

Proposed Changes to AR 499 draft rules – Opening & Response Comments

A. Properly Attributed Issues	Alternatives
<p>1. Tax Normalization Requirements. Non-Oregon deferred taxes: Allocating benefits related to regulated operations to Oregon customers could trigger a normalization violation. (13f requires an adjustment for deferred taxes of Oregon operations.)</p>	<p>a) Prior to apportioning taxes paid to regulated operations, adjust the amount of federal income taxes by the amount of deferred taxes attributable to non-Oregon regulated entities.</p> <p>b) Same as above, except also adjust for deferred taxes related to non-regulated affiliates.</p> <p>c) Make separate adjustment to properly attributed amount that removes non-Oregon regulated deferred taxes.</p> <p>d) Also make separate adjustment for deferred taxes related to Oregon disallowed capital costs, if any.</p> <p>e) Remove all non-Oregon regulated entities from the calculation.</p> <p>f) Use stand-alone calculation minus three-factor apportionment of tax benefits of combined net losses of non-regulated affiliates.</p> <p>g) Utility proposes additional adjustments to compliance filing to address normalization risks.</p>
<p>2. Add backs to Taxes Paid. Tax credits and benefits unrelated to Oregon regulated operations (e.g., Production Tax Credits and charitable contributions), unless adjusted, would be allocated to Oregon customers. (13f requires an adjustment for Oregon items)</p>	<p>Prior to apportioning taxes paid to regulated operations, adjust the total by tax credits (i.e., start with taxes before credits) and by tax benefits related to charitable contributions of non-Oregon operations.</p>
<p>3. Situs versus allocated amounts. Use of situs amounts in the three-factor calculation for Taxes Paid creates a mismatch with how Taxes Collected are calculated.</p>	<p>For calculating the three-factor ratios for Oregon regulated operations, use amounts that reflect ratemaking basis (e.g., much of property and payroll is allocated), rather than situs.</p>
<p>4. State Taxes Paid: Unitary Group. Basing calculation of state income taxes paid on all companies of the affiliated group in the state requires unwarranted complexity and is inconsistent with the unitary taxpaying group that includes the utility.</p>	<p>For calculating state income taxes paid, apportion using the utility's unitary group (taxpaying entity with which utility has nexus) rather than all companies in the affiliated group that file state taxes.</p>
<p>5. State Taxes Paid: Multi-state tax rate. Three-factor calculation for state tax using only Oregon income tax creates a mismatch between how Taxes Paid and Taxes Collected are calculated for multi-state utilities for which Commission recognizes non-Oregon state taxes in setting rates.</p>	<p>For calculating state taxes paid, utilities that include non-Oregon state taxes in rates should have option to use the three-factor method with either (a) Oregon taxes paid, with an adjustment to reflect difference between effective tax rate from rate case and Oregon tax rate; or (b) the total state tax of all jurisdictions, with an allocation to Oregon.</p>
<p>6. Local Taxes Paid Apportionment. Three-factor calculation for local taxes is inconsistent with the gross income allocator Multnomah County uses to apportion Oregon net income to county.</p>	<p>Apportion Multnomah County local tax to utility's regulated operations using 100% sales (gross income) factor.</p>

7. Definition of “Sales” Factor. In the three-factor formula, Sales may not include all income underlying taxes paid (e.g., dividend income)	Modify definition of Sales to include all income that is taken into account to calculate the tax payment.
8. Floor for Properly Attributed Amount. As losses reduce the taxes paid starting point, the three-factor method apportions those losses to all entities, including the losers. Thus, utility’s properly attributed amount could be lower than stand-alone by more than 100% of the combined losses.	a) Calculate a “floor” for properly attributed taxes paid equal to the utility’s stand-alone tax liability minus total amount of the tax benefits from losses in the taxpaying group. b) Apportion tax effect of losses only on a net basis (see 1f, above)
9. “Double Whammy.” SB 408 adjustment exacerbates higher/lower earnings.	Increase the calculated properly attributed amount up to section (12) stand-alone cap when costs fluctuate between rate cases.

B. Other Issues	Alternatives
10. The (12)(a) cap Definition. If “With and Without” method were used for the cap, section (12) would not be meaningful because (12)(a) would always be lower than (12)(b).	Use a stand-alone tax liability calculation for the utility’s regulated operations for the (12)(a) cap.
11. The (12)(a) cap Adjustments. “With and without” calculation does not reflect all impacts on the affiliated group related to the utility.	Adjust the calculation to account for all tax liability and credits supported directly or indirectly (e.g., affiliate debt-related interest payments) by the utility.
12. The (12)(a) cap for state taxes paid. A stand-alone calculation of taxable income is not consistent with how state income tax payments are determined.	For state taxes paid, use the three-factor apportionment result as both the properly paid amount and the stand-alone (12)(a) amount.
13. Private Letter Rulings. The proposed date of October 15 for filing the Private Letter Ruling does not provide sufficient process time for the companies, OPUC, and other participants to prepare and review drafts.	Extend date to December 31, 2006, by which each utility must seek at Private Letter Ruling from the IRS.