OREGON DEPARTMENT OF REVENUE

# Oregon Revenue Bulletin 2010-02

## Partnership minimum tax

**Purpose:** To provide guidance about the new partnership minimum tax.

**Tax program:** Partnership minimum tax

**Statute:** Note following ORS 314.724 (OR Laws 2009, Ch 745, Section 3)

**Effective date:** For tax years beginning on or after January 1, 2009.

**Issue:** A partnership must pay the $150 minimum tax if it's transacting business in Oregon and required to file a partnership return.

The new partnership minimum tax became law when Measure 67 passed on January 26, 2010. The term "partnership" includes any entity that files as a partnership, such as a multiple member LLC filing as a partnership.

These examples describe when a partnership is and isn't required to pay the minimum tax:

*Partnership return requirement*: A partnership that isn't required to file a partnership return under ORS 314.724 doesn't owe the partnership minimum tax.

Example 1: A husband and wife run their business as a qualified joint venture. Each is reporting their income as sole proprietors on separate Schedules C. They aren't required to file a partnership return, so they don't owe the partnership minimum tax.

Example 2: A multiple member LLC classified as a partnership did not have any activity during the year and has no income or loss to report. As a result, it's not required to file a partnership return and it doesn't owe the partnership minimum tax.

*Resident partner filing requirement*: A partnership that files an Oregon return only because it has partners who are Oregon residents doesn't owe the partnership minimum tax.

Example 3: A partnership based in Colorado owns and operates a resort in Colorado. The partnership doesn't do business outside Colorado. However, one of the partners is an Oregon resident, so the partnership is required to file an Oregon partnership return. Because this is the only reason the partnership is filing in Oregon, it doesn't owe the partnership minimum tax.

*Transacting business definition*: The term “transacting business” means the same as “doing business” for corporations in ORS 317.010 and OAR 150-317.010(4). If a partnership is doing business in Oregon depends on the facts and circumstances and activities of that partnership. Our website has more examples and explanations for corporate taxpayers that a partnership can also use.

*Tiered entities*: A partnership that isn’t otherwise doing business in Oregon may owe the partnership minimum tax if it owns an interest in another partnership—including an LLC classified as a partnership—that is doing business in Oregon. If the partnership is involved in the Oregon business or acts on behalf of the Oregon business, the partnership is doing business in Oregon and subject to the partnership minimum tax. Generally, limited partners aren’t involved in a partnership’s activities and don’t act on behalf of the partnership. Each partnership must look at the facts and circumstances to determine if it’s doing business in Oregon for a particular tax year.

Example 4: Albany Associates is a limited partnership doing business in Oregon. Phoenix LLC is classified as a partnership and owns 20 percent of Albany Associates as a limited partner. Phoenix LLC has no other activity, property, or ties to Oregon and doesn’t own an interest in any other entity doing business in Oregon. Phoenix LLC isn’t involved in the operation of Albany Associates and doesn’t perform any actions on behalf of Albany Associates. Phoenix LLC is not doing business in Oregon. Although Phoenix LLC still has Oregon-source income taxable to its owners and must file an Oregon partnership return, it doesn’t owe the partnership minimum tax.

Example 5: Detroit LLC owns a 40-percent stake in Ontario Enterprises, an Oregon partnership doing business in Oregon. Detroit LLC files as a partnership and is involved in the operation of Ontario Enterprises. Detroit LLC owes the partnership minimum tax. Bend Associates owns 20 percent of Detroit LLC and manages Detroit LLC’s affairs, including its actions as a general partner of Ontario Enterprises. Bend Associates is involved in the activities of Ontario Enterprises; therefore, Bend Associates also owes the partnership minimum tax.

Example 6: Pittsburgh LLC owns 40 percent of Waldport LLC, an Oregon LLC classified as a partnership and doing business in Oregon. Pittsburgh LLC has no involvement in Waldport LLC, which is operated by the other owners. Pittsburgh LLC is not otherwise doing business in Oregon. Pittsburgh LLC doesn’t owe the partnership minimum tax. However, Pittsburgh LLC must file a partnership return for Oregon because it has Oregon-source income that flows through to its owners.

*Investment partnerships*: A partnership whose purpose is investing (often called an investment club) generally isn’t doing business in Oregon if it simply pools resources to hold stocks and securities for long-term investment. Therefore, it generally isn't required to pay the partnership minimum tax. The club still must file a partnership return if it has Oregon-source income or one of the partners is an Oregon resident. Many investment clubs don't owe the partnership minimum tax. However, labels are not determinative, and one must consider the partnership's facts and circumstances. An investment club may be doing business in Oregon—and subject to the partnership minimum tax—if it regularly conducts short-term trading for profit, or conducts substantial and continuous activities marketing portfolio investments.

*Real estate*: A partnership engaged in systematic and regular activity regarding Oregon real estate is doing business in Oregon. Managing rental real estate is usually considered doing business in Oregon because of the continuous and substantial activity of managing property and tenants. However, just holding Oregon property isn't considered doing business in Oregon. For example, a joint venture to buy and hold bare land for long-term appreciation and eventual sale with no regular activity to develop or market the property isn't doing business in Oregon, even though the gain or loss from the property's sale is Oregon-source.

Example 7: Comfort Living owns residential rentals in Oregon. Comfort Living is regularly involved in managing the property and entering into lease agreements. Comfort Living is doing business in Oregon and must pay the minimum tax.

Example 8: Family Property LLC (FP) owns three plots of land in Oregon that it bought for long-term investment. Two of the plots are farmland, which FP leases to farmers. There is no maintenance or regular activity of FP associated with any of the land. FP's only activity is receipt of semiannual lease payments made by the farmers. FP has no other business property or activity; its sole purpose is to own these plots for investment. It's required to file a partnership return to report the Oregon source income from the leases. Even though this is taxable income that flows through to the owners, FP isn't doing business so it doesn't owe the partnership minimum tax.

*Penalty and interest*: Penalty and interest may accrue if the partnership minimum tax isn't paid by the return's due date. If filing an extension, complete and send the partnership minimum tax voucher, Form 65-V, with the $150 payment and write "Extension" across the top of the voucher. The Oregon partnership return due date is the same as the federal partnership return due date.

*Does the partnership owe the partnership minimum tax?*

If a partnership is required to file an Oregon partnership return, use the flow chart below to determine if it owes the partnership minimum tax.

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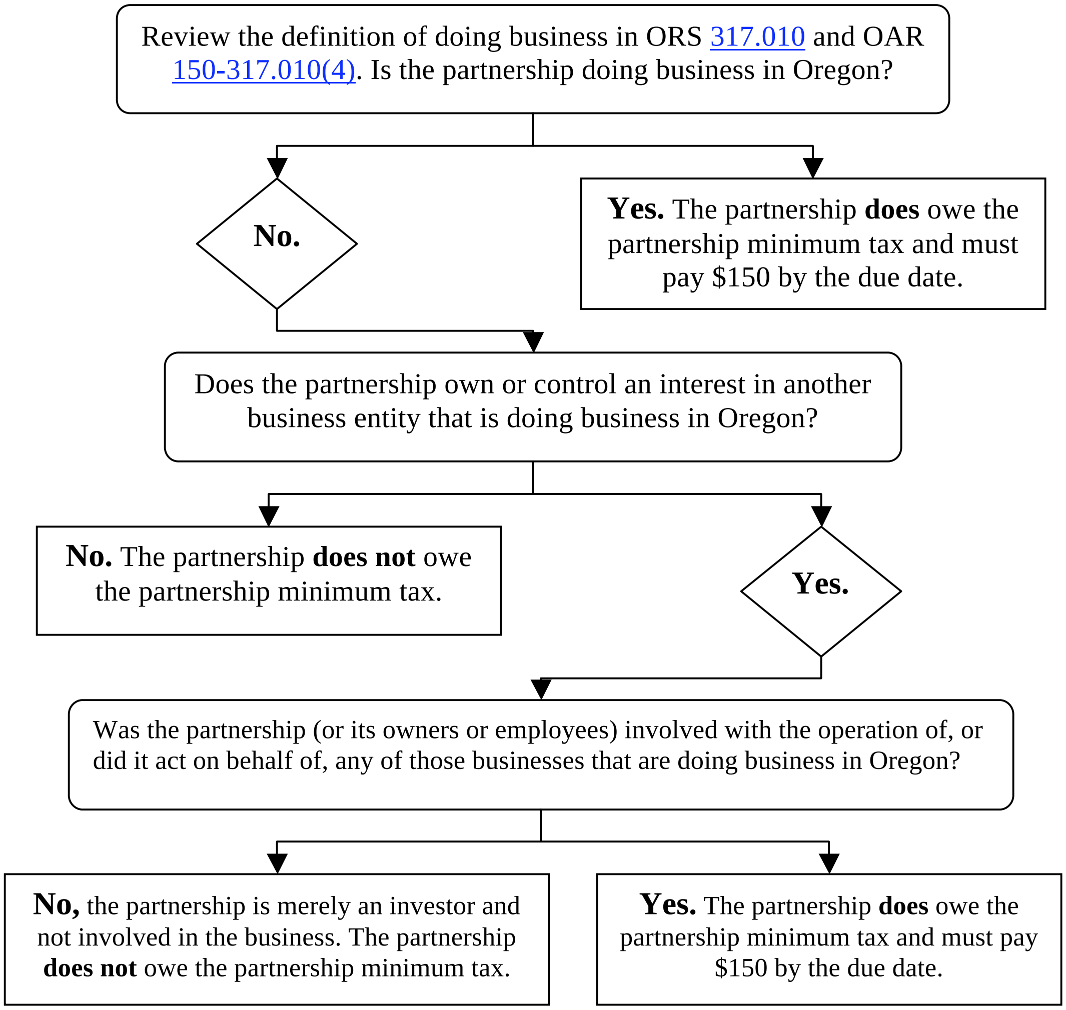


Check the partnership information on our website for other information.

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