Business Law 2018—Law Practice in the Modern (and Digital) Age

Cosponsored by the Business Law Section

Friday, November 2, 2018
8 a.m.–4:30 p.m.

5.5 General CLE credits and 1 Ethics credit
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Justin Denton, *Tonkon Torp LLP, Portland*
James Hein, *Tonkon Torp LLP, Portland*
Benjamin Kearney, *Arnold Gallagher PC, Eugene*
David Post, *Miller Nash Graham & Dunn LLP, Portland*
Kara Ellis Tatman, *Perkins Coie LLP, Portland*
Tyler Volm, *Black Helterline LLP, Portland*

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   — Molly Wilcox, *Perkins Coie LLP, Portland, Oregon*

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   — Peter Threlkel, *Director, Oregon Secretary of State Corporation Division, Salem, Oregon*
   — Jaime Weddle, *Oregon Secretary of State Corporation Division, Salem, Oregon*
SCHEDULE

7:30  Registration

8:00  Welcome and Opening Remarks

Joe Bailey, Perkins Coie LLP, Portland
Molly Wilcox, Perkins Coie LLP, Portland

9:00  Accounting for Lawyers 101
Ana Andueza, CFO Advisory Services, Portland
Daniel O’Leary, Geffen Mesher & Co, Portland

9:45  Break

10:00 Investor Ready? How to Prepare Your Clients for Success in Raising Capital
Meredith Fox, White Summers Caffee & James LLP, Portland

10:30 The Economies of MeToo: Good Policies Are Good Business
Anthony Kuchulis, Barran Liebman LLP, Portland

11:00 Ethical and Risk Management Issues for Business Lawyers
Mark Fucile, Fucile & Reising LLP, Portland

12:00 Lunch

1:15  Down the Rabbit Hole: Tax Update 2018
Valerie Sasaki, Samuels Yoelin Kantor LLP, Portland
Caitlin Wong, Samuels Yoelin Kantor LLP, Portland

2:00 Structuring Equity Compensation in Limited Liability Companies and Partnerships
Lauren DeMasi, Lane Powell PC, Portland

2:45  Break

3:00  Negotiating and Drafting Common M&A Post-Closing Adjustment Provisions
Thomas Tongue, Schwabe Williamson & Wyatt PC, Portland

3:45  Regulatory Matters for Business Lawyers—A View from the Corporation Division of the Secretary of State’s Office
Moderator: John Thomas, Perkins Coie LLP, Portland
Peter Threlkel, Director, Oregon Secretary of State Corporation Division, Salem
Jaime Weddle, Oregon Secretary of State Corporation Division, Salem

4:30  Adjourn
Ana Andueza, CFO Advisory Services, Portland.

Joe Bailey, Perkins Coie LLP, Portland. Mr. Bailey’s practice focuses on corporate finance and mergers and acquisitions for companies at all stages of the growth cycle, ranging from startups to large public companies. He helps clients access the capital markets, raise capital through equity investments by venture capital, private equity, and angel investors, and negotiate debt financings with banks and other lenders. His mergers and acquisitions practice includes structuring and executing acquisitions, dispositions, divestitures, and recapitalizations. In addition to his work with public and private companies, Mr. Bailey represents investors in debt and equity financings. He is a member of the Oregon State Bar Securities Regulation Section Executive Committee.

Lauren DeMasi, Lane Powell PC, Portland. Ms. DeMasi is a business lawyer and partnership tax advisor who focuses her practice on corporate finance, mergers and acquisitions, and advising investment funds. She advises investment funds and private fund managers and institutional investors on regulatory compliance, structure, and tax considerations. She also represents fund managers in connection with sales of their investment management businesses and investments by seed capital providers, and she provides strategic advice to funds of funds and institutional investors on their investment activities. She is a member of the Oregon State Bar Business Law Section.

Meredith Fox, White Summers Caffee & James LLP, Portland. Ms. Fox’s practice focuses on corporate formation, governance, tax planning for corporations and partnerships, and a wide range of business transactions including mergers and acquisitions, financings, and general business matters. She holds an LL.M. in Taxation from the University of San Diego School of Law, with an emphasis on domestic and international corporate tax planning.

Mark Fucile, Fucile & Reising LLP, Portland. Mr. Fucile handles professional responsibility, regulatory, and attorney-client privilege issues for lawyers, law firms, and corporate and governmental legal departments throughout the Northwest. Mr. Fucile is a member of the Idaho State Bar Section on Professionalism & Ethics, past member of the Oregon State Bar Legal Ethics Committee, and past chair of the Washington State Bar Association Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mr. Fucile writes the Ethics & the Law column for the WSBA NWLawyer and the Ethics Focus column for the Multnomah Bar’s Multnomah Lawyer, and he is a regular contributor on legal ethics and law firm risk management to the WSBA NWSidebar blog. He is a member of the American Institute of Certified Public Accountants, the Oregon Society of Certified Public Accountants, and the Portland Tax Forum board.

Anthony Kuchulis, Barran Liebman LLP, Portland. Mr. Kuchulis focuses his practice on representing employers and management in employment litigation. He also regularly advises on employment law issues, including compliance with state and local rules and ordinances, representation before board and regulatory agencies, and when necessary defending or litigating claims through trial.

Daniel O’Leary, Geffen Mesher & Co, Portland. Mr. O’Leary is a CPA who specializes in S- and C-corporation taxation, multi-state and multi-national tax compliance, income tax planning for high-net worth individuals, and representing taxpayers under examination by tax authorities. He is a member of the American Institute of Certified Public Accountants, the Oregon Society of Certified Public Accountants, and the Portland Tax Forum board.
Valerie Sasaki, Samuels Yoelin Kantor LLP, Portland. Ms. Sasaki focuses her practice on resolving complex tax matters for clients with state and federal revenue agencies. Ms. Sasaki has served as Adjunct Professor at Lewis & Clark Law School, Portland Community College, and University of Oregon School of Law. She regularly speaks and writes on tax topics of interest to her. Many of her recent articles are accessible at https://samuelslaw.com/blog. Ms. Sasaki holds an LL.M. in Taxation from the University of Washington School of Law. She is admitted to practice in Oregon, Washington, Idaho, and Utah.

John Thomas, Perkins Coie LLP, Portland. Mr. Thomas focuses his practice on counseling and representing clients in mergers and acquisitions, corporate financings, including underwritten public securities offerings and private placements, joint ventures and strategic alliances, restructurings and spin-offs, purchases, sales, and leases of aircraft and aviation finance, commercial transactions and contracts, periodic reporting and securities law compliance, and corporate governance. He is a frequent speaker and author of articles on a variety of primarily public company topics, including securities law and corporate governance issues. He coauthored The Public Company Handbook: A Corporate Governance and Disclosure Guide for Directors and Executives (Perkins Coie LLP 2016).

Peter Threlkel, Director, Oregon Secretary of State Corporation Division, Salem.

Thomas Tongue, Schwabe Williamson & Wyatt PC, Portland. Mr. Tongue has extensive experience advising closely held and family-owned businesses on corporate governance, mergers and acquisitions, and corporate finance. Also, his deep understanding of how private equity investments are structured in both corporations and limited liability companies helps his clients secure capital from private equity firms, venture capital firms, strategic investors, and private investors. He is a member of the Oregon State Bar Business Law Section Executive Committee. Mr. Tongue is admitted to practice law in Oregon and Washington.

Jaime Weddle, Oregon Secretary of State Corporation Division, Salem.

Molly Wilcox, Perkins Coie LLP, Portland. Ms. Wilcox has experience counseling buyers and sellers in a variety of mergers and acquisition transactions, minority investments and corporate reorganizations. She has also advised public and private companies on corporate formation and governance matters, employee equity offerings, and securities law disclosures. Ms. Wilcox is admitted to practice law in California.

Caitlin Wong, Samuels Yoelin Kantor LLP, Portland. Ms. Wong focuses her practice on taxation, estate planning, trust and estate administration, business formation and transactions, tax controversy, business succession planning and wealth preservation, and trust and estate (fiduciary) litigation. She represents corporate, business, and individual clients on a wide range of business and commercial disputes. She is a member of the Oregon State Bar Taxation Section Executive Committee, the OSB Solo and Small Firm Section Executive Committee, the Portland Tax Forum board, the OSB Estate Planning and Administration Section, the Multnomah Bar Association, Oregon Women Lawyers, the Oregon Asian Pacific American Bar Association, and the American Bar Association. Ms. Wong is a coauthor of the “Principal and Income” chapter of Administering Trusts in Oregon (OSB Legal Pubs 2018) and has authored articles and presented in the areas of tax, estate planning and administration, and business law. Ms. Wong is admitted to practice law in Oregon and Washington and before the U.S. Tax Court.
Chapter 1


Joe Bailey
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Why Use Electronic Signatures?

- Reduction of paperwork.
- Ability to sign documents quickly and easily.
- Ability to track signatures, ensure all parties are signing the same document.
- Can be more secure than paper signatures.
General Legal Overview – Key Takeaways

**General Rule:**

- If a law requires a signature, an electronic signature generally will suffice if the *intent is to create an enforceable contract*.
- If the law requires a record to be in writing, an electronic record will suffice.
- No specific technology required.

General Legal Overview – Key Takeaways Continued

**Exceptions to General Rule:**

- Land and family
- Certain UCC sections, other than sections covering:
  - The waiver or renunciation of a claim or right after a breach of contract.
- Sale of goods
- Leases
Federal Law (E-SIGN)

- Electronic Signatures in Global and National Commerce Act (or “E-SIGN”) enacted in 2000.
- Authorized replacing writings with electronic records and broad adoption of electronic signatures.
- Requires affirmative “opt-in” by parties, but “opt-in” may be demonstrated by surrounding circumstances.

State Law – Oregon (UETA)

- In 1999 the National Conference of Commissioners on Uniform State Laws proposed the Uniform Electronic Transactions Act (or “UETA”)
- The UETA was subsequently adopted by 47 states, Puerto Rico, the U.S. Virgin Island and the District of Columbia, including Oregon (ORS Chapter 84).
- **General Rule:** Whenever a written document or signature is required by law, an electronic record or e-signature can satisfy the legal requirement if the parties have agreed to conduct business electronically.
Oregon Law – What is an Electronic Signature?

- **“Electronic Signature”**: an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. ORS 84.001
- **“Electronic Record”**: a record created, generated, sent, communicated, received or stored by electronic means. ORS 84.001
- **Implication**: Terms are broadly defined and provide great leeway to utilize various forms of electronic signatures and allows businesses to adopt electronic records policy rather than maintain paper records.

UETA Outliers – New York, Illinois, Washington

- Although New York, Illinois and Washington have not adopted UETA, all three states have adopted statutes to protect the legal enforceability of electronic signatures.
- States have limited reverse preemption of E-SIGN so long as they:
  - Describe the use or acceptance of electronic records or signatures to establish the legal effect, validity or enforceability of contracts;
  - Adopt rules that are consistent with E-SIGN; and
  - Do not favor a specific technology.
Validity of E-Signatures Worldwide

Over 60 countries around the world have established their own set of laws and standards regarding electronic signatures and digital transactions. As worldwide adoption of electronic signatures continues to rise, the number of countries that employ such regulations will also grow.

Examples of International Laws

**European Union:** Electronic Identification and Electronic Trust Services (eIDAS) Regulation No. 910/2014, Effective July 1, 2016
- Applies to all European Union Member States

**Canada:** Personal Information Protection and Electronic Documents Act (PIPEDA)

**India:** Information Technology Act (IT Act)

**China:** Electronic Signature Law of the People’s Republic of China.
Practice tips

- Developing an eSignature policy can eliminate some uncertainty with electronic signatures.
- Consider including an electronic signatures clause in contractual agreements.

Developing an Effective eSign Policy

- What *types of documents* will be signed electronically?
- What *kinds of signatures* will be permitted?
- Where are you doing business and what is the *local law* on electronic signatures.
Developing an eSign Policy – Potential Provisions

- Consider using US governing law to further reduce risk. Provide in policy that the use of e-signatures for international transactions must be approved by the legal or other applicable department.
- Ensure standard document management and retention.
- Update templates with express consent to do business electronically.

Sample Contract Clause: Electronic Signatures

1. **Electronic Signatures.** Each party agrees that the Electronic Signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

2. “Electronic Signature” means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.
Questions?

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Chapter 2

Presentation Slides: Accounting 101 for Lawyers

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Accounting 101 for Lawyers

Daniel O’Leary, Geffen Mesher
Ana Andueza, CFO Advisory Services

Today’s Presentation

* Introductions
* Basic Accounting Concepts: What are key financial statements and terms?
* Accounting Personnel: Who is who?
* What do you wish lawyers knew?
Concept: Accounting Methods

- **Cash Basis**
  - Recognizes revenues when a company receives cash
  - Recognizes expenses when a company makes cash disbursements
  - Primarily used by small businesses and most individual taxpayers

- **Accrual Basis**
  - Revenues are recorded when earned and expenses are recorded when incurred. Expenses are “matched” to associated revenue
  - It is irrelevant when cash is received or paid
  - Generally Accepted Accounting Principles (GAAP) require the use of the accrual basis of accounting

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Concept: Key Financial Documents

- **Balance Sheets**
- **Income Statements**
- **Statement of Cash Flows**
**Assets = Liabilities + Owner’s Equity**

- **Assets:** An economic resource that is expected to benefit the business in the future; can be both tangible and intangible; it is something that has value, and the business owns or has control of.
- **Liabilities:** It is something the business owes and represents the creditor’s claim on the business assets.
- **Owner’s Equity:** The owner’s claim to the residual assets of the business; owner’s equity represents the amount of assets that are left over after the company has paid its liabilities. Also, net worth.

**MUST BALANCE!!!!**

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**Concept: Key Financial Documents**

**Balance Sheets**

\[
\text{Assets} = \text{Liabilities} + \text{Owner’s Equity}
\]

**Revenues – Expenses = Net Income**

- **Revenues:** Earnings that result from the delivery of goods or services to customers. Equity is increased by revenues.
- **Expenses:** The costs of selling goods or services. Expenses are the opposite of revenues and therefore, decrease equity.
- **Net Income:** At the end of each period, net income is closed to equity. If the difference is positive (resulting in income), it will increase equity. If the difference is negative (resulting in loss), it will decrease equity.
Concept: Key Financial Documents
Statement of Cash Flows

Summarizes information on inflows and outflows for a period of time

* Operating Activities: Cash related to transactions related to net income
* Investing Activities: Cash related to purchase and sale of non-operating assets
* Financing Activities: Cash related to transactions with creditors and owners

Concept: Key Financial Documents
“Financial Statements”

* How are financial statements used: Is the company viable?
  * Liquidity concerns: Does the company have the cash to meet its obligations?
  * Solvency concerns: Can the company pay its debts when due?
  * Profitability concerns: Does the company make more than it spends?
* Notes to the financial statements
* Role of management in preparation of financial statements
* What are internal controls and how do they relate to financial statements?
Earnings Per Share = Net Income / Weighted Average Number of Shares Outstanding
- Earnings per share (EPS) is the portion of a company's profit allocated to each outstanding share of common stock. Earnings per share serves as an indicator of a company's profitability.

EBITDA = Earnings Before Interest, Taxes, Depreciation and Amortization
- EBITDA is generally used to eliminate the effects of financing and accounting decisions when comparing company and industry profitability.

Gross Profit = Sales – Cost of Goods Sold
- Gross profit is the profit a company makes after deducting the costs associated with making and selling its products, or the costs associated with providing its services.

Concept: Standards
- Accounting Standards
- Audit Standards
- How does this get messed up?
What is GAAP? The actual determining of appropriate accounting treatment is based upon a compiled set of rules and regulations that have been set forth by the Financial Accounting Standards Board. These rules and regulations are generally referred to as Generally Accepted Accounting Principles (GAAP). On July 1, 2009, the FASB issued the codification of U.S. GAAP.

What is IFRS? International Financial Reporting Standards (IFRS) are the standards created by the International Accounting Standards Board (IASB) for use in a variety of international countries.

Which rules are Oregon companies likely to use?

Accountants performing audits of public companies must adhere to the standards of the Public Company Accounting Oversight Board (PCAOB). The PCAOB was created by the Sarbanes Oxley Act of 2002 (SOX) to oversee the audits of public companies and broker-dealers.

Accountants performing audits of non-public companies must adhere to the auditing standards set forth by the AICPA Auditing Standards Board (ASB).

The combined rules established by the PCAOB and the ASB are generally referred to as Generally Accepted Auditing Standards (GAAS).
Common things to look out for when evaluating financial statements:

- Mismatch of Revenues and Expenses to Boost (or Reduce) Earnings
- Impact on tax returns
- Changes in Estimates
- Changes in methodology for Revenue Recognition
- Inventory and Accounts Receivable Management

Dramatis Personae (who does what):

Chief Financial Officer
VP Finance/Treasurer
Controller
Accounting Manager
Credit and Collections Manager
Internal Audit Manager
Purchasing Manager

Credit to www.bizmanuale.com for nice chart
**Contract CFO**

- **Role:** Work with small and mid-size businesses to manage growth and achieve goals
- **Education:** Most are CPAs, so a four year degree, sometimes combined with a master’s degree (e.g., MST); CPA Exam; experience working with business finances
- **What do they do:** Work to understand the financial aspects of a business; Serve an internal function to improve profitability; help a company develop strategic plans and achieve the company’s financial goals.

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**Enrolled Agents**

- **Role:** Represent Taxpayers before the IRS
- **Education:** Typically not a four year degree; application and testing; 72 hours of continuing education / 3 years
- **What do they do:** (Per National Association of Enrolled Agents): Represent taxpayers before IRS and are authorized to advise, represent, and prepare tax returns for individuals, partnerships, corporations, estates, trusts, and any entities with tax-reporting requirements.
Bookkeepers

- Role: Records transactions like sales, purchases, payroll, collections, etc.
- Education: Typically not a four year degree, usually associates degree
- What do they do: Process paperwork for business transactions (often uses software like Quickbooks); Journal Entries; generate financial statements in coordination with, and usually overseen by, CPA.

Certified Public Accountants

- Role (Per American Institute of Certified Public Accountants): “A trusted financial advisor who helps individuals, businesses, and other organizations plan and reach their financial goals.”
- Education: Four year degree, sometimes combined with a master’s degree (e.g., MST); CPA Exam
- What do they do: Work related to bookkeeping, preparation of government audits, taxes, and financial planning. Work with tax returns and analyze financial information to ensure taxes are paid on time. Audit accounts for errors, misinformation, fraud, and overspending.


**Tax Attorney**

- Role: Integrate business and financial advice and provide oversight on legal actions related to tax for clients.
- Education: Four year degree, three years of law school, often one additional year for masters in tax. Bar exam.
- What do they do? Manage legal aspects of financial proceedings, including complex audit representation; tax appeals; business planning including merger and acquisition advising.

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**What do you wish Lawyers knew?**

- About Accounting?
- About working with Tax CPAs?
- About working with Finance Professionals?
- Tips to work with Finance Professionals?
Questions?

Thank you!

For questions, please contact me!

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Chapter 3
Investor Ready? How to Prepare Your Clients for Success in Raising Capital

Meredith Fox
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Presentation Slides: Investor Ready? How to Prepare Your Clients for Success in Raising Capital. .......................... 3–3
1. **Pillars of a Viable Investor-Ready Startup**
   a. Entity
   b. Corporate Records and Record Keeping
   c. IP/Asset Protection
   d. Type of Funding

2. **Entity**
   a. Does choice of entity matter?
      i. Yes!
      ii. How do their goals affect choice of entity?
         A. Short term – may choose a pass-through option for founders
         B. Long-term – will want to convert at the financing
   b. Why do most investors prefer a corporate structure?
      i. Tax Issues
         1. Pass through entity –
            a. Can affect personal returns every year, will be taxed on the income of the LLC even if no cash is distributed to investor to pay their taxes
            b. Certain deductions not available to LLC interests
            c. Some VCs restricted from investing in pass-through companies if they have tax-exempt partners that want to avoid active trade or business income
            d. Reinvestment requirements of LLCs
         ii. Complications and Complexity
            1. Requires service providers to have greater understanding in how the company works internally –
            2. Operating Agreements get more and more complex the more classes of equity the company has
      iii. Equity Compensation
            1. More difficult, complex and expensive to draft and administer equity compensation in LLC
            2. Treated differently than standard options
      iv. Familiarity
            1. Honestly, investors like to invest in what they are familiar with – Delaware C corporation registered to do business in the state
            2. Clear statutory laws govern them
               a. Delaware General Corporation Law, Title 8
               b. Chancery Court
            3. Documents are more clear than operating agreements and subscription agreement

3. **Clean Corporate Record**
   a. Diligence: The most arduous part of the financing process, and the part where your client wants to throw in the towel!
Chapter 3—Investor Ready? How to Prepare Your Clients for Success in Raising Capital

b. How do we prevent deal fatigue and potential deal-killing issues?
   i. Organizational Documents
      1. Capitalization at outset should be prepared for funding structure
         a. Give higher amount of stock to founders (approx. 10M shares issued)
         b. Vesting for founders
   ii. Importance of record-keeping
      1. Educating client on their responsibilities is key to avoiding clean-up during diligence

c. What if your client is worried about legal fees prior to funding?
   i. Forms can help them keep track on their own

4. **IP Issues – IP Ownership can derail your client’s deal**
   a. Help your client identify types of IP
   b. Who owns the IP?
      i. Make sure your client has proper records that can trace the ownership of IP and other assets from an individual into the company
   c. How is the IP being protected?
      i. Importance of documents between company and contractors, employees, service providers
         1. Documents including proprietary information agreements and non-disclosure agreements show company is proactive in protecting its IP and assets
   d. Former founders
      i. Proper agreements with former founders protect the company prior to financing, and protect investors and the company at a potential exit
   e. Representations and warranties to be made by the Company

5. **Employee Issues**
   a. On boarding paperwork importance
      i. Non-solicitation and non-competes – advising your client on what’s allowed and what isn’t
      ii. PIIA and proper assignment documents
   b. Independent contractors and employees
      i. Startups tend to want to have everyone qualify as an independent contractor
      ii. Advise clients on the difference
      iii. Representations and warranties will require that everyone properly classified

6. **What Type of Investment Does Your Client Need?**
   a. Goal analysis for clients – short- and long-term financial needs
   b. Educate them on the possible oversight and participation on investors
      i. Are they ready to give up control?
      ii. Do they know the pros and cons of each type?
      iii. Do they know how this will affect their role?
Pillars of a Viable Investor-Ready Startup

- Entity
- Corporate Records
- IP/Asset Protection
- Employee Issues
- Type of Funding and Consequences of Investing
Chapter 3—Investor Ready? How to Prepare Your Clients for Success in Raising Capital

Does Choice of Entity Matter?

- Yes!
- LLC/Corporation Debate
  - What does your client need short-term? Long-term?
  - When do they need investment?
- Problems with Conversion
  - Cost
  - Timing
  - Potential tax exposure

Entity: What type of Entity is Best for Your Startup?

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<th></th>
<th>C Corp</th>
<th>S Corp</th>
<th>LLC</th>
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<tr>
<td>Limited Liability</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Pass Through Taxation</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Investor Appeal</td>
<td>Yes</td>
<td>Usually Not</td>
<td>Usually Not</td>
</tr>
<tr>
<td>Stock Options</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes-ish</td>
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Investor Preference

Why do investors prefer a corporate structure?
  - Tax Issues
  - Complications
  - Equity Compensation
  - Familiarity

Clean Corporate Record

• Due diligence can be a deal killer!
• Organizational documents
• Regular record-keeping
  • Identify the potential issues with the client
    • Board consents for equity compensation, loans, etc.
    • 409A and FMV of stock options
    • Is everything actually signed?
Clean Corporate Record

• Cash-strapped client with limited funds for legal work?
  • Educate clients on importance of keeping their own records
  • Forms

IP: Overview

• Identify IP Assets-- Patents, trade secrets, copyrights and trademarks
  • Is the client properly identifying what needs to be protected and what doesn’t?

• The Big Question– Who owns the client’s IP?
  • Does your client have the proper records to trace ownership?
  • Does the client have proper protection in place?
IP: Ownership Issues Can Derail a Deal

• IP **MUST** be transferred into the Company
  • Founders should transfer as party of receiving their shares at formation
    • What about if a founder leaves prior to investment?
  • Employees:
    • Must assign inventions to the company -- Know and advise client on state acknowledgment requirements
    • Must agree not to disclose confidential information
  • Contractors:
    • Must assign inventions to the Company, just like employees
    • Must agree not to disclose confidential information
    • Include “work for hire” language in contractor agreements

Not having proper agreements with founders and employees may cause delay or potentially end a deal – if client can’t prove they own IP, investors won’t invest

• Client will be required to make representations and warranties related to their IP ownership
• Former founders can cause issue, especially on exit
Employee Issues

- Paperwork upon onboarding
  - Non-solicitation and non-competition
  - Proprietary Information & Inventions Agreement
- Independent Contractor v. Employee
  - New rules in California, other states to follow
  - Err on the side of employee over contractor

What Type of Investment Does Your Client Need?

- Long- and short-term goals
  - How much do they need?
  - How much oversight/participation do they want from investors?
- Types
  - Crowdfunding
  - Debt funding
  - Angel Funding
  - Venture Capitalist
Educating Founders on Funding Issues

• Investor rights and privileges
• Board changes
• Formalities
• Dilution

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Chapter 4

Presentation Slides: The Economics of #MeToo—Five Surprisingly Easy Changes That Make Business Sense

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THE ECONOMICS OF #METOO

FIVE SURPRISINGLY EASY CHANGES THAT MAKE BUSINESS SENSE

OREGON STATE BAR BUSINESS LAW SECTION
PRESENTATION BY ANTHONY KUCHULIS OF BARRAN LIEBMAN LLP

WHAT CHANGED?

• Not more claims
• More conversation
• More exposure in court of public opinion
WHAT HASN’T CHANGED

- October SHRM Study
- Two-thirds of executives have barely (or not at all) changed behavior since last year
- One-third said they changed, but wouldn’t say how – one said “don’t talk to women”
- These companies reported having policies and trainings, but not updated

Insanity: doing the same thing over and over again and expecting different results.

Albert Einstein
CONSEQUENCES HAVE EVOLVED

• The #MeToo movement changed the calculus for businesses

• Old way of thinking:
  average no. of claims x average out of court settlement = exposure

• Now public opinion, press, and online reviews are part of calculation
BUSINESSES THAT SEIZE THIS OPPORTUNITY WILL THRIVE

The Washington Post

2018’s challenge: Too many jobs, not enough workers

December 23, 2017

Employers nationwide are grappling with a problem that threatens to stall economic growth: too many jobs, not enough workers.

In Maine, where hurricanes can fall as late as April, the state’s transportation department is struggling to fill thousands of slots in its labor market. Ski resorts in the state, meanwhile, are still looking for employees to run the slopes.

Texas, too, is dealing with a labor shortage. As the price of oil climbs, drillers are ramping up production, but they need more workers to build and operate offshore oil rigs.

STILL NOT CONVINCED?

- Unemployment at historic low
- No. 1 reason why people leave employer?
- Best businesses recruit and retain the best talent
- A tale of two Koreas: North v. S. Korea
EASY STEP NO. 1

RE-EXAMINE YOUR TRAININGS

Don’t waste people’s time, make them relevant and memorable
TRADITIONAL TRAININGS ARE A WASTE OF TIME

- Too much legal
- Check the box
- “Don’t be Harvey Weinstein”
- Starts from premise that everyone is a harasser
- Closes off, instead of opening dialogue

NEW PRESENTATIONS

- Fun (yes, actually)
- Engaging
- Workshops
- Mixed media
- Non-threatening
EVERYTHING YOU SAY IS
SEXUAL HARASSMENT:
AND 9 OTHER

PRESENTATION BY ANTHONY KUCHULIS OF BARRAN LIEBMAN LLP

EASY STEP NO. 2
UPDATE POLICIES
The legal definition in your handbook isn’t helping
Chapter 4—The Economics of #MeToo—Five Surprisingly Easy Changes That Make Business Sense

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**KEEP IT SIMPLE – DITCH THE LAW TALK**

**Be Nice.**

We strive to treat one another, and those we encounter in our workday and beyond, with the utmost respect, dignity, and understanding.

**Don’t Make Things Weird.**

Anything that occurs before, during, or after work, that risks making things weird or awkward at work, will be an issue.

**Look Out for Each Other.**

If you see, hear, or learn of something small or large that could create a conflict later, talk with the person you are concerned about, and advise a supervisor.
DON’T AIM FOR THE BASELINE

EASY STEP NO. 3
ENCOURAGE REPORTING

No reports of concerns? That could be concerning…
WHAT DID WE LEARN?

• Best way to avoid lawsuit: trust of internal systems
• …Even when it doesn’t go the reporting employee’s way
• Have a fair system
• Apply it consistently
• Pop quiz. What’s your reporting/investigation protocol?
FOLLOW PROTOCOL, ALWAYS

Award for HR consultant of the year goes to…

DITCH ZERO TOLERANCE POLICIES

• Low level infractions should be treated on sliding scale

• People won’t report if worried about an overreaction

• Fair and evenhanded leadership strengthens your organization
EASY STEP NO. 4

EMPOWER BYSTANDERS

Encourage employees to look out for each other

ELLISON V. BRADY

• Concern with workplace behavior
• Went on too long
• Crossed the line
• Could have been addressed sooner
• Supervisor standard: known or should have known
EASY STEP NO. 5

FIRE TALENTED JERKS

Don’t tolerate the equal opportunity a-hole

WHAT IS AN EOA?

• Doesn’t pick on people because of a protected class… Just a jerk to everyone, equally
• Technically, not in violation of your old policies

In 2017, a young female producer accuses Bill O’Reilly of yelling at her and humiliating her based on her youth and gender… but 20 years ago…
WHY A PROBLEM, AND WHAT TO DO

A problem because…

• Terrible for culture
• Ticking time bomb for claims – difficult to defend claims
• Ultimately bad for business

What to do…

• Update policies, counsel, and provide opportunity to change
• If no change, discipline and terminate
IN CLOSING

- Re-examine trainings
- Update policies
- Encourage reporting
- Empower bystanders
- Fire jerks, even if talented

THANK YOU!

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Chapter 5

Risky Business: Ethical and Risk Management Issues for Business Lawyers

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LOGISTICS

▸ Materials

▸ Questions
PERSPECTIVE

► The Statistics
  ● OSB disciplinary statistics
  ● PLF claims statistics

► Mirrors Experience
  ● As disciplinary defense counsel
  ● As expert witness

OVERVIEW

► Know Your Client
► Define Your Client
► Stick with One Client
NOT THE UNIVERSE

► Business deals with clients:
  RPC 1.8(a)

► “No contact” issues:
  RPC 4.2

► Unauthorized practice issues:
  RPC 5.5

KNOW YOUR CLIENT

“[The mastermind] was so charismatic and his Ponzi scheme so sophisticated that he duped everyone, including [the lawyers].”

KNOW YOUR CLIENT

If you don’t . . .

► Claims by receivers
  ♦ Legal malpractice
  ♦ Breach of fiduciary duty

► Claims by investors
  ♦ “Aid and assist”
  ♦ Securities claims

KNOW YOUR CLIENT

Protect yourself in advance by . . .

► Specifying the scope of your work under RPC 1.2(b)
► Avoiding terms like “general counsel”
► Closely evaluating co-marketing
Chapter 5—Risky Business: Ethical and Risk Management Issues for Business Lawyers

**DEFINE YOUR CLIENT**

“During oral argument, [Law Firm] could not explain why an engagement letter was not executed at the outset of the . . . representation. Similarly troubling to the Court was the fact that [Law Firm] could not advise the Court as to whether [Client] was identified as a client in [Law Firm’s] conflicts check system.”


---

**DEFINE YOUR CLIENT**

If you don’t . . .

► Disqualification
► Breach of fiduciary duty claims
► Regulatory discipline for individual firm lawyers
DEFINE YOUR CLIENT

Protect yourself in advance by . . .

► Specifying the client in an engagement letter & use “non-engagement” letters
► Include client and related entities in conflict system
► Use advance waivers as appropriate

STICK WITH ONE CLIENT

“The complaint, however, alleges that the corporation hired the lawyers, that the corporation had no interest in the dispute between plaintiff and [Other Directors] and that the work that the lawyers performed was outside the scope of any legitimate employment on behalf of the corporation.”

STICK WITH ONE CLIENT

If you don’t . . .

► Disqualification
► Breach of fiduciary duty claims
► Regulatory discipline for individual firm lawyers
► “Aid and assist” claims

STICK WITH ONE CLIENT

Protect yourself in advance by . . .

► Specifying the client in an engagement letter & use “non-engagement” letters
► Amend/supplement engagement agreements as appropriate
► “Corporate *Miranda* warnings”
QUESTIONS?
RESOURCE GUIDE

**Selected Oregon Rules of Professional Conduct**

RPC 1.2  
RPC 1.2(b) permits limiting the scope of representation  
*(Note: This provision is at ABA Model Rule 1.2(c).)*

RPC 1.7  
Current client conflicts

RPC 1.13  
Representing entities

**Selected Oregon State Bar Ethics Opinions**

2005-85  
Corporate representation

2005-122  
Advance waivers

**Selected Oregon Supreme Court Cases**

*In re Campbell,*  
345 Or 670 (2009)  
Discusses entity representation and Oregon RPC 1.13

*KAO v. Ferguson,*  
315 Or 135 (1992)  
Lawyer liability for breach of fiduciary duty

*Granewich v. Harding,*  
329 Or 47 (1999)  
Lawyer liability for “aid and assist”

*In re Weidner,*  
310 Or 757 (1990)  
Oregon standard defining attorney-client relationships
Chapter 6

Presentation Slides: Further Down the Rabbit Hole: Tax Law Update 2018

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Introduction

Scope of Presentation

“True genius resides in the capacity for evaluation of uncertain, hazardous, and conflicting information.”

– Winston Churchill
*** If IRS Issues more regulations on the materials covered in this presentation, this presentation will change. There is a non-zero chance this will happen. ***

A link to the new slides will be posted at: http://www.samuelslaw.com/blog/

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**Major Themes of the TCJA**

- Reduced Tax Rates
- Attempt to get to Parity in Form of Doing Business
- Attempt to get to Parity in Debt/Equity
- Changes to Depreciation and Expensing

- Winners and Losers
  - Real Estate Investors and REIT Investors 😊
  - Nonprofit Investors 😔

- Unintended consequences and an inability to fix obvious problems
Overview of TCJA of 2017

Changes to Personal Income Taxes
- Lowers most individual income tax rates, including the top marginal rate from 39.6 percent to 37 percent. Retains the current seven-bracket structure, but bracket widths are modified. Indexes tax brackets and other provisions by the chained CPI measure of inflation.
- Increases the standard deduction to $12,000 for single filers, $18,000 for heads of household, and $24,000 for joint filers in 2018 (compared to $6,500, $9,550, and $13,000 respectively under current law).
- Eliminates the personal exemption.
- Retains the charitable contribution deduction, and limits the mortgage interest deduction to the first $750,000 in principal value. Limits the state and local tax deduction to a combined $10,000 for income, sales, and property taxes. Taxes paid or accrued in carrying on a trade or business are not limited.

Overview of TCJA of 2017

Changes to Personal Income Taxes (Cont'd)
- Limits or eliminates a number of other deductions.
- Expands the child tax credit from $1,000 to $2,000, while increasing the phaseout from $110,000 in current law to $400,000 married couples. The first $1,400 would be refundable.
- Effectively repeals the individual mandate penalty, by lowering the penalty amount to $0, effective January 1, 2019.
- Raises the exemption on the alternative minimum tax from $86,200 to $109,400 for married filers, and increases the phaseout threshold to $1 million.
- The majority of individual income tax changes would be temporary, expiring on December 31, 2025. Several, such as the adoption of chained CPI and functional repeal of the individual mandate, would be permanent.

- TaxFoundation.org
Overview of TCJA of 2017

Changes to Business Taxes
- Lowers the corporate income tax rate permanently to 21 percent, starting in 2018.
- Establishes a 20 percent deduction of qualified business income from certain pass-through businesses. Specific service industries, such as health, law, and professional services, are excluded. However, joint filers with income below $315,000 and other filers with income below $157,500 can claim the deduction fully on income from service industries. This provision would expire December 31, 2025.
- Allows full and immediate expensing of short-lived capital investments for five years. Increases the section 179 expensing cap from $500,000 to $1 million.
- Limits the deductibility of net interest expense to 30 percent of earnings before interest, taxes, depreciation, and amortization (EBITDA) for four years, and 30 percent of earnings before interest and taxes (EBIT) thereafter.

Overview of TCJA of 2017

Changes to Business Taxes (cont’d)
- Eliminates net operating loss carrybacks and limits carryforwards to 80 percent of taxable income.
- Eliminates the domestic production activities deduction (section 199) and modifies other provisions, such as the orphan drug credit and the rehabilitation credit.
- Enacts deemed repatriation of currently deferred foreign profits, at a rate of 15.5 percent for cash and cash-equivalent profits and 8 percent for reinvested foreign earnings.
- Moves to a territorial system with base erosion rules.
- Eliminates the corporate alternative minimum tax.

- TaxFoundation.org
TCJA: Things that matter to Business Lawyers

- Changes to the Individual Rates (Temporary – Exp. 2025)
- Corporate Tax Rate Changes (Permanent)
- Pass Through 20% Deduction (Temporary – Exp. 2025)
- Business Interest Deduction Limitations (Permanent)
- Changes to Depreciation and Expensing (Temporary and Permanent)
- Itemized Deduction Elimination (Temporary – Exp. 2025)
- Limits on Aggregate Losses for Noncorporate TP (Temporary – Exp. 2025)
- Limits on Net Operating Losses Changes (Permanent)
- Eliminates Technical Termination Rules (Permanent)
- Treatment of Carried Interest Gains (Permanent)
- Rehabilitation Credit (Permanent)
- Unrelated Business Taxable Income (Permanent)
- Contributions to Capital (Permanent)
- Like Kind Exchange Changes (Real Property Only) (Permanent)
- Change to Home Builder Revenue Recognition Method (Permanent)

199A: 20% Deduction for Qualified Business Income
Section 199A: What?

- Non-corporate taxpayers are now entitled to a new deduction that stands to decrease their effective tax rate (if it pencils out) on non-wage business income and qualified REIT dividend income, subject to certain restrictions.
- What were they thinking, if they were thinking, when they drafted this?

Section 199A: Math

For qualifying taxpayers there is a 20% deduction for the “qualified business income” from a “qualified trade or business.”

If the business offers certain services then a phase out applies once taxable income exceeds $157,500 ($315,000 MFJ) to $207,500 ($415,000 MFJ) when completely phased out.
Section 199A: Qualified Business Income

- Qualified Business Income is the net amount of “qualified items” – essentially all of the non-corporate business's non-investment income.
- Qualified items do not include:
  - Investment items, such as capital gain, dividends, interest income, commodities, annuities, etc;
  - Certain amounts paid to owners, such as (i) any reasonable compensation paid to the taxpayer for services rendered with respect to the trade or business; (ii) any guaranteed payment for services rendered with respect to the trade or business; and (iii) to the extent provided in regulations, any amount paid or incurred by a partnership to a partner who is acting other than in his or her capacity as a partner for services;
  - Foreign items of income

Section 199A: Qualified Business Income Deduction

How much can you actually claim? More deduction limitations:

- 20% of Qualified Business Income – or –
- 50% of total W-2 Wages paid by the business – or –
- Owner’s allocable share of 2.5% of the unadjusted cost basis of certain business assets.

Note: Qualified REIT dividends not subject to the wage and basis limitations. So, 20% of all qualified REIT dividends may be deducted, subject to overall income limit.
Section 199A(a): Qualified Trade or Business

Any business EXCEPT the business of being an employee or specified service businesses. ("any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset is the reputation or skill of one or more of its employees.")

So, if you are in a specified trade or business AND you have taxable income over the thresholds noted 2 slides ago, your deduction is completely phased out.

Example: H and W file a joint return with $450,000 of income of which $300,000 is from W's interest in a S corporation in a specified service trade or business. H and W can't take the 199A deduction because they are phased out.

Section 199A(a): Qualified Trade or Business

Clarification in the August regulations on what they mean by a SSTB. Significantly, “Any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners.” Is understood to mean a business in which a person receives fees, compensation or other income, including receipt of a partnership interest or S corporation stock, for: (a) endorsing products or services; (b) the use of a person's image, likeness, name, signature, voice, trademark or any other symbols associated with the individual’s identity; or (c) appearing on radio, television or another media format.

See, e.g., Paris Hilton; see also, Kardashian
Section 199(a): Winners and Losers

Different results for similarly situated taxpayers: e.g. High income business with no outside employees.*

Facts: A owns a small business (if a partnership, A owns 99% and A’s spouse owns 1%). A builds and sells a product. A has no employees, but utilizes independent contractors. No substantial fixed assets. 2018 revenue is $500,000 of ordinary income, which is A’s 2018 taxable income.

* For this and other examples, See, Anthony Nitti, Forbes, The New ‘Qualified Business Income Deduction Varies Based On Your Business Type – Or Does It?’ (Jan. 4, 2018, Online)

Sole Proprietorship: QBI of $500,000x20%=tentative deduction of $100,000. Limited to 50% of W-2 wages. Sole proprietorship so no wages, limitation = $0. In addition, deduction phased out because A’s income is over cap. No deduction allowed.

S-Corporation: A pays reasonable compensation to self of $125,000, reducing flow through income to $375,000. QBI doesn’t include “reasonable compensation paid to A” so not eligible for deduction. A’s QBI is $375,000 and tentative deduction is $75,000. However, limited to 50% of wages. Deduction allowed of $62,500.
Tidbits from the Regs

Related Party Rules are intended to address the form over substance problem that the TCJA left us with. They establish three rules to address the separate, commonly owned entity engaging in “distinct” businesses, one of which is a SSTB. Under these rules:

1. Any trade or business that provides 80 percent or more of its property or services to a related SSTB is itself treated as an SSTB;

2. A trade or business is treated as an SSTB if (1) it shares expenses (including wages or overhead) with a related SSTB and (2) the trade or business’s gross receipts represent 5 percent or less of the total combined gross receipts of the trade or business and the related SSTB during a taxable year; and

3. Even if a trade or business is not treated as an SSTB in its entirety under either of the prior two rules, any portion of a trade or business providing property or services to a related SSTB is treated as part of the SSTB.

Applicable for tax years ending after 12/22/2017.

163(J): Deductibility of Business Interest
163(j) Overview

Former 163(j): The Omnibus Budget Reconciliation Act of 1989 included § 163(j) which disallowed excess interest expense paid to tax exempt related persons. This section mostly applied to U.S. subsidiaries of foreign-headquartered companies which borrow at favorable terms from their foreign parents. Many companies did not meet this profile and so largely did not have to concern themselves with former 163(j) and did not perform the associated calculations for tax compliance or provision purposes.

– The 2017 perceived problem –

Continued concerns about base erosion. Possible interest in eliminating perceived advantage of debt over equity for investment.

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163(j) Overview

New 163(j): Under new 163(j) the interest expense deduction is limited to the sum of business interest income (i.e. not including investment interest income of non-corporate taxpayers), plus 30% of adjusted taxable income ("ATI"), plus floor plan financing income of the taxpayer for the tax year.

Unlike former 163(j), interest expense includes amounts paid or accrued to both related and unrelated parties.

ATI is defined as taxable income with add backs for: Income, gain, deduction, or loss which is not properly allocable to a trade or business; Business interest or business interest income; NOL deductions; For tax years beginning before January 1, 2022, depreciation, amortization, and depletion (no add back for depreciation/amortization after 2021).
163(j) Overview

163(j):
- Effective for all tax years beginning after December 31, 2017;
- no phase in;
- no grandfathering of existing debt arrangements

Objective: Level playing field between debt and equity. So, Interest like items that are not covered:
- Leases in sale-leaseback arrangements
- Guaranteed payments for use of capital (707(c))
- Preferred partnership interests

Should 163(j) apply to things outside of pure debt? IRS is “Studying the question” “along with how all the other terms should be defined”

163(j) Mechanical Challenges

Carryforwards? Disallowed interest expense can be carried forward can’t carry it back. Still will be subject to limitations.

Definition Problem: Business Interest Expense. “Any interest paid or accrued on indebtedness properly allocable to a trade or business.”

Business Interest Does not include investment interest (163(d))

Notice 2018-28: Future regulations will provide that all interest paid or accrued by a C corporation on indebtedness of a C Corporation will be business interest expense, as a corporation has no investment interest within the meaning of Section 163(d). C corporations can ONLY have trade or business income.

- What about partnerships owned by C Corporations?

Business Interest Income offset against Business Interest Expense
163(j) Mechanical Challenges

Who is not subject to 163(j) limitations?
- Any business with average gross receipts over the prior three years of less than $25 million;
- An employee;
- The business of furnishing or selling certain types of energy;
- An electing farming business; or,
- An electing real property trade or business.

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163(j) Mechanical Challenges

Deeper Dive on Exceptions (When does 163(j) not apply?):

Small Business: Any business with average gross receipts over the prior three years of less than $25 million

163(j) limitation does not apply if Taxpayer’s gross receipts for the three taxable years preceding the current taxable year <$25 million. However!

How do aggregation rules apply? Forced combination for folks treated as a single employer. Majority partner’s gross receipts included? 448(c) as a starting point.

Note! This small business exception does not apply to “tax shelters” (defined as partnerships where the losses of an entity are more than 35% allocable to limited partners or the more typical definition of an entity “a significant purpose of which is the avoidance or evasion of federal income tax.)

- Allocable vs Allocated to (per temporary regs) (IRS: An area where rules that may not have been a focus before come into much more focus)
163(j) Mechanical Challenges

**Electing real property trade or business** defined at 469(c)(7)(C).

On its face, does not cover financing or mortgage portfolios so election might not be available for Mortgage REITs, REMICs

Election is irrevocable.

- Requires that all of certain types of properties be depreciated using alternative depreciation system (not 168(k) bonus). Not just properties placed in service in 2018.
- Seller has an electing RPTB, Buyer buys all of Seller’s assets. Does the election persist?

163(j) More challenges

What does “Properly Allocable” mean in the context of 163(j)?

- How do you address situations where there are multiple trades or businesses? For example, what if a partnership holding co owns a RPTB and a hedgehog café? Bank loans money to the partnership. What share of the interest is properly allocable to the RPTB? Can the partnership do a partial election out of 163(j) for the RPTB?

- Aggregation? If the owner of an entity engaged in a RPTB borrows money, is that properly allocable to a RPTB if the funds are then dropped down into the partnership? Can you impute underlying activities to an owner?

Can a REIT be a RPTB? Typically passive investment entities. How do you calculate an up-REIT’s ATI if it dividends items up to its shareholders?
[163(j) Placeholder]

[Watch this space for guidance from Treasury.]

167 and 179:
Adventures in Depreciation
Adventures in Depreciation

Temporary Adventures:
- Depreciation Expensing for new or used Personal Property and Qualified Improvement Property

Permanent Adventures:
- First Year Expensing
- Qualified Improvement Property
- Alternative Depreciation System ("ADS")

Temporary Adventures in Depreciation

100% immediate expensing permitted for certain property (machinery and equipment and Qualified Improvement Property) property placed in service between September 27, 2017 and December 31, 2022

Phase out of immediate expensing:
- 80% for property placed in service in 2023;
- 60% for property placed in service in 2024;
- 40% for property placed in service in 2025;
- 20% for property placed in service in 2026.
Permanent Adventures in Depreciation

First Year Expensing:

- Other than the Immediate expensing provisions, noted on the prior slide, taxpayers may immediately expense up to $1 million of property placed in service during a year. However, if taxpayer places more than $2.5 million of property in service, phase-out rules apply.

- Applies to: (1) Personal Property used in a trade or business; (2) personal property used predominantly in a lodging business; (3) qualified improvement property; and, (4) with respect to non-residential real property only: roof, HVAC, fire-suppression, and security systems.

Expands application of Qualified Improvement Property

- Qualified Improvement Property was formerly improvements to an interior portion of a non-residential property.

- Property formerly known as “qualified leasehold improvement property,” “qualified restaurant property,” and “qualified retail improvement property” is all now Qualified Improvement Property.

- The improvement now must be constructed after the building is placed in service. Also, Qualified Improvements do not include enlargement of a building, or improvements to internal structural framework, elevators or escalators.

- Why do we care? Bonus Depreciation!

- Who might not like this? Restaurants that have exterior improvements are now going to have to take those over 39 years since they won’t qualify as Qualified Improvement Property.
Permanent Adventures in Depreciation

Alternative Depreciation System (“ADS”)

- If the taxpayer is engaged in a real property trade or business and elects out of the interest deduction limitation discussed earlier, the taxpayer is required to use the new ADS depreciation method for all real estate, INCLUDING real estate acquired prior to the election date.

- TCJA changed the ADS recovery period for residential real property from 40 years to 30 years. Also, Qualified Improvement Property is given a special recovery period of 15 years.

- The “normal” – non ADS - recovery periods for residential real property and nonresidential real property were left alone at 27.5 years and 39 years, respectively.

[167 and 179: Placeholder]

[Watch this space for guidance from Treasury.]
Adventures in Converging State Tax Nexus Standards

_South Dakota v. Wayfair_

Statutory Limitations (Income)

Public Law 86-272: A state may not impose a tax based on net income on an entity or person whose only activity in a state is the solicitation of sales of tangible personal property. 15 USC 381, _et seq_

Constitutional Limitations

US Constitution, Due Process Clause (14th Amendment): A state must have a sufficient relationship with an activity to justify exercising jurisdiction.

- This has become the idea of “Minimum Contacts” - “systematic and continuous” casual presence is not enough.
- General (resident) vs. Specific (activity, stream of commerce) Jurisdiction.

Constitutional Limitations

US Constitution, Commerce Clause, Article 1, Section 8, Cl. 3: “[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

Dormant Commerce Clause: Chief Justice Marshall, The power to regulate interstate commerce can never be exercised by the people themselves, but must be placed in the hands of agents or lie dormant. *Gibbon v Ogden*, 22 US 1 (1824) Eventually meant that state laws or regulations that did not discriminate against interstate commerce are okay – states have concurrent authority.
Constitutional Limitations

National Bellas Hess v. Department of Revenue of Illinois, 386 US 753 (1967)
Commerce clause prohibits a state from making a seller collect its sales tax if the only connection of that seller with the state is by mail or common carrier. Only contact with Illinois was catalogues.

Complete Auto Transit v. Brady 430 US 274, 97 S Ct 1076, 51 LEd 2d 326 (1977)
Requirements to sustain a state tax:
1. Substantial nexus to the taxing jurisdiction; 2. fairly apportioned; 3. does not discriminate against interstate commerce; 4. fairly related to the services the state provides.

Constitutional Limitations

Facts: Taxpayer sold office supplies, via a catalogue, into ND. It had no property (other than some tonnage of floppy disks and catalogues) or payroll in ND. ND wanted to force the company to collect sales and use tax on its sales to ND residents.

Analysis:
Due Process Clause Analysis: Physical presence is not required for specific jurisdiction. Quill purposefully availed itself of the ND markets so had minimum contacts.

Commerce Clause Analysis: Commerce clause analysis has to look at more than minimum contacts. Concerns itself with burdening effect on interstate commerce. Commerce clause requires non-de minimis physical presence.

Congress should act!
1992-2018

Nexus: Physical presence was **required**

... but corporate affiliates acting in the state could give a company physical presence nexus (“affiliate nexus”);

... but non-corporate, third party agents could give a company physical presence nexus (“click through nexus”);

... but momentary ownership could give a company physical presence nexus (“flash nexus”)

... but placing a cookie on a customer’s internet browser could give a company physical presence nexus (“cookie nexus”)

... but selling through an online marketplace facilitator could give a company physical presence nexus (“marketplace nexus”)

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1992-2018

Lest we forget the “Use” Tax....

All states with a sales tax have a compensating use tax. Nobody loves the use tax. Fewer than 2% of consumers report their use tax on untaxed purchases.

- However –

If collections were 100%, we wouldn’t be having this discussion.

So! Several states began to require private companies with sales into a state of fairly nominal amounts ($10k, for example) to (1) notify their scofflaw customers that they need to pay use tax; (2) send each customer an annual summary of their purchases subject to use tax based on shipping destination; and (3) disclose the company’s customer information to the state revenue departments.
1992-2018


Background: In 2010, Colorado implemented the first “Notification” statute. The DMA filed a lawsuit to challenge this law under a Quill theory that the state was imposing burdensome tax collection responsibilities on businesses with no physical presence.

The 10th Circuit Court of Appeals found that the requirement to collect information under the Colorado law was not the same thing as tax collection.

DMA appealed to the Supreme Court, which sent it back to the 10th Circuit. The DMA and Colorado eventually settled, but Justice Kennedy’s concurrence in DMA is worth noting, as it set the stage for Wayfair. Kennedy expressed doubts about Quill’s impact on state revenues and said he “thought it unwise to delay a reconsideration of the Court’s holding in Quill.”

1992-2018:

Economic Nexus
Whatever we can tax we will; or,
Factor presence (e.g., $250,000 Sales, $50,000 Property, $50,000 Payroll)

Tax Commissioner of State of West Virginia v. MBNA America Bank, N.A., (W. Va. Nov. 2, 2006) Economic nexus was constitutionally permissible (income tax): Delaware based company with no property or payroll in West Virginia was required to pay corporate franchise and income tax. (Cert. Den.)

Lanco, Inc. v. Director, Division of Taxation, 908 A 2d 176 (NJ 2006) Quill
Physical presence test does not apply to corporate income and franchise taxes.
South Dakota v. Wayfair

Facts:
2016 South Dakota law required out of state vendors to collect sales tax if those vendors had (1) $100,000 of sales into the state or (2) more than 200 separate transactions for the delivery of goods or services into the state.

Wayfair sold furniture and other goods to South Dakota customers and did not collect sales tax on those transactions.

Wayfair’s website said: “[o]ne of the best things about buying through Wayfair is that we do not have to charge sales tax.”
South Dakota v. Wayfair

*Stare Decisis* (“To Stand on Decisions”): To abide by, or adhere to, decided cases. *Black’s Law Dictionary*

We don’t need no stinkin’ *stare decisis*.

“If it becomes apparent that the Court’s Commerce Clause decisions prohibit the States from exercising their lawful sovereign powers in our federal system, the Court should be vigilant in correcting the error.” (no citation given).

“Though *Quill* was wrong on its own terms when it was decided in 1992, since then the Internet revolution has made its earlier error all the more egregious and harmful.”

---

South Dakota v. Wayfair

Majority (Physical Presence isn’t necessary): Kennedy (author), Ginsburg, Alito, Thomas, Gorsuch

“Each year the physical presence rule becomes further removed from economic reality and results in significant revenue losses to the States.”

“So long as any state law avoids ‘any effect forbidden by the Commerce clause’ * * * , courts should not rely on anachronistic formalisms to invalidate it. The basic principles of the Court’s Commerce Clause jurisprudence are grounded in functional, marketplace dynamics; and states can and should consider those realities in enacting and enforcing their tax laws.”

Concurrence (Mea Culpa, Mea Culpa, Mea Maxima Culpa): Thomas

Concurrence (Article III Courts matter, Dormant Commerce Clause): Gorsuch
South Dakota v. Wayfair

Dissent: (We have precedent, what about that?): Roberts (author), Breyer, Sotomayor, Kagan

“This is neither the first, nor the second, but the third time this Court has been asked whether a State may obligate sellers with no physical presence within its borders to collect tax on sales to residents. Whatever salience the adage “third time’s the charm” has in daily life, it is a poor guide to Supreme Court decision making.”

2018: What now?

State response to Wayfair:

- South Dakota-like rules:
- Existing Standards:
2018: What now?

Congressional response to *Wayfair*:

“Online Sales Simplicity and Small Business Relief Act”

I. The OSS/SBRA bans retroactive taxation of internet commerce
II. The “Sense of Congress” statement can be read to say “We don’t want to tell you (states) what to do but you’re making us do it”
III. The OSS/SBRA creates a rather large “small business” remote seller exemption


Other proposals

---

Thank you!

For questions, please contact me!

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<thead>
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<th>Samuels Yoelin Kantor LLP</th>
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<tr>
<td>111 SW Fifth Avenue, Suite 3800 Portland, Oregon 97204</td>
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<tr>
<td>Valerie Sasaki</td>
<td><a href="mailto:vsasaki@samuelslaw.com">vsasaki@samuelslaw.com</a></td>
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<td>Caitlin Wong</td>
<td><a href="mailto:cwong@samuelslaw.com">cwong@samuelslaw.com</a></td>
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Structuring Equity Compensation in Limited Liability Companies and Partnerships

Lauren DeMasi
November 2, 2018

Disclaimer: The income tax principles, rules and outcomes discussed in these materials are intended to be used solely for general informational purposes.
Topics Covered

- What are profits interests and how do they work?
- When are profits interests a good fit?
- What are the key considerations in designing & documenting a profits interest plan?
- What are the tax consequences of awarding a profits interest?

A profits interest is a right to share in the future profits of a partnership.
How Does a Profits Interest Work?

LLC’s Balance Sheet Before Awarding Equity to Louie

<table>
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<td><strong>$750,000</strong></td>
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<tr>
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### Capital Interests vs. Profits Interests

LLC’s balance sheet immediately after Louie is awarded a one-third *capital* interest . . . . .

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### Capital Interests vs. Profits Interests (cont.)

LLC’s balance sheet immediately after Louie is awarded a one-third *profits* interest . . . . .

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### Profits Interest in Operation

LLC has profit of $210,000 in the first year after Louie is awarded a one-third profits interest

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Advantages of Profits Interests

- Encourage employees to act like co-owners
- No immediate tax consequences for profits interest holder
- Possibility of capital gains treatment on liquidity event
- Reliable IRS guidance on tax treatment (unlike, for example, options in partnerships)

When are Profits Interests a Good Fit?

- Company seeks to incentivize relatively small group of key employees
  - Administrative burden
  - Phantom income
  - Loss of employee status for tax purposes
- Company expects to have a liquidity event at some point in the future
Consequences of Profits Interests for Recipients

- Loss of employee status
  - Loss of tax withholding – must make quarterly estimated payments
  - Subject to self-employment tax, which means loss of employer’s FICA contribution.
  - Loss of unemployment benefits

**Gross-Up Formula**

\[
\text{Desired Net Amount} = 100\% - \text{Tax } \%
\]

Use tiered partnership to avoid loss of employee status?

Louie holds a profits interest in HoldCo . . . but is an employee of OpCo
Structuring a Profits Interest Plan

- Tailoring the plan
  - profits interest can be limited to profits of a particular division or from a particular event
- Distribution threshold (operating income versus sales proceeds)
- Catch-up provisions

Structuring a Profits Interest Plan (cont.)

- When does the profits interest holder get cash?
  - Tax distributions
  - Distributing operating profits
  - Distributing profits from liquidity events
- What happens when the profits interest holder leaves?
  - Nothing
  - Mandatory repurchase
  - Put/Call rights
- Terms of repurchase
  - Forfeiting restricted units on departure
  - Value of unrestricted units – FMV or capital account
    - How is value determined?
    - Payment terms
### Documenting Profits Interests

- **Operating Agreement**
  - Must often be amended to implement profits interest plan
  - Allocation & distribution provisions
  - Profits interest holder (and spouse in community property states) must join this agreement
  - Require members and managers to take actions necessary to ensure profits interest treatment
- **Profits Interest Plan**
  - Static terms (like administration, call rights & voting rights)
- **Profits Interest Award Agreement**
  - Variable terms (like profits percentage, vesting & profits interest hurdle)
  - Spousal consent in community property states
- **83(b) election**
- **Securities law considerations**

### Tax Treatment of Profits Interests: Three Regimes

**Caselaw:** *Diamond v. Commissioner*, 492 F.2d 286 (7th Cir. 1974)  
*Campbell v. Commissioner*, 943 F.2d 815 (8th Cir. 1991)

**IRS Safe Harbor:** Revenue Procedure 93-27  
Revenue Procedure 2001-43

**Proposed Treasury Regulations:** Various regulations are affected; see Notice 2005-43
IRS Safe Harbor

- Revenue Procedure 93-27 provides guidance on the treatment of the receipt of a profits interest for services provided to or for the benefit of the partnership.
- A capital interest is an interest that would give the holder a share of the proceeds if the partnership’s assets were sold at fair market value and then the proceeds were distributed in complete liquidation of the partnership.
- A profits interest is a partnership interest other than a capital interest.

Exceptions to Safe Harbor Treatment

- The safe harbor is not available if . . . .
  - The profits interest relates to a substantially certain and predictable stream of income (e.g., income from a high-quality net lease).
  - The profits interest holder disposes of the profits interest within two years.
  - The profits interest is a limited partnership interest in a publicly traded partnership.
Treatment of Unvested Profits Interests Under Safe Harbor Rules

- Revenue Procedure 2001-43
- Holder of an unvested profits interest will not be taxed upon receipt or upon vesting, if the profits interest holder is treated as a full partner/member for tax purposes prior to vesting (i.e., profits interest holder receives allocations of income).
- No Section 83(b) election is required (but it is not uncommon to file one anyway).

Proposed Regulations

- Proposed Regulations will automatically supersede Rev. Procs. 93-27 and 2001-43 (the current IRS safe harbor) upon finalization
- Proposed Regulations generally follow the Revenue Procedures, except partnership/LLC must make file “Safe Harbor Election” with IRS to obtain safe harbor treatment
- Include provision in partnership/LLC agreement requiring entity to file Safe Harbor Election if Proposed Regulations are finalized & requiring partners/members to cooperate
Chapter 7—Structuring Equity Compensation in Limited Liability Companies and Partnerships

Avoiding Pitfalls

- Misunderstanding the profits interest plan and its implications
  - The company – not understanding the burden of administering the profits interest plan
  - Profits interest holders – not understanding the economics of the profits interest plan and not understanding the tax consequences and burdens of having a profits interest
- Not thinking through the exit mechanics
- Failure to adequately establish and document profits interest “hurdles”
- Allowing rank and file employees to participate
- Continuing to treat/designate profits interest holders as “employees”

Thanks for attending!

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Chapter 8

Presentation Slides: Negotiating and Drafting Common M&A Post-Closing Adjustment Provisions

Thomas Tongue
Schwabe Williamson & Wyatt PC
Portland, Oregon
Negotiating and Drafting Common M&A Post-Closing Adjustment Provisions

OSB Business Law 2018
Thomas M. Tongue
Schwabe, Williamson & Wyatt, P.C.

Common Post-Closing Adjustments

- **Short-Term (60-90 days post-closing)**
  - Cash
  - Working Capital
  - Indebtedness
  - Transaction Fees
- **Long-Term (one or more years)**
  - Earnouts and Contingent Payments
ABA Deal Study

- Percentage of private target transactions with price adjustment provisions
  - 2006 – 68%
  - 2008 – 79%
  - 2010 – 82%
  - 2012 – 85%
  - 2014 – 86%
  - 2016 – 86%

ABA Deal Study

- Breakdown of 2016 deals that included price adjustments:
  - Working Capital – 89%
  - Debt – 61%
  - Cash – 58%
  - Other – 54%

- 73% of 2016 deals included multiple price adjustments
Short-Term Adjustments

- Key Concept – Must clearly understand how the parties are calculating purchase price.
- Recommend: “Purchase Price” is the Enterprise Value assuming a cash free, debt free company with normalized working capital.

Short-Term Adjustments

- Enterprise Value – Value of the entire business without regard to capital structure.
- Cash – Cash and Cash Equivalents (i.e., deposit accounts)
- Debt – Indebtedness of the business
- Working Capital – Current Assets (excluding cash) less Current Liabilities
Short-Term Adjustments

- **Cash Adjustment**
  - Asset deals – Retained by Seller as a retained asset. No need for pricing adjustment.
  - Stock deals – May distribute cash to Seller prior to closing, but most common approach is a purchase price adjustment.

Short-Term Adjustments

- **Indebtedness Adjustment**
  - Asset deals – Seller may retain debt, but often paid at closing to remove debt associated encumbrances and to avoid concerns about fraudulent conveyance issues.
  - Stock deals – Typically paid at closing, but may be assumed by Buyer and deducted from purchase price.
  - In either structure, it is common for seller to indemnify buyer for any indebtedness not paid at closing or included in a pricing adjustment.
Short-Term Adjustments

- Working Capital Adjustment
  - Same in both stock and asset deals
  - At closing, parties set a working capital target.
  - Post-closing (60-90 days), buyer typically prepares a calculation of the actual working capital at closing.
  - Seller has period of time to review (typically 30 days) and object.
  - If objection, agreement defines method to resolve dispute often involving a neutral accountant.

Short-Term Adjustments

- Traps and Tricky Issues
  - Cash as a current asset – Exclude cash from current assets if cash is handled separately.
  - Uncollectable or slow pay account receivable as current asset.
    - Hard indemnification for uncollectable A/R (i.e., no deductibles or caps).
    - Right for credit if A/R isn’t collected within reasonable period of time (i.e., slow pay).
    - If buyer receives credit for uncollected or slow pay A/R, seller should consider asking buyer to transfer those accounts back to seller so seller may pursue independent collection efforts.
Short-Term Adjustments

• Traps and Tricky Issues
  ◦ Unusable or obsolete inventory as current asset
    • Inventory representation and/or pre-closing count
    • Representation and warranty with indemnification (consider excluding from deductible/cap)
  ◦ Current portion of long-term debt as a current liability
    • Double counting risk
    • Exclude from definition of current liability if included in debt adjustment or paid at closing

• Traps and Tricky Issues
  ◦ Transaction costs as a current liability
    • Double counting risk
    • Exclude from definition of current liability
  ◦ Taxes payable as a current liability
    • Double counting risk
    • If covered in special tax indemnity exclude from definition of current liability
  ◦ Unearned Revenue as a current liability
    • Often not booked property
    • Booked as liability, but often obligation is less than amount recorded
Short-Term Adjustments

- **Traps and Tricky Issues**
  - Retained Assets and Retained Liabilities
    - Double counting risk
    - Exclude from definition of current assets and current liabilities, respectively

- **Adjustment Procedures**
  - Dispute Risk – GAAP vs. Historic
  - Accounting Standard – 2016 ABA Study
    - GAAP – 11%
    - GAAP consistent with past practices – 29%
    - GAAP with specific modifications – 36%
    - Silent – 8%
    - Other – 17%
  - Consider sample calculations using historic financial statement
  - Involve accountants and financial officers
Short-Term Adjustments

• Adjustment Procedures
  ◦ Working Capital Escrows
    • ABA Study
      • 2014 – 25% of deals included separate escrow/holdback
      • 2016 – 45% of deals included separate escrow/holdback
  ◦ Working capital dispute resolution
    • “Independent CPA” is most common
    • Courts/Arbitration is an alternative

Short-Term Adjustments

• Lock Box – An alternate approach
  ◦ Used on occasion in Europe
  ◦ Party bid equity value, not enterprise value, as price using historic financial statements
  ◦ Date of financial statements becomes “lock box” date.
  ◦ No post-closing adjustment for cash, debt, or working capital.
  ◦ “Leakage” prohibited (i.e., dividends, payment of shareholder debt, insider payments, etc.)
Long-Term Adjustments

- Earnout – contingent payment based on future performance or event not known at closing

Long-Term Adjustments

- ABA Deal Study – Percentage of private target deals with earnouts
  - 2006 – 19%
  - 2008 – 29%
  - 2010 – 38%
  - 2012 – 25%
  - 2014 – 26%
  - 2016 – 28%
Long-Term Adjustments

“[A]n earn-out often converts today’s disagreement over price into tomorrow’s litigation over the outcome.”


Long-Term Adjustments

- Challenges with drafting earnouts
  - Simple in concept, but complex in practice
  - Buyer and Seller often have valid, but conflicting, interests
  - Warps economics that encourage counterintuitive behavior
Long-Term Adjustments

- Earnout Dispute Risk Factors
  - Percentage of purchase price
  - Position on income statement
  - GAAP vs. Historic Practice
  - Disruption from integration
  - Whole business or division
  - Double recovery when combined with indemnification claims
  - “Carry-over” employee issue

- Metric for determining earnout
  - Revenue
  - EBITDA
  - Customer/Employee Retention
  - Granting of IP Rights
  - Knowledge Transfer

- Carefully consider adjustments to metric
Long-Term Adjustments

• Earnouts – avoiding securities laws
  ◦ Integral part of the consideration for the transaction
  ◦ Not represented by any form of certificate or instrument
  ◦ No rights akin to a shareholder, i.e., voting or dividend rights, and no right to stated interest rate
  ◦ Does not represent equity interest
  ◦ Not assignable or transferable, except by operation of law

Long-Term Adjustments

• Caselaw Lessons
  ◦ Implied covenant of good faith is narrowly applied
  ◦ Clear covenants setting ground rules are critical, but also extremely challenging to draft.
  ◦ Clear dispute resolution – courts, ADR, independent CPA
Long-Term Adjustments

- Potential Covenants for Earnouts
  - Buyer has no obligations
  - Buyer must run business consistent with past practices
  - Buyer must run business to maximize earnout
  - Earnout accelerate on change of control
  - Buyer must provide minimum levels of support – personnel, marketing, promotion
  - Buyer must maintain separate books and records

Long-Term Adjustments

- Potential Covenants for Earnouts
  - Buyer must maintain same accounting system/practices
  - Buyer cannot justify business decision on the basis of the savings that would result by avoiding the earnout
Questions
Chapter 9

Regulatory Matters for Business Lawyers—A View from the Secretary of State Corporation Division

MODERATOR: JOHN THOMAS
Perkins Coie LLP
Portland, Oregon

PETER THRELKEL
Director, Oregon Secretary of State Corporation Division
Salem, Oregon

JAIME WEDDLE
Oregon Secretary of State Corporation Division
Salem, Oregon

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House Bill 2191

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Business and Labor)

CHAPTER ............................

AN ACT

Relating to business entities; creating new provisions; amending ORS 56.035, 60.001, 60.004, 60.047, 60.074, 60.111, 60.131, 60.647, 60.661, 60.737, 62.155, 63.001, 63.004, 63.047, 63.074, 63.111, 63.647, 63.661, 63.737, 65.001, 65.111, 70.020, 70.025, 128.575, 128.595, 314.840 and 554.082; repealing sections 1 and 2, chapter 55, Oregon Laws 2017 (Enrolled House Bill 2610); and declaring an emergency.

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

SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS chapter 60.

SECTION 2. (1)(a) The Secretary of State may investigate an alleged or potential violation of this chapter and, in the course of the investigation or in response to a request from a law enforcement agency, may order a corporation to:

(A) Prepare and submit to the Secretary of State within 30 days the list described in ORS 60.771 (3); and

(B) Answer within 30 days any interrogatory that is related to an alleged or potential violation of this chapter that the Secretary of State submits to the corporation.

(b) Notwithstanding the provisions of ORS 192.410 to 192.505, the list described in paragraph (a)(A) of this subsection and information that the Secretary of State obtains from an interrogatory under paragraph (a)(B) of this subsection is not subject to public disclosure. The Secretary of State may provide a law enforcement agency with the list described in paragraph (a)(A) of this subsection and information the Secretary of State obtains from an interrogatory under paragraph (a)(B) of this subsection.

(2)(a) If a corporation fails to comply with an order from the Secretary of State under subsection (1) of this section, the Secretary of State may:

(A) Impose a civil penalty on the corporation in accordance with ORS 183.745;

(B) Cancel or revoke an incorporation, or revoke a foreign corporation's authorization to transact business in this state, after conducting a hearing under ORS 183.413 to 183.470; or

(C) Administratively dissolve the corporation in accordance with ORS 60.651.

(b) The Secretary of State shall provide in an order that imposes a civil penalty under paragraph (a)(A) of this subsection that the civil penalty is not due and payable until after the order becomes final following any appeal of the order or, if an appeal does not occur, after the order becomes final by operation of law.
(3)(a) The Director of the Department of Revenue may recommend to the Secretary of State that the Secretary of State administratively dissolve a corporation for a failure to comply with the tax laws of the state, but the director may not recommend administrative dissolution if the director has allowed an appeal of the corporation's tax liability or another action of the Department of Revenue related to the corporation's failure to comply with the tax laws of the state or if an appeal is pending. If the Secretary of State agrees with the director, the Secretary of State may dissolve the corporation under ORS 60.651.

(b) The Secretary of State, in consultation with the department, may specify what constitutes a failure to comply with the tax laws of the state for the purposes set forth in paragraph (a) of this subsection.

(4) The Secretary of State may not reinstate a corporation that was administratively or judicially dissolved unless, as appropriate:

(a) The corporation complies with the Secretary of State's order under subsection (1) of this section;

(b) A law enforcement agency that has completed an investigation of the corporation for which the Secretary of State canceled or revoked incorporation or revoked an authorization to transact business in this state recommends that the Secretary of State allow the corporation or reinstatement;

(c) A court order compels a reinstatement; or

(d) The Department of Revenue recommends a reinstatement.

(5) A corporation may appeal in accordance with ORS 183.480 to 183.500 an order the Secretary of State issues or an action the Secretary of State takes under this section.

(6) The Secretary of State and the Director of the Department of Revenue may each adopt rules to implement the provisions of this section.

SECTION 3. (1) An officer, director, employee or agent of a shell entity is liable for damages to a person that suffers an ascertainable loss of money or property as a result of the officer, director, employee or agent:

(a) Making, issuing, delivering or publishing, or participating in making, issuing, delivering or publishing, a prospectus, report, circular, certificate, financial statement, balance sheet, public notice or document concerning the shell entity or the shell entity's shares, assets, liabilities, capital, dividends, earnings, accounts or business operations that the officer, director, employee or agent knows is false in any material respect;

(b) Making an entry or causing another person to make an entry in a shell entity's books, records, minutes or accounts that the director, officer, employee or agent knows is false in any material respect; or

(c) Removing, erasing, altering or canceling, or causing another person to remove, erase, alter or cancel, an entry in a shell entity's books, records, minutes or accounts if by means of the removal, erasure, alteration or cancellation the director, officer, employee or agent intends to deceive another person.

(2) An officer, director, employee or agent of a shell entity that engages in any of the actions described in subsection (1) of this section in a submission to, or an interaction with, a public agency, as defined in ORS 180.750, makes a false claim and is subject to a civil action as provided in ORS 180.750 to 180.785.

SECTION 4. Sections 5 and 6 of this 2017 Act are added to and made a part of ORS chapter 63.

SECTION 5. (1)(a) The Secretary of State may investigate an alleged or potential violation of this chapter and, in the course of the investigation or in response to a request from a law enforcement agency, may order a limited liability company to:

(A) Prepare and submit to the Secretary of State within 30 days the list described in ORS 63.771 (1)(a); and

(B) Answer within 30 days any interrogatory that is related to an alleged or potential violation of this chapter that the Secretary of State submits to the limited liability company.
(b) Notwithstanding the provisions of ORS 192.410 to 192.505, the list described in paragraph (a)(A) of this subsection and information that the Secretary of State obtains from an interrogatory under paragraph (a)(B) of this subsection is not subject to public disclosure. The Secretary of State may provide a law enforcement agency with the list described in paragraph (a)(A) of this subsection and information the Secretary of State obtains from an interrogatory under paragraph (a)(B) of this subsection.

(2)(a) If a limited liability company fails to comply with an order from the Secretary of State under subsection (1) of this section, the Secretary of State may:

(A) Impose a civil penalty on the limited liability company in accordance with ORS 183.745;

(B) Cancel or revoke an organization, or revoke a foreign limited liability company's authorization to transact business in this state, after conducting a hearing under ORS 183.413 to 183.470; or

(C) Administratively dissolve the limited liability company in accordance with ORS 63.651.

(b) The Secretary of State shall provide in an order that imposes a civil penalty under paragraph (a)(A) of this subsection that the civil penalty is not due and payable until after the order becomes final following any appeal of the order or, if an appeal does not occur, after the order becomes final by operation of law.

(3)(a) The Director of the Department of Revenue may recommend to the Secretary of State that the Secretary of State administratively dissolve a limited liability company for a failure to comply with the tax laws of the state, but the director may not recommend administrative dissolution if the director has allowed an appeal of the limited liability company's tax liability or another action of the Department of Revenue related to the limited liability company's failure to comply with the tax laws of the state or if an appeal is pending. If the Secretary of State agrees with the director, the Secretary of State may dissolve the limited liability company under ORS 63.651.

(b) The Secretary of State, in consultation with the department, may specify what constitutes a failure to comply with the tax laws of the state for the purposes set forth in paragraph (a) of this subsection.

(4) The Secretary of State may not reinstate a limited liability company that was administratively or judicially dissolved unless, as appropriate:

(a) The limited liability company complies with the Secretary of State's order under subsection (1) of this section;

(b) A law enforcement agency that has completed an investigation of the limited liability company for which the Secretary of State canceled or revoked organization or revoked an authorization to transact business in this state recommends that the Secretary of State allow the organization or reinstatement;

(c) A court order compels a reinstatement; or

(d) The Department of Revenue recommends a reinstatement.

(5) A limited liability company may appeal in accordance with ORS 183.480 to 183.500 an order the Secretary of State issues or an action the Secretary of State takes under this section.

(6) The Secretary of State and the Director of the Department of Revenue may each adopt rules to implement the provisions of this section.

SECTION 6. (1) A member, manager, employee or agent of a shell entity is liable for damages to a person that suffers an ascertainable loss of money or property as a result of the member, manager, employee or agent:

(a) Making, issuing, delivering or publishing, or participating in making, issuing, delivering or publishing, a prospectus, report, circular, certificate, financial statement, balance sheet, public notice or document concerning the shell entity or the shell entity's shares, assets, liabilities, capital, dividends, earnings, accounts or business operations that the member, manager, employee or agent knows is false in any material respect;
(b) Making an entry or causing another person to make an entry in a shell entity’s books, records, minutes or accounts that the member, manager, employee or agent knows is false in any material respect; or

(c) Removing, erasing, altering or canceling, or causing another person to remove, erase, alter or cancel, an entry in a shell entity’s books, records, minutes or accounts if by means of the removal, erasure, alteration or cancellation the member, manager, employee or agent intends to deceive another person.

(2) A member, manager, employee or agent of a shell entity that engages in any of the actions described in subsection (1) of this section in a submission to, or an interaction with, a public agency, as defined in ORS 180.750, makes a false claim and is subject to a civil action as provided in ORS 180.750 to 180.785.

SECTION 7. ORS 56.035 is amended to read:

56.035. (1) If a document is required by law to be verified before being submitted for filing with the Secretary of State, the document must include or be accompanied by a written declaration that the person who executes the document prepares under penalties of perjury to the effect that the person has examined the document and to the best of the person’s knowledge and belief the document is true, correct and complete. An acknowledgment before a notary public or other officer is not required.

(2) The Secretary of State, before filing a document that a person submits for filing, may verify that the principal office address, [or] the registered office address, the records office address described in ORS 70.020 or the principal address described in ORS 648.010 for an entity that has an assumed business name as listed in the document is a physical street address and not a commercial mail receiving agency, a mail forwarding business or a virtual office.

SECTION 8. ORS 60.001 is amended to read:

60.001. As used in this chapter:

(1) “Anniversary” means the day each year that is exactly one or more years after:

(a) The date on which the Secretary of State files the articles of incorporation for a domestic corporation.

(b) The date on which the Secretary of State files an application for authority to transact business for a foreign corporation.

(2) “Articles of incorporation” means the articles described in ORS 60.047, amended and restated articles of incorporation, articles of conversion or articles of merger.

(3) “Authorized shares” means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(4) “Conspicuous” means written, printed or typed in text that is italicized, boldfaced, of a contrasting color, capitalized or underlined or similarly enhanced so that a reasonable person against whom the writing is to operate should have noticed the writing.

(5) “Corporation” or “domestic corporation” means a corporation for profit that is incorporated under or subject to the provisions of this chapter and that is not a foreign corporation.

(6) “Delivery” means any method of delivery used in conventional commercial practice, whether by hand, mail, commercial delivery or electronic transmission.

(7) “Distribution” means a direct or indirect transfer of money or other property, except of a corporation’s own shares, or [an] a corporation’s incurrence of indebtedness [by a corporation] to or for the benefit of the corporation’s shareholders in respect of any of the corporation’s shares, in the form of a declaration or payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or otherwise.

(8) “Domestic limited liability company” means an entity that is an unincorporated association that has one or more members and that is organized under ORS chapter 63.

(9) “Domestic nonprofit corporation” means a corporation not for profit that is incorporated under ORS chapter 65.
“Domestic professional corporation” means a corporation that is organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

“Electronic signature” has the meaning given that term in ORS 84.004.

“Electronic transmission” means any process of communication that does not directly involve the physical transfer of paper and that is suitable for the recipient to retain, retrieve and reproduce information.

“Employee” includes an officer but not a director, unless the director accepts duties that make the director also an employee.

“Entity” includes a corporation, foreign corporation, nonprofit corporation, profit and nonprofit unincorporated association, business trust, partnership, two or more persons having a joint or common economic interest, any state, the United States, a federally recognized Native American or American Indian tribal government and any foreign government.

“Foreign corporation” means a corporation for profit that is incorporated under laws other than the laws of this state.

“Foreign limited liability company” means an entity that is an unincorporated association organized under laws other than the laws of this state and that is organized under a statute under which an association may be formed that affords to each of the entity's members limited liability with respect to liabilities of the entity.

“Foreign nonprofit corporation” means a corporation not for profit that is organized under laws other than the laws of this state.

“Foreign professional corporation” means a professional corporation that is organized under laws other than the laws of this state.

“Governmental subdivision” includes an authority, county, district and municipality.

“Individual” means a natural person or the estate of an incompetent individual or a deceased individual.

“Office,” when used to refer to the administrative unit directed by the Secretary of State, means the office of the Secretary of State.

“Person” means an individual or entity.

“Principal office” means the physical street address of an office, in or out of this state, where the principal executive offices of a domestic or foreign corporation are located and designated in the annual report or in the application for authority to transact business in this state.

“Principal office” does not include a commercial mail receiving agency, a mail forwarding business or a virtual office.

“Proceeding” means a civil, criminal, administrative or investigatory action.

“Record date” means the date established under this chapter on which a corporation determines the identity of the corporation’s shareholders and their shareholdings for purposes of this chapter.

“Remote communication” means any method by which a person that is not physically present at the location at which a meeting occurs may nevertheless hear or otherwise communicate at substantially the same time with other persons at the meeting and have access to materials necessary to participate or vote in the meeting to the extent of the person’s authorization to participate or vote.

“Shares” means the units into which the proprietary interest in a corporation is divided.

“Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

“Shell entity” means an entity that has the characteristics described in ORS 60.661 (1)(a)(C)(i).

“Signature” means any manual, facsimile, conformed or electronic signature.

“Single voting group” means a voting group, the shares of which are entitled by the articles of incorporation or this chapter to vote generally on a matter.
"State," when referring to a part of the United States, means a state, commonwealth, territory or insular possession of the United States and the agencies and governmental subdivisions of the state, commonwealth, territory or insular possession.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"United States" includes means the federal government or a district, authority, bureau, commission, department [and] or any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

SECTION 8a. If House Bill 2610 becomes law, section 1, chapter 55, Oregon Laws 2017 (Enrolled House Bill 2610) (amending ORS 60.001), is repealed and ORS 60.001, as amended by section 8 of this 2017 Act, is amended to read:

60.001. As used in this chapter:

1. "Anniversary" means the day each year that is exactly one or more years after:
   (a) The date on which the Secretary of State files the articles of incorporation for a domestic corporation.
   (b) The date on which the Secretary of State files an application for authority to transact business for a foreign corporation.

2. "Articles of incorporation" means the articles described in ORS 60.047, amended and restated articles of incorporation, articles of conversion or articles of merger.

3. "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

4. "Conspicuous" means written, printed, [or] typed, displayed or otherwise presented [in text that is italicized, boldfaced, of a contrasting color, capitalized or underlined or similarly enhanced] so that a reasonable person against whom [the] a writing is to operate should have noticed the writing as a consequence of a use of a method to draw attention to the writing, such as italics, boldface, contrasting color, capitalization or underlining.

5. "Corporation" or "domestic corporation" means a corporation for profit that is incorporated under or subject to the provisions of this chapter and that is not a foreign corporation.

6. "Delivery" means any method of delivery used in conventional commercial practice, [whether] including by hand, mail, commercial delivery [or] and, in accordance with ORS 60.034, electronic transmission.

7. "Distribution" means a direct or indirect transfer of money or other property, except of a corporation's own shares, or a corporation's incurrence of indebtedness to or for the benefit of the corporation's shareholders in respect of any of the corporation's shares, in the form of a declaration or payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or otherwise.

8. "Document" means:
   (a) A medium that embodies information in tangible form, including any writing or written instrument; or
   (b) An electronic medium that embodies information that a person may retain, retrieve and reproduce, in tangible form or otherwise, by means of an automated process that is used in conventional commercial practice, except as otherwise provided in ORS 60.034 (4)(c).

9. "Domestic limited liability company" means an entity that is an unincorporated association that has one or more members and that is organized under ORS chapter 63.

10. "Domestic nonprofit corporation" means a corporation not for profit that is incorporated under ORS chapter 65.

11. "Domestic professional corporation" means a corporation that is organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.
“Electronic notice revocation” means a notice in which a person states that the person will not accept delivery of certain communications by means of electronic transmission.

“Electronic signature” has the meaning given that term in ORS 84.004.

“Electronic transmission” means any form or process of communication that does not directly involve the physical transfer of physically transferring paper or another tangible medium and that is suitable for the recipient enables a recipient to retain, retrieve and reproduce information by means of an automated process that is used in conventional commercial practice, except as provided in ORS 60.034 (4)(c).

“Employee” includes an officer but not a director, unless the director accepts duties that make the director also an employee.

“Entity” means a corporation, foreign corporation, nonprofit corporation, profit and nonprofit unincorporated association, business trust, partnership, two or more persons that have a joint or common economic interest, any state, the United States, a federally recognized Native American or American Indian tribal government and any foreign government.

“Foreign corporation” means a corporation for profit that is incorporated under laws other than the laws of the state.

“Foreign limited liability company” means an entity that is an unincorporated association organized under laws other than the laws of the state and that is organized under a statute under which an association may be formed that affords to each of the entity’s members limited liability with respect to liabilities of the entity.

“Foreign nonprofit corporation” means a corporation not for profit that is organized under laws other than the laws of the state.

“Foreign professional corporation” means a professional corporation that is organized under laws other than the laws of the state.

“Governmental subdivision” includes an authority, county, district and municipality.

“Individual” means a natural person or the estate of an incompetent individual or a deceased individual.

“Office,” when used to refer to the administrative unit directed by the Secretary of State, means the office of the Secretary of State.

“Person” means an individual or entity.

“Principal office” means the physical street address of an office, in or out of this state, where the principal executive offices of a domestic or foreign corporation are located and designated in the annual report or in the application for authority to transact business in this state. (b) “Principal office” does not include a commercial mail receiving agency, a mail forwarding business or a virtual office.

“Proceeding” means a civil, criminal, administrative or investigatory action.

“Record date” means the date established under this chapter on which a corporation determines the identity of the corporation’s shareholders and their shareholdings for purposes of this chapter.

“Remote communication” means any method by which a person that is not physically present at the location at which a meeting occurs may nevertheless hear or otherwise communicate at substantially the same time with other persons at the meeting and have access to materials necessary to participate or vote in the meeting to the extent of the person’s authorization to participate or vote.

“Share” means the units into which the proprietary interest in a corporation is divided.

“Shareholder” means a person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

“Shell entity” means an entity that has the characteristics described in ORS 60.661 (1)(a)(C)(i).
“Sign” means to indicate a present intent to authenticate or adopt a document by:
(a) Affixing a symbol to the document;
(b) Inscribing or affixing a manual, facsimile or conformed signature on the document;
or
(c) Attaching to, or logically associating with, an electronic transmission any electronic sound, symbol or process, including an electronic signature.

“Signature” means any [manual, facsimile, conformed or electronic signature] embodiment of a person’s intent to sign a document.

“Single voting group” means a voting group, the shares of which are entitled by the articles of incorporation or this chapter to vote generally on a matter.

“State,” when referring to a part of the United States, means a state, commonwealth, territory or insular possession of the United States and the agencies and governmental subdivisions of the state, commonwealth, territory or insular possession.

“Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

“United States” means the federal government or a district, authority, bureau, commission, department or any other agency of the United States.

“Voting group” means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

“Written” means embodied as a document.

SECTION 9. ORS 60.004 is amended to read:
60.004. (1) For the Secretary of State to file a document under this chapter, the document must satisfy the requirements set forth in this section and any other requirements in this chapter that supplement or modify the requirements set forth in this section.

(2) [This chapter must require or permit filing] The document must be a type of document that this chapter or another law requires or permits a person to file with the Office of the Secretary of State.

(3) The document must contain the information required by this chapter and may contain other information.

(4) The document must be legible.

(5) The document must be in the English language. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed by:
(a) [By] The chair of the board of directors of a domestic or foreign corporation, the corporation’s president or another of the corporation’s officers;
(b) An incorporator, if directors have not been selected or before the organizational meeting, by an incorporator;
(c) A receiver, trustee or court-appointed fiduciary, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by the fiduciary, receiver or trustee; or
(d) [By] An agent of a person identified in this subsection, if the person authorizes the agent to execute the document.

(7) The person that executes the document shall:
(a) Declare, above the person’s signature and under penalty of perjury, that the document does not fraudulently conceal, fraudulently obscure, fraudulently alter or otherwise misrepresent the identity of the person or any of the officers, directors, employees or agents of the corporation on behalf of which the person signs; and
(b) State beneath or opposite the signature the person’s name and the capacity in which the person signs.

(8) The document may, but is not required to, contain:
(a) The corporate seal;
(b) An attestation by the secretary or an assistant secretary; or
(c) An acknowledgment, verification or proof.

[(8)] (9) If the Secretary of State has prescribed a mandatory form for the document under ORS 60.016, the document must be in or on the prescribed form.

[(9)] (10) The document must be delivered to the Office of the Secretary of State and must be accompanied by the required fees.

[(10)] (11) Delivery of a document to the office is accomplished only when the office actually receives the document.

SECTION 9a. If House Bill 2610 becomes law, section 2, chapter 55, Oregon Laws 2017 (Enrolled House Bill 2610) (amending ORS 60.004), is repealed and ORS 60.004, as amended by section 9 of this 2017 Act, is amended to read:

60.004. (1) For the Secretary of State to file a document under this chapter, the document must satisfy the requirements set forth in this section and any other requirements in this chapter that supplement or modify the requirements set forth in this section.

(2) The document must be a type of document that this chapter or another law requires or permits a person to file with the Office of the Secretary of State.

(3) The document must contain the information required by this chapter and may contain other information.

(4) The document must be legible.

(5) The document must be in the English language. The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be [executed] signed by:

(a) The chair of the board of directors of a domestic or foreign corporation, the corporation’s president or another of the corporation’s officers;

(b) An incorporator, if directors have not been selected or before the organizational meeting;

(c) A receiver, trustee or court-appointed fiduciary, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary; or

(d) An agent of a person identified in this subsection, if the person authorizes the agent to [execute] sign the document.

(7) The person that [executes] signs the document shall:

(a) Declare, above the person’s signature and under penalty of perjury, that the document does not fraudulently conceal, fraudulently obscure, fraudulently alter or otherwise misrepresent the identity of the person or any of the officers, directors, employees or agents of the corporation on behalf of which the person signs; and

(b) State beneath or opposite the signature the person’s name and the capacity in which the person signs.

(8) The document may, but is not required to, contain:

(a) The corporate seal;

(b) An attestation by the secretary or an assistant secretary; or

(c) An acknowledgment, verification or proof.

(9) If the Secretary of State has prescribed a mandatory form for the document under ORS 60.016, the document must be in or on the prescribed form.

(10) The document must be delivered to the [Office of the Secretary of State] office and must be accompanied by the required fees.

(11) Delivery of a document to the office is accomplished only when the office actually receives the document.

SECTION 10. ORS 60.047 is amended to read:

60.047. (1) [The] Articles of incorporation [shall] must set forth:

(a) A corporate name for the corporation that satisfies the requirements of ORS 60.094;

(b) The number of shares the corporation is authorized to issue;
(c) The address, including street and number, and mailing address, if different, of the corporation’s initial registered office and the name of the corporation’s initial registered agent at that the initial registered office;

(d) The name and address of each incorporator; [and]

(e) A mailing address to which notices, as required by this chapter, may be mailed until the corporation designates an address has been designated by the corporation in its in the corporation’s annual report{,];

(f) The initial physical street address, including the number and name of the street, and the mailing address, if different, of the corporation’s principal office; and

(g) The name and address of at least one individual who is a director or controlling shareholder of the corporation or an authorized representative with direct knowledge of the operations and business activities of the corporation.

(2) The articles of incorporation may set forth:

(a) The names of the initial directors;

(b) The addresses of the initial directors;

(c) Provisions regarding:

(A) The purpose or purposes for which the corporation is organized;

(B) Managing the business and regulating the affairs of the corporation;

(C) Defining, limiting and regulating the powers of the corporation, the board of directors and shareholders; and

(D) A par value for authorized shares or classes of shares;

(d) A provision eliminating or limiting the personal liability of a director to the corporation or the corporation’s shareholders for monetary damages for conduct as a director, provided that no such provision shall the provision does not eliminate or limit the liability of a director for any act or omission occurring prior to the date on which the provision becomes effective and such the provision shall does not eliminate or limit the liability of a director for:

(A) Any breach of the director’s duty of loyalty to the corporation or the corporation’s shareholders;

(B) Acts or omissions that are not in good faith or which involve intentional misconduct or a knowing violation of law;

(C) Any unlawful distribution under ORS 60.367; or

(D) Any transaction from which the director derived an improper personal benefit;

(e) A provision authorizing or directing the corporation to conduct the business of the corporation in a manner that is environmentally and socially responsible; and

(f) Any provision that under this chapter is required or permitted to be set forth in the bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

SECTION 11. ORS 60.074 is amended to read:

60.074. (1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation. A person may not incorporate a corporation under this chapter for any illegal purpose or with an intent to fraudulently conceal any business activity from another person or a governmental agency.

(2) A business that is subject to regulation under another statute of the state may not be incorporated under this chapter if such business is required to the business must be organized under such the other statute.

SECTION 12. ORS 60.111 is amended to read:

60.111. (1) A corporation shall continuously maintain in this state a registered agent and registered office that may be, but need not be, the same as any of the corporation’s places of business. The registered office must be located at a physical street address where process may be personally
served on the registered agent. The registered office may not be a commercial mail receiving agency, a mail forwarding business or a virtual office.

(2) A registered agent [shall] must be:
   (a) An individual who resides in this state and whose business office is identical to the registered office;
   (b) A domestic corporation, domestic limited liability company, domestic professional corporation or domestic nonprofit corporation, the business office of which is identical to the registered office; or
   (c) A foreign corporation, foreign limited liability company, foreign professional corporation or foreign nonprofit corporation that is authorized to transact business in this state, the business office of which is identical to the registered office.

SECTION 13. ORS 60.131 is amended to read:

60.131. (1) [The] Articles of incorporation must prescribe the classes of shares and the number of shares of each class that [the corporation is authorized to] a corporation may issue.

   (b) A corporation may not issue a document that entitles an unidentified individual or entity that possesses the document to a share in the corporation.

   (c) If the corporation may issue more than one class of shares [is authorized], the articles of incorporation must prescribe a distinguishing designation for each class, and [prior to the issuance of] before shares of a class are issued, the preferences, limitations and relative rights of [that] the class must be described in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical to [those] the preferences, limitations and relative rights of other shares of the same class except to the extent otherwise permitted by ORS 60.134 and 60.157.

   (2) If the articles of incorporation authorize only one class of shares, that class has unlimited voting rights and rights to receive the net assets of the corporation upon dissolution. If the articles of incorporation authorize more than one class of shares, then one or more classes of shares must together have unlimited voting rights, and one or more classes of shares which may be the same class or classes as those with voting rights, must together be entitled to receive the net assets of the corporation upon dissolution.

   (3) The articles of incorporation may authorize one or more classes of shares that:

   (a) Have special, conditional or limited voting rights, or no voting rights, except to the extent prohibited by this chapter;
   (b) Are redeemable or convertible as specified in the articles of incorporation:
       (A) At the option of the corporation, the shareholder or another person or upon the occurrence of a designated event;
       (B) For cash, indebtedness, securities or other property; or
       (C) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
   (c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or
   (d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

   (4) The description of the designations, preferences, limitations and relative rights of share classes in subsection (3) of this section is not exhaustive.

SECTION 14. ORS 60.647 is amended to read:

60.647. The Secretary of State may commence a proceeding under ORS 60.651 to administratively dissolve a corporation if:

   (1) The corporation does not pay when due any fees imposed by this chapter;
   (2) The corporation does not deliver [its] the corporation's annual report to the Secretary of State when due;

   (3) The corporation fails to comply with an order from the Secretary of State under section 2 (1) of this 2017 Act or is the subject of a recommendation for dissolution from the Director of the Department of Revenue under section 2 (3) of this 2017 Act;
Section 15. ORS 60.661 is amended to read:

60.661. (1) 

(a) In a proceeding by the Attorney General if [it is established] the court finds that:

(i) The corporation obtained its articles of incorporation with fraudulent intent, with fraudulent information or in a manner that otherwise indicates fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law.; or

(b) The corporation is a shell entity. For purposes of this subparagraph:

(i) A court may find that a corporation is a shell entity if the court determines that the corporation was used or incorporated for an illegal purpose, was used or incorporated to defraud or deceive a person or a governmental agency or was used or incorporated to fraudulently conceal any business activity from another person or a governmental agency; and

(ii) The Attorney General may make a prima facie showing that a corporation is a shell entity by stating in an affidavit that:

(I) The corporation did not provide a name or address required by the Secretary of State, or the name or address the corporation provided was false, fraudulent or inadequate;

(II) The corporation’s articles of incorporation, a record the corporation must keep under ORS 60.771, or the corporation’s annual report is false, fraudulent or inadequate;

(III) A public body, as defined in ORS 174.109, attempted to communicate with, or serve legal process upon, the corporation at the address or by means of other contact information the corporation provided to the Secretary of State, but the corporation failed to respond; or

(IV) The Attorney General has other evidence that shows that the corporation was used or incorporated for an illegal purpose, was used or incorporated to defraud or deceive a person or a governmental agency or was used or incorporated to fraudulently conceal any business activity from another person or a governmental agency.

(b) In a proceeding by a shareholder in a corporation that has shares that are listed on a national securities exchange or that are regularly traded in a market maintained by one or more members of a national or affiliated securities association, if [it is established] the court finds that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(iii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) The corporate assets are being misapplied or wasted.

(c) In a proceeding by a creditor if [it is established] the court finds that:

(i) The creditor’s claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor’s claim is due and owing and the corporation is insolvent.

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.
(2) In addition to subjecting a corporation to dissolution under subsection (1)(a)(C) of this section, a finding that a corporation is a shell entity has the following effects:

(a) A court may rebuttably presume that the corporation's filings with the Secretary of State constitute a false claim, as defined in ORS 180.750, in any action the Attorney General brings against the corporation under ORS 180.760 and may award to the Attorney General reasonable attorney fees and the costs of investigation, preparation and litigation if the Attorney General prevails in the action; and

(b) A public body, as defined in ORS 174.109, in any proceeding against the corporation, may move to enjoin a director, officer or other person that exercises significant direction or control over the corporation from engaging in commercial activity in this state, including but not limited to incorporating or organizing an entity in this state.

(3) A corporation may affirmatively defend against an allegation that the corporation is a shell entity by showing that the corporation, within 60 days after receiving a request to provide or correct a name, address or other information required for a filing or in articles of incorporation, a record the corporation must keep or an annual report, or within 60 days after the date of a request to respond to a communication or service of process, provided or corrected the name, address or other information or responded to the communication or service of process.

SECTION 16. ORS 60.737 is amended to read:

60.737. The Secretary of State may commence a proceeding under ORS 60.741 to revoke the authority of a foreign corporation to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within the time prescribed by this chapter;

(2) The foreign corporation does not pay within the time prescribed by this chapter any fees imposed by this chapter;

(3) The foreign corporation fails to comply with an order from the Secretary of State under section 2 (1) of this 2017 Act;

(4) The foreign corporation has failed to appoint or maintain a registered agent or registered office in this state as prescribed by this chapter;

(5) The foreign corporation does not inform the Secretary of State under ORS 60.724 that its registered agent or registered office has changed, that its the registered agent has resigned or that its the registered office has been discontinued;

(6) An incorporator, director, officer or agent of the foreign corporation signed a document knowing it the document was false in any material respect with intent that the document be delivered to the office for filing; or

(7) The Secretary of State receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that its the foreign corporation has been dissolved or disappeared as the result of a merger.

SECTION 17. ORS 62.155 is amended to read:

62.155. (1) A cooperative shall have and continuously maintain in this state:

(a) A registered office that may be, but need not be, the same as the cooperative's place of business. The registered office must be located at a physical street address where process may be personally served on the registered agent. The registered office may not be a commercial mail receiving agency, a mail forwarding business or a virtual office.

(b) A registered agent that must be:

(A) An individual who resides in this state and whose business office is identical to the registered office;

(B) A domestic corporation, domestic limited liability company, domestic professional corporation or domestic nonprofit corporation that has a business office identical to the registered office; or

Enrolled House Bill 2191 (HB 2191-C)
(C) A foreign corporation, foreign limited liability company, foreign professional corporation or foreign nonprofit corporation that is authorized to transact business in this state and that has a business office identical to the registered office.

(2) A cooperative may change the cooperative’s registered office or registered agent in accordance with the procedure set forth in ORS 60.114.

(3) A person that a cooperative has designated as the cooperative’s registered agent may resign in accordance with the procedure set forth in ORS 60.117.

(4) A registered agent appointed by a cooperative is an agent of the cooperative upon whom any process, notice or demand required or permitted by law to be served upon the cooperative may be served.

(5) The provisions of ORS 60.121 are applicable to cooperatives.

SECTION 18. ORS 63.001 is amended to read:

63.001. As used in this chapter:

1. “Anniversary” means [that] the day each year that is exactly one or more years after:

   a. The date [of filing by] on which the Secretary of State [of] files the articles of organization [in the case of] for a domestic limited liability company.

   b. The date [of filing by] on which the Secretary of State [of an] files a foreign limited liability company’s application for authority to transact business in [the case of a foreign limited liability company] this state.

2. “Articles of organization” means the document described in ORS 63.047 [for the purpose of forming] that forms a limited liability company, including articles of organization as [they] the articles of organization may be amended or restated, articles of conversion and articles of merger.

3. “Bankruptcy” means:

   a. [Assignment by a member] A member’s assignment for the benefit of creditors;

   b. A member’s commencement of a voluntary bankruptcy case [by a member];

   c. Adjudication of a member as bankrupt or insolvent;

   d. [Filing by a member of] A member’s filing of a petition or answer [seeking] to seek for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule;

   e. A member’s filing [by a member] of an answer or other pleading [admitting or failing] that admits or fails to contest the material allegations of a petition filed against the member in [any proceeding of this nature] a bankruptcy procedure;

   f. Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member’s properties;

   g. A commencement of an involuntary bankruptcy case against a member that has not been dismissed on or before the 120th day after the commencement of the case;

   h. An appointment, without the member’s consent, of a trustee, receiver or liquidator either of the member or of all or any substantial part of the member’s properties that is not vacated or stayed on or before the 90th day after the appointment; or

   i. An appointment described in paragraph (h) of this subsection that is not vacated on or before the 90th day after expiration of the stay under the stay described in paragraph (h) of this subsection expires.

4. “Contribution” means anything of value that a person contributes to the limited liability company as a prerequisite for or in connection with membership including cash, property or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

5. “Corporation” or “domestic corporation” means a corporation for profit that is incorporated under ORS chapter 60.

6. “Distribution” means a direct or indirect transfer of money or other property, except of a limited liability company’s own interests, or a limited liability company’s incurrence of indebtedness [by a limited liability company] to or for the benefit of the limited liability company’s members in respect of a member’s interests. A distribution may be, whether in the form of a declaration or
payment of profits, a purchase, retirement or other acquisition of interests, a distribution of indebtedness, or otherwise.

(7) “Domestic nonprofit corporation” means a corporation not for profit that is incorporated under ORS chapter 65.

(8) “Domestic professional corporation” means a corporation that is organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

(9) “Entity” includes a domestic or foreign limited liability company, corporation, professional corporation, foreign corporation, domestic or foreign nonprofit corporation, domestic or foreign cooperative corporation, profit or nonprofit unincorporated association, business trust, domestic or foreign general or limited partnership, two or more persons that have a joint or common economic interest, any state, the United States, a federally recognized Native American or American Indian tribal government or any foreign government.

(10) “Foreign corporation” means a corporation for profit that is incorporated under laws other than the laws of this state.

(11) “Foreign limited liability company” means an entity that is an unincorporated association organized under laws other than the laws of this state and that is organized under a statute under which an association may be formed that affords to each of the entity’s members limited liability with respect to the liabilities of the entity.

(12) “Foreign limited partnership” means a limited partnership formed under laws other than the laws of this state and having the state and that has as partners one or more general partners and one or more limited partners.

(13) “Foreign nonprofit corporation” means a corporation not for profit that is organized under laws other than the laws of this state.

(14) “Foreign professional corporation” means a professional corporation that is organized under laws other than the laws of this state.

(15) “Incompetency” means the entry of a judgment by a court of competent jurisdiction adjudicating the member incompetent to manage the member’s person or estate.

(16) “Individual” means a natural person.

(17) “Limited liability company” or “domestic limited liability company” means an entity that has one or more members and that is organized under this chapter.

(18) “Limited partnership” or “domestic limited partnership” means a partnership formed by two or more persons under ORS chapter 70 and having one or more general partners and one or more limited partners.

(19) “Manager” or “managers]” means a person who need not be members, designated by, not necessarily a member, that the members of a manager-managed limited liability company designate to manage the limited liability company’s business and affairs.

(20) “Manager-managed limited liability company” means a limited liability company that is designated as a manager-managed limited liability company in the limited liability company’s articles of organization or whose articles of organization of which otherwise expressly provide that a manager will manage the limited liability company [will be managed by a manager or managers].

(21)(a) “Member” or “members”] means a person with both an ownership interest in a limited liability company and all the rights and obligations of a member specified under this chapter.

(b) “Member” does not include an assignee of an ownership interest who has not also acquired the voting and other rights appurtenant to membership.

(22) “Member-managed limited liability company” means a limited liability company other than a manager-managed limited liability company.

(23) “Membership interest” or “interest” means a member’s collective rights in a limited liability company, including the member’s share of profits and losses of the limited liability company,
the right to receive distributions of the limited liability company's assets and any right to vote or participate in management.

(24) “Office,” when used to refer to the administrative unit directed by the Secretary of State, means the office of the Secretary of State.

(25) “Operating agreement” means any valid agreement, written or oral, of the member or members as to the affairs of a limited liability company and the conduct of the limited liability company's business.

(26) “Organizer” means one of the signers of the initial articles of organization.

(27) “Party” includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(28) “Person” means an individual or entity.

(29)(a) “Principal office” means the physical street address of an office, in or out of this state, where the principal executive offices of a domestic or foreign limited liability company are located and designated in the annual report or in the application for authority to transact business in this state.

(b) “Principal office” does not include a commercial mail receiving agency, a mail forwarding business or a virtual office.

(30) “Proceeding” means any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigatory and whether formal or informal.

(31) “Shell entity” means an entity that has the characteristics described in ORS 63.661 (1)(a)(C)(i).

(32) “State,” when referring to a part of the United States, means a state, commonwealth, territory or insular possession of the United States and the agencies and governmental subdivisions of the state, commonwealth, territory or insular possession.

(33) “United States” means the federal government and a district, authority, bureau, commission, department or any other agency of the United States.

SECTION 19. ORS 63.004 is amended to read:

63.004. (1) For the Secretary of State to file a document under this chapter, the document must satisfy the requirements set forth in this section and any other requirements in this chapter that supplement or modify the requirements set forth in this section.

(2) This chapter must require or permit filing The document must be a type of document that this chapter or another law requires or permits a person to file with the Office of the Secretary of State.

(3) The document must contain the information required by this chapter and may contain other information.

(4) The document must be legible.

(5) The document must be in the English language. The certificate of existence required of foreign limited liability companies under ORS 63.707 need not be in English if accompanied by a reasonably authenticated English translation.

(6)(a) Unless otherwise specified in this chapter, each document or report required by this chapter to be filed with the office must be executed in the following manner:

(A) Articles of organization must be signed by or on behalf of one or more persons wishing to form the limited liability company.

(B) Articles of amendment must be signed by at least one member or manager.

(C) Each annual report must be signed by one member or manager.

(D) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, a document or report must be signed by that receiver, trustee or fiduciary.

(b) An agent of a person identified in paragraph (a) of this subsection may execute a document identified in paragraph (a) of this subsection, if the person authorizes the agent to execute the document.

(7) The person that executes the document shall:
(a) Declare, above the person's signature and under penalty of perjury, that the document does not fraudulently conceal, fraudulently obscure, fraudulently alter or otherwise misrepresent the identity of the person or any of the members, managers, employees or agents of the limited liability company on behalf of which the person signs; and

(b) State beneath or opposite the signature the person's name and the capacity in which the person signs.

(8) The document may, but is not required to, contain an acknowledgment, verification or proof.

(9) If the Secretary of State has prescribed a mandatory form for the document under ORS 63.016, the document must be in or on the prescribed form.

(10) The document must be delivered to the office accompanied by the required fees.

(11) Delivery of a document to the office occurs only when the office actually receives the document.

SECTION 20. ORS 63.047 is amended to read:

63.047. (1) [The] Articles of organization [shall] must set forth:

(a) The name of the limited liability company, which [satisfies] must satisfy the requirements of ORS 63.094;

(b) The address, including street and number, and mailing address, if different, of the limited liability company's initial registered office and the name of [its] the initial registered agent at [that] the office;

(c) A mailing address to which notices, as required by this chapter, may be mailed until the limited liability company designates an address [has been designated by the limited liability company in its] in an annual report;

(d) If the limited liability company [is to] will be manager-managed, a statement that the limited liability company will be manager-managed or a statement that the limited liability company [is to] will be managed by a manager or managers;

(e) The name and address of each organizer;

(f) The latest date on which the limited liability company [is to] will dissolve or a statement that [its] the limited liability company's existence is perpetual; [and]

(g) If a limited liability company [is to] will render professional service or services, as defined in ORS 58.015, the professional service or services [to be rendered through] that the limited liability company[.] will render;

(h) The initial physical street address, including the number and name of the street, and the mailing address, if different, of the limited liability company's principal office; and

(i) The name and address of at least one individual who is a member or manager of the limited liability company or an authorized representative with direct knowledge of the operations and business activities of the limited liability company.

(2) The articles of organization may set forth any other provisions, not inconsistent with law, for [the regulation of] regulating the internal affairs of the limited liability company, including any provision that is required or permitted to be included in any operating agreement of the limited liability company under this chapter.

(3) The articles of organization need not set forth any of the powers enumerated in this chapter.

SECTION 21. ORS 63.074 is amended to read:

63.074. (1) Except as otherwise provided by the laws of [this] the state and in this section, a limited liability company formed under this chapter may conduct or promote any lawful business or purpose [which] that a partnership, corporation or professional corporation as defined in ORS 58.015 may conduct or promote, unless the articles of organization set forth a more limited purpose [is set forth in the articles of organization]. A person may not organize a limited liability company under this chapter for any illegal purpose or with an intent to fraudulently conceal any business activity from another person or a governmental agency.

(2) Subject to the laws of [this] the state, the rules and regulations of [the] a regulatory board of [the] a profession, if any, and the standards of professional conduct of the profession, if any, a limited liability company or [its] members of the limited liability company may render professional
service in this state. Notwithstanding any other law, members of a limited liability company, including members who are managers, [of a limited liability company] and who are also professionals, as defined in ORS 58.015, [shall be] are personally liable as members of the limited liability company to the same extent and in the same manner as provided for shareholders of a professional corporation in ORS 58.185 and 58.187 and as otherwise provided in this chapter.

(3) A business that is subject to regulation under another statute of [this] the state may not be organized under this chapter if the business is required to be organized only under the other statute.

SECTION 22. ORS 63.111 is amended to read:

63.111. (1) A limited liability company shall continuously maintain in this state a registered agent and registered office that may be, but need not be, the same as any of the limited liability company’s places of business. The registered office must be located at a physical street address where process may be personally served on the registered agent. The registered office may not be a commercial mail receiving agency, a mail forwarding business or a virtual office.

(2) A registered agent must be:

(a) An individual who resides in this state and whose business office is identical to the registered office;

(b) A domestic limited liability company, a domestic corporation, a domestic professional corporation or a domestic nonprofit corporation, the business office of which is identical to the registered office; or

(c) A foreign limited liability company, foreign corporation, foreign professional corporation or foreign nonprofit corporation that is authorized to transact business in this state, the business office of which is identical to the registered office.

SECTION 23. ORS 63.647 is amended to read:

63.647. The Secretary of State may commence a proceeding under ORS 63.651 to administratively dissolve a limited liability company if:

(1) The limited liability company does not pay when due any fees imposed by this chapter;

(2) The limited liability company does not deliver [its] the limited liability company’s annual report to the Secretary of State when due;

(3) The limited liability company fails to comply with an order from the Secretary of State under section 5 (1) of this 2017 Act or is the subject of a recommendation for dissolution from the Director of the Department of Revenue under section 5 (3) of this 2017 Act;

(4) The limited liability company is without a registered agent or registered office in this state;

(5) The limited liability company’s period of duration stated in [its] the articles of organization expires.

SECTION 24. ORS 63.661 is amended to read:

63.661. (1) [The circuit courts] A circuit court may dissolve a limited liability company:

[(1)] (a) In a proceeding by the Attorney General if [it is established] the court finds that:

[(A)] (A) The limited liability company [obtained its] filed articles of organization [through] with fraudulent intent, with fraudulent information or in a manner that otherwise indicates fraud; or

[(B)] (B) The limited liability company has continued to exceed or abuse the authority conferred upon [it] the limited liability company by law; or

(C) The limited liability company is a shell entity. For purposes of this subparagraph:

[(i)] (i) A court may find that a limited liability company is a shell entity if the court determines that the limited liability company was used or organized for an illegal purpose, was used or organized to defraud or deceive a person or a governmental agency or was used or organized to fraudulently conceal any business activity from another person or a governmental agency; and

Enrolled House Bill 2191 (HB 2191-C)
(ii) The Attorney General may make a prima facie showing that a limited liability company is a shell entity by stating in an affidavit that:

(I) The limited liability company did not provide a name or address required by the Secretary of State, or the name or address the limited liability company provided was false, fraudulent or inadequate;

(II) The limited liability company’s articles of organization, a record the limited liability company must keep under ORS 63.771 or the limited liability company’s annual report is false, fraudulent or inadequate;

(III) A public body, as defined in ORS 174.109, attempted to communicate with, or serve legal process upon, the limited liability company at the address or by means of other contact information the limited liability company provided to the Secretary of State, but the limited liability company failed to respond; or

(IV) The Attorney General has other evidence that shows that the limited liability company was used or organized for an illegal purpose, was used or organized to defraud or deceive a person or a governmental agency or was used or organized to fraudulently conceal any business activity from another person or a governmental agency.

(b) In a proceeding by or for a member if the court finds that it is not reasonably practicable to carry on the business of the limited liability company in conformance with its articles of organization or any operating agreement.

(c) In a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision.

(2) In addition to subjecting a limited liability company to dissolution under subsection (1)(a)(C) of this section, a finding that a limited liability company is a shell entity has the following effects:

(a) A court may rebuttably presume that the limited liability company’s filings with the Secretary of State constitute a false claim, as defined in ORS 180.750, in any action the Attorney General brings against the limited liability company under ORS 180.760 and may award to the Attorney General reasonable attorney fees and the costs of investigation, preparation and litigation if the Attorney General prevails in the action; and

(b) A public body, as defined in ORS 174.109, in any proceeding against the limited liability company, may move to enjoin a member, manager or other person that exercises significant direction or control over the limited liability company from engaging in commercial activity in this state, including but not limited to incorporating or organizing another entity in this state.

(3) A limited liability company may affirmatively defend against an allegation that the limited liability company is a shell entity by showing that the limited liability company, within 60 days after receiving a request to provide or correct a name, address or other information required for a filing or in articles of organization, a record the limited liability company must keep or an annual report, or within 60 days after the date of a request to respond to a communication or service of process, provided or corrected the name, address or other information or responded to the communication or service of process.

SECTION 25. ORS 63.737 is amended to read:

63.737. The Secretary of State may commence a proceeding under ORS 63.741 to revoke the authority of a foreign limited liability company to transact business in this state if:

(1) The foreign limited liability company does not deliver the limited liability company’s annual report to the Secretary of State within the time prescribed by this chapter;

(2) The foreign limited liability company does not pay within the time prescribed by this chapter any fees imposed by this chapter;

(3) The foreign limited liability company fails to comply with an order from the Secretary of State under section 5 (1) of this 2017 Act;

[3][4] The foreign limited liability company has failed to appoint or maintain a registered agent or registered office in this state as prescribed by this chapter;
[(4)] (5) The foreign limited liability company does not inform the Secretary of State under ORS 63.724 or 63.727 that [its] the limited liability company's registered agent or registered office has changed, that [its] the registered agent has resigned or that [its] the registered office has been discontinued;

[(5)] (6) An organizer, manager, member or agent of the foreign limited liability company signed a document knowing [it] the document was false in any material respect with intent that the document be delivered to the office for filing;

[(6)] (7) The foreign limited liability company no longer satisfies the requirements of ORS 63.714 (3);

[(7)] (8) The Secretary of State receives a duly authenticated certificate from the official having custody of the limited liability company records in the state or country under whose law the foreign limited liability company is organized stating that [it] the foreign limited liability company has been dissolved or has ceased to exist as the result of a merger or other reorganization transaction; or

[(8)] (9) The period of duration of the foreign limited liability company expires.

SECTION 26. ORS 65.001 is amended to read:

65.001. As used in this chapter:

(1) “Anniversary” means the day each year that is exactly one or more years after the date on which the Office of the Secretary of State files the articles of incorporation for a domestic corporation or the date on which the office files an application for authority to transact business for a foreign corporation[], except that an event that would otherwise cause an anniversary to fall on February 29 will cause the anniversary to fall on February 28.

(2) “Approved by the members” or “approval by the members” means approved or ratified by the members entitled to vote on the issue through either:

(a) The affirmative vote of a majority of the votes of the members represented and voting at a duly held meeting at which a quorum is present or the affirmative vote of a greater proportion including the votes of any required proportion of the members of any class as the articles, bylaws or this chapter may provide for specified types of member action; or

(b) A written ballot or written consent in conformity with this chapter.

(3) “Articles of incorporation” or “articles” means the articles described in ORS 65.047, amended and restated articles of incorporation or articles of merger, and corrections to the articles.

(4) “Board” or “board of directors” means the individual or individuals who are vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that an individual or a group of individuals is not the board of directors because of powers delegated to the individual or group under ORS 65.301.

(5) “Bylaws” means the code or codes of rules, other than the articles adopted under this chapter or the laws governing a foreign corporation, for regulating or managing the affairs of the domestic or foreign corporation, irrespective of the name or names by which the rules are designated.

(6) “Class” means a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights are the same if the rights are determined by a formula applied uniformly.

(7)(a) “Contact address” means a mailing address, including the principal office of a corporation or foreign corporation, or a business or residential address at which a person affiliated with the [organization] corporation or foreign corporation will or has consented to receive and transmit [to the organization] notices intended for the corporation or foreign [or domestic] corporation either when sending the notices to the registered agent is not practical or when a duplicate notice is desirable. [The contact address may be the principal place of business, if any, or the business or residence address of any person associated with the corporation or foreign corporation who has consented to serve, but may not be the address of the registered agent.]

(b) “Contact address” does not include the address of a registered agent.
(8) “Corporation” or “domestic corporation” means a nonprofit corporation that is not a foreign corporation, and that is incorporated under or subject to the provisions of this chapter.

(9) [“Delegates” means those persons] “Delegate” means a person elected or appointed to vote in a representative assembly for electing a director or directors or on other matters.

(10) “Deliver” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(11) [“Directors” means individuals] “Director” means an individual whom the articles or bylaws designate or whom the incorporators elect to act as [members] a member of the board, and [the successors to the individuals] a successor to the individual.

(12) “Distribution” means paying a dividend or any part of the income or profit of a corporation to the corporation’s members, directors or officers, other than paying value for property received or services performed or paying benefits to further the corporation’s purposes.

(13) “Domestic business corporation” means a for profit corporation that is incorporated under ORS chapter 60.

(14) “Domestic limited liability company” means an unincorporated association that has one or more members and that is organized under ORS chapter 63.

(15) “Domestic professional corporation” means a corporation that is organized under ORS chapter 58 for the purpose of rendering professional services and for the purposes provided under ORS chapter 58.

(16) “Effective date of notice” has the meaning given that term in ORS 65.034.

(17) “Employee” includes an officer or director whom the corporation employs with compensation for services beyond those encompassed by board membership.

(18) “Entity” means a corporation, foreign corporation, business corporation and foreign business corporation, profit and nonprofit unincorporated association, corporation sole, business trust, two or more persons that have a joint or common economic interest, any state, the United States, a federally recognized Native American or American Indian tribal government and any foreign government.

(19) “File,” “filed” or “filing” means reviewed, accepted and entered in the Office of the Secretary of State.

(20) “Foreign business corporation” means a for profit corporation that is incorporated under laws other than the laws of [this] the state.

(21) “Foreign corporation” means a corporation that is organized under laws other than the laws of [this] the state and that would be a nonprofit corporation if formed under the laws of [this] the state.

(22) “Foreign limited liability company” means an unincorporated association that is organized under laws other than the laws of [this] the state and that is organized under a statute under which an association may be formed that affords to each of the entity’s members limited liability with respect to liabilities of the entity.

(23) “Foreign professional corporation” means a professional corporation that is organized under laws other than the laws of [this] the state.

(24) “Governmental subdivision” includes an authority, county, district and municipality.

(25) “Individual” means a natural person, including the guardian of an incompetent individual.

(26)(a) “Member” means a person that is entitled, under a domestic or foreign corporation’s articles or bylaws, without regard to what the person is called in the articles or bylaws, to vote on more than one occasion to elect a director or directors.

(b) “Member” does not include:

(A) A person [is not a member by virtue of any] that has only one or more of the following rights [the person has]:

[(A)] (i) As a delegate;
[(B)] (ii) To designate or appoint a director or directors;
[(C)] (iii) As a director; or
[(D)] (iv) As a holder of an evidence of indebtedness the corporation has issued or will issue.
[(c) (B) [Notwithstanding the provisions of paragraph (a) of this subsection, a person is not a member if the person’s] A person whose membership rights have been eliminated as provided in ORS 65.164 or 65.167.

(27) “Membership” means the rights and obligations a member has under this chapter.

(28) “Mutual benefit corporation” means a domestic corporation that is formed as a mutual benefit corporation under ORS 65.044 to 65.067 and is designated a mutual benefit corporation by a statute or does not come within the definition of public benefit or religious corporation.

(29) “Nonprofit corporation” means a mutual benefit corporation, a public benefit corporation or a religious corporation.

(30) “Notice” has the meaning given that term in ORS 65.034.

(31) “Office,” when used to refer to the administrative unit directed by the Secretary of State, means the Office of the Secretary of State.

(32) “Person” means individual or entity.

(33)(a) “Principal office” means the physical street address of the place, in or out of this state, where the principal executive offices of a domestic or foreign corporation are located and that is designated as the principal office in the most recent annual report filed pursuant to ORS 65.787 or, if no annual report is on file, in the articles of incorporation or the application for authority to transact business in this state.

(b) “Principal office” does not include a commercial mail receiving agency, a mail forwarding business or a virtual office.

(34) “Proceeding” means a civil, criminal, administrative or investigatory action.

(35) “Public benefit corporation” means a domestic corporation that:

(a) Is formed as a public benefit corporation under ORS 65.044 to 65.067, is designated as a public benefit corporation by a statute, is recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or is otherwise organized for a public or charitable purpose;

(b) Is restricted so that on dissolution the corporation must distribute the corporation’s assets to an organization organized for a public or charitable purpose, a religious corporation, the United States, a state or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986; and

(c) Does not come within the definition of “religious corporation.”

(36) “Record date” means the date established under ORS 65.131 to 65.177 or 65.201 to 65.254 on which a corporation determines the identity of the corporation’s members and the members’ membership rights for the purposes of this chapter.

(37) “Religious corporation” means a domestic corporation that is formed as a religious corporation under ORS 65.044 to 65.067, is designated a religious corporation by a statute or is organized primarily or exclusively for religious purposes.

(38) “Remote communication” means any method by which a person that is not physically present at the location at which a meeting occurs may nevertheless hear or otherwise communicate at substantially the same time with other persons at the meeting and have access to materials necessary to participate or vote in the meeting to the extent of the person’s authorization to participate or vote.

(39) “Secretary,” when used in the context of a corporate official, means the corporate officer to whom the board of directors has delegated responsibility under ORS 65.371 for preparing the minutes of the directors’ and members’ meetings and for authenticating the records of the corporation.

(40) “State,” when referring to a part of the United States, means a state, commonwealth, territory or insular possession of the United States and the agencies and governmental subdivisions of the state, commonwealth, territory or insular possession.

(41) “Uncompensated officer” means an individual who serves in an office without compensation for personal service. For purposes of this subsection, payment solely for actual expenses in performing duties of the officer or a stipend that is paid only to compensate the average expenses the individual incurs over the course of a year is not compensation.
(42) “United States” means the federal government or a district, authority, bureau, commission, department or any other agency of the United States.

(43) “Vote” means authorization by written ballot and written consent, where permitted.

(44) “Voting power” means the total number of votes entitled to be cast on an issue at the time the determination of voting power is made, excluding a vote that is contingent upon a condition or event occurring that has not occurred at the time.

SECTION 27. ORS 65.111 is amended to read:

65.111. (1) Each corporation shall continuously maintain in this state both:

[(1)] (a) A registered agent, who [shall] must be:

[(a)] (A) An individual who resides in this state;

[(b)] (B) A corporation, domestic business corporation, domestic limited liability company or domestic professional corporation with an office in this state; or

[(c)] (C) A foreign corporation, foreign business corporation, foreign limited liability company or foreign professional corporation authorized to transact business in this state with an office in this state;

and

[(2)] (b) A registered office of the corporation, which [shall] must be the residence or office address of the registered agent.

(2) A registered office under this section must be located at a physical street address where process may be personally served on the registered agent. The registered office may not be a commercial mail receiving agency, a mail forwarding business or a virtual office.

SECTION 28. ORS 70.020 is amended to read:

70.020. Each limited partnership shall continuously maintain in this state an office at which the records referred to in ORS 70.050 shall be kept. The office may be but need not be a place of business of the limited partnership in this state and may not be a commercial mail receiving agency, a mail forwarding business or a virtual office.

SECTION 29. ORS 70.025 is amended to read:

70.025. (1)(a) A domestic limited partnership and a foreign limited partnership that does business in this state and all general partners of each domestic limited partnership or foreign limited partnership must continuously maintain in this state a registered agent and a registered office. The registered office must be located at a physical street address where process may be personally served on the registered agent. The registered office may not be a commercial mail receiving agency, a mail forwarding business or a virtual office.

(b) The registered agent must be:

(A) An individual resident of this state who has a business office in this state;

(B) A domestic corporation, domestic limited liability company, domestic professional corporation or domestic nonprofit corporation that has a business office in this state; or

(C) A foreign corporation, foreign limited liability company, foreign professional corporation or foreign nonprofit corporation that is authorized to transact business in this state and has a business office in this state.

(2) A domestic or foreign limited partnership and the general partners of the domestic or foreign limited partnership may change the registered agent of the domestic or foreign limited partnership by submitting for filing to the Office of Secretary of State a statement described in this subsection. The statement must be executed by a general partner. Filing the statement immediately terminates the existing registered agent and establishes the newly appointed registered agent as the registered agent of the domestic or foreign limited partnership and the general partners of the domestic or foreign limited partnership. The statement must include:

(a) The name of the domestic or foreign limited partnership and the name and address of each general partner of the domestic or foreign limited partnership; and

(b) The name of the successor registered agent and the physical street address of the registered agent’s business office in this state.

SECTION 30. ORS 128.575 is amended to read:

Enrolled House Bill 2191 (HB 2191-C)
128.575. (1) Any business trust desiring to do business in this state shall first submit to the Office of Secretary of State a copy of the trust instrument creating the trust and any subsequent amendments to the trust and a document setting forth:

(a) The business trust name and the state or country of formation;
(b) The names and addresses of [its] the business trust’s trustees;
(c) The physical street address of the business trust's registered office in this state, which must be a location at which process may be personally served on the registered agent and that may not be a commercial mail receiving agency, a mail forwarding business or a virtual office, and the name of the registered agent;
(d) A mailing address to which the Secretary of State may mail notices; and
(e) Any additional identifying information that the Secretary of State by rule may require.

(2) The filing described in subsection (1) of this section shall must be accompanied by the applicable filing fee.

(3) If the Secretary of State finds that the document contains the required information, the Secretary of State, when all fees have been paid, shall file the trust instrument and document and return an acknowledgment of filing to the sender.

(4) If a business trust amends [its] a trust instrument [it], the business trust shall submit for filing a copy of the amendment to the Office of Secretary of State. The amendment shall set forth:

(a) The name of the business trust as shown on the records of the Office of Secretary of State; and
(b) The information as changed.

SECTION 31. ORS 128.595 is amended to read:

128.595. (1) A business trust by the trust’s anniversary date shall deliver to the office of the Secretary of State for filing an annual report accompanied by the annual fee.

(2) The annual report must contain:

(a) The name of the business trust and the state or country under the law of which the business trust is formed;
(b) The names and addresses of the business trust's trustees;
(c) The physical street address of the business trust's registered office in this state, which must be a location at which process may be personally served on the registered agent and which may not be a commercial mail receiving agency, a mail forwarding business or a virtual office, and the name of the trust's registered agent at the registered office;
(d) A mailing address to which the Secretary of State may mail notices;
(e) A description of the primary business activity of the business trust; and
(f) Any additional identifying information that the Secretary of State may require by rule.

(3) The annual report must be on forms prescribed and furnished by the Secretary of State. The information contained in the annual report must be current as of 30 days before the anniversary of the business trust.

(4) The Secretary of State shall mail the report form to any address shown for the business trust in the current records of the Office of Secretary of State. The business trust’s failure to receive the report form from the Secretary of State does not relieve the business trust of the trust’s duty under this section to deliver a report to the office.

(5) If the Secretary of State finds the report conforms to the requirements of this section, the Secretary of State shall file the report.

(6) If the Secretary of State finds that the annual report does not conform to the requirements of this section, the Secretary of State shall return the report to the business trust. The business trust shall correct the annual report and return the corrected report to the Secretary of State within 45 days after the Secretary of State returns the report.

(7) If [no] a business trust has not filed the report [is filed] by the reporting date or [if no] has not filed a corrected report [is filed] within the 45-day period, the Secretary of State shall send to the business trust a final notice advising that a report has not been filed and the Secretary of
State, therefore, assumes that the business trust is no longer active unless a report is filed within 45 days after the mailing of the final notice.

(8) Not less than 45 days after the mailing date of the final notice specified in subsection (7) of this section, the Secretary of State may assume and note on the records of the Secretary of State that the business trust is inactive.

SECTION 32. ORS 314.840 is amended to read:

314.840. (1) The Department of Revenue may:

(a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, representative or designee, with a copy of the taxpayer’s income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return, or with any other information the department considers necessary.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer’s name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report or return required in the administration of any local tax under ORS 305.620 or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor with respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(A) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(B) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(C) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(D) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(b) An officer or employee of the Oregon Department of Administrative Services duly authorized or employed to prepare revenue estimates, or a person contracting with the Oregon Department of Administrative Services to prepare revenue estimates, in the preparation of revenue estimates required for the Governor’s budget under ORS 291.201 to 291.226, or required for submission to the Emergency Board or the Joint Interim Committee on Ways and Means, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer or Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes of this paragraph only if:

(A) The request for information is made in writing, specifies the purposes for which the request is made and is signed by an authorized representative of the Oregon Department of Administrative Services. The form for request for information shall be prescribed by the Oregon Department of Administrative Services and approved by the Director of the Department of Revenue.
(B) The officer, employee or person receiving the information does not remove from the premises of the Department of Revenue any materials that would reveal the identity of a personal or corporate taxpayer.

c) The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.

d) For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

(A) A state;
(B) A city, county or other political subdivision of a state;
(C) The District of Columbia; or
(D) An association established exclusively to provide services to federal, state or local taxing authorities.

e) The Multistate Tax Commission or its authorized representatives, for tax administration and compliance purposes only. The Multistate Tax Commission may make the information available to the Commissioner of Internal Revenue or the proper officer or authorized representative of any governmental entity described in and meeting the qualifications of paragraph (d) of this subsection.

(f) The Attorney General, assistants and employees in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of [this] the state.

g) Employees of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department’s administration of the tax laws.

(h) Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the department deems disclosure or access necessary for the performance of such others’ duties under contracts or agreements between the department and such legal entities, in the department’s administration of the tax laws.

(i) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

(j) The Department of Consumer and Business Services, to the extent the department requires such information to determine whether it is appropriate to adjust those workers’ compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

(k) Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under Article VI, section 2, of the Oregon Constitution; the Department of Human Services pursuant to ORS 412.094; the Division of Child Support of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy, pursuant to ORS 673.415.

(L) The Director of the Department of Consumer and Business Services to determine that a person complies with ORS chapter 656 and the Director of the Employment Department to determine that a person complies with ORS chapter 657, the following employer information:

(A) Identification numbers.
(B) Names and addresses.
(C) Inception date as employer.
(D) Nature of business.
(E) Entity changes.
(F) Date of last payroll.

(m) The Director of the Oregon Health Authority to determine that a person has the ability to pay for care that includes services provided by the Oregon State Hospital, or the Oregon Health Authority to collect any unpaid cost of care as provided by ORS chapter 179.

(n) Employees of the Employment Department to the extent the Department of Revenue deems disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657.

(o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

(p) Employees of the Department of State Lands for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the refund amount.

(q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement agencies to assist in the investigation or prosecution of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(r) The United States Postal Inspection Service or a federal law enforcement agency, including but not limited to the United States Department of Justice, to assist in the investigation of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(s) The United States Financial Management Service, for purposes of facilitating the offsets described in ORS 305.612.

(t) A municipal corporation of this state for purposes of assisting the municipal corporation in the administration of a tax of the municipal corporation that is imposed on or measured by income, wages or net earnings from self-employment. Any disclosure under this paragraph may be made only pursuant to a written agreement between the Department of Revenue and the municipal corporation that ensures the confidentiality of the information disclosed.

(u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS 314.843.

(v) The Public Employees Retirement Board, to the extent necessary to carry out the purposes of ORS 238.372 to 238.384, and to any public employer, to the extent necessary to carry out the purposes of ORS 237.635 (3) and 237.637 (2).

(w) The Secretary of State for the purpose of initiating or supporting a recommendation under section 2 (3) or 5 (3) of this 2017 Act to administratively dissolve a corporation or limited liability company that the Director of the Department of Revenue determines has failed to comply with applicable tax laws of the state.
(3)(a) Each officer or employee of the department and each person described or referred to in subsection (2)(a), (b), (f) to (L) [or], (n) to (q) or (w) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835.

(b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a written agreement has been entered into between the Department of Revenue and the person described in subsection (2)(r) of this section to whom disclosure or access to the tax information is given, providing that:

(A) Any information described in ORS 314.835 that is received by the person pursuant to subsection (2)(r) of this section is confidential information that may not be disclosed, except to the extent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of this section;

(B) The information shall be protected as confidential under applicable federal and state laws; and

(C) The United States Postal Inspection Service or the federal law enforcement agency shall give notice to the Department of Revenue of any request received under the federal Freedom of Information Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

(4) The Department of Revenue may recover the costs of furnishing the information described in subsection (2)(L), (m) and (o) to (q) of this section from the respective agencies.

SECTION 33. ORS 554.082 is amended to read:

554.082. (1) A corporation shall continuously maintain in this state a registered agent and registered office that may be, but need not be, the same as any of the corporation’s places of business. The registered office must be located at a physical street address where process may be personally served on the registered agent. The registered office may not be a commercial mail receiving agency, a mail forwarding business or a virtual office.

(2) A registered agent must be:

(a) An individual who resides in this state and whose business office is identical to the registered office;

(b) A domestic corporation or domestic nonprofit corporation, the business office of which is identical to the registered office; or

(c) A foreign corporation or foreign nonprofit corporation that is authorized to transact business in this state, the business office of which is identical to the registered office.

SECTION 34. (1) Sections 2, 3, 5 and 6 of this 2017 Act and the amendments to ORS 56.035, 60.001, 60.004, 60.047, 60.074, 60.111, 60.131, 60.647, 60.661, 60.737, 62.155, 63.001, 63.004, 63.047, 63.074, 63.111, 63.647, 63.661, 63.737, 65.001, 65.111, 70.020, 70.025, 128.575, 128.595, 314.840 and 554.082 by sections 7 to 33 of this 2017 Act become operative on January 1, 2018.

(2) The Secretary of State and the Director of the Department of Revenue may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Secretary of State or the director to exercise, on or after the operative date specified in subsection (1) of this section, all of the duties, powers and functions conferred on the Secretary of State and the director by sections 2, 3, 5 and 6 of this 2017 Act and the amendments to ORS 56.035, 60.001, 60.004, 60.047, 60.074, 60.111, 60.131, 60.647, 60.661, 60.737, 62.155, 63.001, 63.004, 63.047, 63.074, 63.111, 63.647, 63.661, 63.737, 65.001, 65.111, 70.020, 70.025, 128.575, 128.595, 314.840 and 554.082 by sections 7 to 33 of this 2017 Act.

SECTION 35. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (5), chapter ____, Oregon Laws 2017 (Enrolled Senate Bill
5536), for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Secretary of State, is increased by $157,718 for the purpose of carrying out the provisions of sections 2, 3, 5 and 6 of this 2017 Act and the amendments to ORS 56.035, 60.001, 60.004, 60.047, 60.074, 60.111, 60.131, 60.647, 60.661, 60.737, 62.155, 63.001, 63.004, 63.047, 63.074, 63.111, 63.647, 63.661, 63.737, 65.001, 65.111, 70.020, 70.025, 128.575, 128.595 and 554.082 by sections 7 to 31 and 33 of this 2017 Act.

SECTION 36. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect July 1, 2017.
Secretary of State

Corporation Division - Chapter 160

Division 10
BUSINESS REGISTRY SECTION

160-010-0480
Physical Street Address and Individual With Direct Knowledge

(1) A corporation shall be considered in compliance with Section 10(1)(f) and Section 10(1)(g) of House Bill 2191 (2017) if the corporation:

(a) Was formed on or after January 1, 2018 and has filed with the Secretary of State the information required by Section 10(1)(f) and Section 10(1)(g) of House Bill 2191 (2017) in the Articles of Incorporation;

(b) Was formed prior to January 1, 2018 and has not filed with the Secretary of State on or after January 1, 2018 Amended Articles of Incorporation, Restated Articles, Articles of Conversion, or Articles of Merger;

(c) Was formed prior to January 1, 2018 and provides the information required by Section 10(1)(f) and Section 10(1)(g) of House Bill 2191 (2017) when it files with the Secretary of State Amended Articles of Incorporation, Restated Articles, Articles of Conversion, or Articles of Merger; or

(d) Includes the information required by Section 10(1)(f) and Section 10(1)(g) of House Bill 2191 (2017) in an Information Change Form or annual report filed with the Secretary of State.

(2) A limited liability company shall be considered in compliance with Section 20(1)(h) and Section 20(1)(i) of House Bill 2191 (2017) if the limited liability company:

(a) Was formed on or after January 1, 2018 and has filed with the Secretary of State the information required by Section 20(1)(h) and Section 20(1)(i) of House Bill 2191 (2017) in the Articles of Organization;

(b) Was formed prior to January 1, 2018 and has not filed with the Secretary of State on or after January 1, 2018 Amended Articles of Organization, Restated Articles, Articles of Conversion, or Articles of Merger;

(c) Was formed prior to January 1, 2018 and provides the information required by Section 20(1)(h) and Section 20(1)(i) of House Bill 2191 (2017) when it files with the Secretary of State Amended Articles of Organization, Restated Articles, Articles of Conversion, or Articles of Merger; or
(d) Includes the information required by Section 20(1)(h) and Section 20(1)(i) of House Bill 2191 (2017) in an Information Change Form or annual report filed with the Secretary of State.

**Statutory/Other Authority:** ORS 56.022, 60.047, and 63.047

**Statutes/Other Implemented:** ORS 56.022, 60.047, and 63.047

**History:**
CORP 1-2017, adopt filed 12/26/2017, effective 01/01/2018