted in a net loss of \$30,000. The income from selling the commercial paper was not derived from Heavy's primary business activity of manufacturing, and Heavy must include net gain of \$70,000 (\$100,000 gain less \$30,000 loss) in the sales factor.

Example 2: Assume the same set of facts as in Example 1, except that the first sale resulted in a \$100,000, loss and the second sale resulted in a \$30,000 gain. The net result of sales of intangible assets not derived from the taxpayer's primary business activity is a negative amount, so no amount of net gain from sale of intangible assets is included in Heavy's sales factor.

Stat. Auth.: ORS 305.100
Stats. Implemented.: ORS 314.665
Hist.: REV 1-2001, f. 7-31-01, cert. ef. 8-1-01

**150-314.665(6)(c)
Sales Factor: Definition of Gross Receipts**

This rule adopts the model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states. This rule is adopted to further the purposes of ORS 305.655, Article I, section 2 and 314.605 to 314.670.

(1) "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction which produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Except as provided in ORS 314.665(6)(a), gross receipts, even if business income, generally do not include such items as:

- (a) Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of Deposit or similar marketable instrument;
- (b) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan;
- (c) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;
- (d) Damages and other amounts received as the result of litigation;
- (e) Property acquired by an agent on behalf of another;
- (f) Tax refunds and other tax benefit recoveries;
- (g) Pension reversions;
- (h) Contributions to capital (except for sales of securities by securities dealers);
- (i) Income from forgiveness of indebtedness; or
- (j) Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

(2) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of ORS 314.610 through 314.670.

(3) This rule applies to all tax years open to adjustment on or after December 31, 2003.

Stat. Auth.: ORS 305.100, 305.655, Article I, section 2, 314.605 - 314.670
 Stats. Implemented: ORS 315.164
 Hist.: REV 4-2003, f. & cert. ef. 12-31-03

**150-314.670-(A)
 Modified Factors for Publishing**

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material. The rule adopts a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of these items by the states.

(1) In General. Except as specifically modified by this rule, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity will be determined pursuant to ORS 314.650 through 314.665 and the rules thereunder.

(2) Definitions. The following definitions are applicable to the terms contained in this rule.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

(b) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material will be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither of such terms will mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" will include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(3) Apportionment of Business Income.

(a) The Property Factor.

(A) Property Factor Denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business will be included in the denominator of the property factor.

(B) Property Factor Numerator.

(i) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period will be included in the numerator of the property factor.

(ii) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period will be included in the numerator of the property factor in the ratio that the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere. The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state will be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state will be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(iii) Outer-jurisdictional property will be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the total original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state.

Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of \$4,000,000 and such mobile property was used in this state for 95 days.

The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state: \$3,000,000
 Value of mobile property:
 $95/365$ (or $.260274$) \times \$4,000,000: \$1,041,096
 Value of leased satellite property used in-state:
 $.02 \times$ \$100,000,000: \$2,000,000
 Total value of property attributable to state: \$6,041,096
 Total property factor %: $\$6,041,096/\$500,000,000$: 1.2082%

(b) The Payroll Factor. The payroll factor will be determined in accordance with OAR 150-314.660 and the rules thereunder.