

Larry's Tax Law

## **Oregon Lawmakers Amend the Understatement of Taxable Income Penalty Regime (House Bill 2488)**

By Larry Brant on 4.30.15 | Posted in Legislation, Oregon Tax Laws, Tax Laws, Tax Penalties

### **CURRENT LAW**

In accordance with ORS § 314.402, the Oregon Department of Revenue (“DOR”) shall impose a penalty on a taxpayer when it determines the taxpayer “substantially” understated taxable income for any taxable year. The penalty is 20% of the amount of tax resulting from the understated taxable income. ORS § 314.402(1). For this purpose, a “substantial” understatement of taxable income for any taxable year exists if it equals or exceeds \$15,000. ORS § 314.402(2) (a). In the case of a corporation (excepting S corporations and personal holding companies), the threshold is increased to \$25,000. ORS § 314.402(2)(b). As perplexing as it may be, these thresholds (established in 1987) are not indexed for inflation.

### **HOUSE BILL 2488**

House Bill 2488 changes the penalty terrain in Oregon. It was unanimously passed by the Oregon House of Representatives on March 2, 2015. The bill made its way to the Oregon Senate where it was unanimously passed on April 8, 2015. The Governor signed House Bill 2488 into law on April 16, 2015. Although it becomes law on the 91<sup>st</sup> day following the end of the current legislative session, taxpayers and practitioners need to be aware, the new law applies to tax years beginning on or after January 1, 2015.

### **MECHANICS OF THE NEW LAW**

House Bill 2488 changes the penalty regime from a penalty for a “substantial” understatement of taxable income to a penalty for a “substantial” understatement of net tax.

A “substantial” understatement of net tax occurs if there is an understatement of the tax due on or measured by net income that exceeds: (i) \$2400 for personal income tax; and (ii) \$3500 for corporate tax (other than S corporations and personal holding companies). If there is a “substantial” understatement of net tax, the penalty to be imposed is 20% of the underpayment of tax. Unlike the current law, the new law indexes the penalty for inflation.

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### **REASONS FOR CHANGE**

The concept of taxable income, for purposes of Oregon taxation, is based upon federal taxable income. Consequently, according to the DOR, taxpayers who file part-year resident returns may understate Oregon taxable income without being subjected to the penalty if federal taxable income is accurately reported. Basing the penalty trigger on the understatement of Oregon tax eliminates this loophole. This appears to be a simple “fix” to the perceived problem.

### **CONCLUSION**

As stated above, while the new penalty becomes law in Oregon on the 91<sup>st</sup> day following the end of the current legislative session, it will apply to all tax years beginning on or after January 1, 2015. Lack of knowledge about this law change may create a trap for the unwary. Consequently, a good understanding of the new penalty regime is warranted.

For copy of enrolled House Bill 2488, please see link [here](#).

**Tags:** House Bill 2488, Oregon Department of Revenue, Tax Penalties