

House Bill 3052

Sponsored by COMMITTEE ON REVENUE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes real estate transfer tax on transfers of real property. Exempts certain transactions from tax. Directs county recording officers to collect tax. Provides special rules for collection of tax on transfers of manufactured structures and floating homes. Establishes exemptions from tax.

Establishes Shared Services Fund. Continuously appropriates moneys in fund to Oregon Department of Administrative Services for distribution.

Applies to real estate transfers occurring on or after January 1, 2008.

A BILL FOR AN ACT

1
2 Relating to finance; creating new provisions; amending ORS 205.110, 305.230, 305.380, 820.570,
3 830.855 and 830.860; appropriating money; and providing for revenue raising that requires ap-
4 proval by a three-fifths majority.

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

6 **SECTION 1. Sections 1 to 26 of this 2007 Act may be cited as the Real Estate Transfer**
7 **Tax Act.**

8 **SECTION 2. Unless the context requires otherwise, the definitions given in sections 3 to**
9 **10 of this 2007 Act govern the construction of sections 1 to 26 of this 2007 Act.**

10 **SECTION 3. (1) "Consideration" means the total price actually paid or delivered or re-**
11 **quired to be paid or delivered for the transfer of real property, or an estate or interest**
12 **therein, whether expressed in the transfer instrument and whether paid or required to be**
13 **paid in money, property or any other thing of value.**

14 (2) "Consideration" includes, but is not limited to:

15 (a) The amount of any lien, mortgage, contract, indebtedness or encumbrance existing
16 against the property to which the property remains subject or that the purchaser or other
17 person agrees to pay or assume. If the sale is of a fractional interest in real property, the
18 principal balance of any debt remaining unpaid at the time of sale shall be multiplied by the
19 same fraction and the result added as a component of the total consideration.

20 (b) The amount of any indebtedness or obligation canceled or discharged by the trans-
21 action.

22 (3) "Consideration" does not include:

23 (a) Interest.

24 (b) The amount of any lien or encumbrance in favor of the United States, this state or
25 a municipal corporation or political subdivision of this state for taxes, special benefits or
26 improvements.

27 (4) In the case of a lease with an option to purchase, consideration shall be determined
28 as provided in section 14 of this 2007 Act.

29 (5) In the case of certain sales or leases of mining property, consideration shall be de-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 terminated as provided in section 14 of this 2007 Act.

2 (6) In the case of a sale where the consideration is not separately stated or is not
 3 ascertainable on the date of transfer, consideration shall be determined as provided under
 4 section 15 of this 2007 Act.

5 (7) In the case of a sale of a manufactured structure or floating home located outside this
 6 state, the consideration is the lesser of:

7 (a) The fair market value of the manufactured structure or floating home as of the date
 8 the manufactured structure or floating home was brought into this state, as determined in
 9 accordance with a current recognized value guide; or

10 (b) The consideration as otherwise determined under this section.

11 **SECTION 4.** (1) "Date of sale" means the date shown on the instrument of transfer.

12 (2) "Department" means the Department of Revenue.

13 (3) "Floating home" has the meaning given that term in ORS 830.700 and includes only
 14 a floating home that is required to be registered or numbered by the state.

15 (4) "Manufactured structure" has the meaning given that term in ORS 801.333 and in-
 16 cludes any manufactured structure that is subject to property taxation or that would be
 17 subject to property taxation as of July 1 preceding the date of sale if it was located in this
 18 state and was not inventory or otherwise exempt from taxation. Notwithstanding ORS
 19 801.333 (2), "manufactured structure" also includes a travel trailer or a special use trailer
 20 assessed under ORS 308.880.

21 (5) "Mining property" means property that has or is believed to have minerals and that
 22 is sold, transferred or leased under terms that require the purchaser, transferee or lessee
 23 to explore or extract the minerals and to use the property for nothing else. "Minerals" in-
 24 cludes but is not limited to coal, oil, gas or geothermal resources, but does not include clay,
 25 sand or gravel, peat, gypsum, stone or limestone. "Mining property" includes all mining
 26 claims, whether patented or unpatented.

27 **SECTION 5.** (1) "Person" means one or any combination of the following:

28 (a) Any individual, partnership, limited partnership, limited liability partnership, society,
 29 association, club, organization, institution, company, limited liability company, joint stock
 30 company, public service company, corporation (for-profit or not-for-profit, public or private),
 31 firm, cooperative, consortium, business trust, trust, trustee, estate, personal representative,
 32 guardian, conservator, custodian, receiver, trustee in bankruptcy, assignee, referee or any
 33 person acting in a fiduciary or representative capacity, whether appointed by a court or
 34 otherwise.

35 (b) Any bank, national bank, mortgage banking company, trust company, savings bank,
 36 federal savings bank, savings and loan association, federal savings and loan association, state
 37 credit union, private banker, investment company, pension fund, insurance company or
 38 mortgage company.

39 (c) Any other group, organization or entity (for-profit or not-for-profit, public or private),
 40 however organized, capable of holding a legal or beneficial interest in real property.

41 (2) "Person" does not include:

42 (a) A state, commonwealth, territory or possession of the United States, the District of
 43 Columbia, a foreign country or any board, commission, agency or instrumentality (including
 44 but not limited to a federal credit union or a production credit association) of any entity
 45 listed in this paragraph.

1 (b) Any city, county, district, people’s utility district or other municipal or public corpo-
 2 ration or political subdivision of a state, commonwealth, territory or possession of the United
 3 States, the District of Columbia, a foreign country or any board, commission, agency or
 4 instrumentality of any entity listed in this paragraph.

5 **SECTION 6. “Real property” includes:**

- 6 (1) Land;
- 7 (2) Structures, improvements and fixtures;
- 8 (3) Standing timber or mining property;
- 9 (4) Manufactured structures or floating homes;
- 10 (5) Irrigation equipment that is located under the ground;
- 11 (6) Growing crops if conveyed with the land on which the crops are being grown; and
- 12 (7) Any improvements on privately or publicly owned leased land.

13 **SECTION 7. “Recording officer” means, as appropriate:**

- 14 (1) The county clerk or other county officer carrying out the duties described in ORS
 15 205.110, 205.130 and 205.160;
- 16 (2) The Department of Transportation; or
- 17 (3) The State Marine Board.

18 **SECTION 8. “Transfer” means:**

- 19 (1) Any sale, conveyance, grant, assignment, quitclaim or transfer of ownership of or ti-
 20 tle to real property or any estate or interest in real property for consideration.
- 21 (2) Any contract for sale, conveyance, grant, assignment, quitclaim or transfer of own-
 22 ership of or title to real property or for any estate or interest in real property for consid-
 23 eration.
- 24 (3) Any lease with an option to purchase real property or any estate or interest in real
 25 property for consideration.
- 26 (4) Any other contract under which possession of real property is given to the purchaser
 27 or to any other person by direction of the purchaser, and under which title is retained by the
 28 seller as security for payment of the purchase price and consideration is given for the right
 29 of possession.
- 30 (5) A transaction in which consideration is given for a deed that names no grantee and
 31 equitable title passes to the purchaser. Subsequent delivery of the deed by the purchaser to
 32 a third person who is named in the deed as grantee is also a transfer.
- 33 (6) A sale as defined in ORS 92.305 (subdivided or series partitioned lands) or 100.005
 34 (condominium units).
- 35 (7) The sale or transfer of a timeshare estate as described under ORS 94.803.
- 36 (8) A sale or other transfer of a fixture, as described under ORS 79.3130, including a fix-
 37 ture with title held separately from the title to the land to which the fixture is attached.
- 38 (9) A sale of timber if, on the date of sale, the timber is standing.
- 39 (10) A transfer of real property:
 - 40 (a) By any person to a general or limited partnership upon formation;
 - 41 (b) By any person to an existing general or limited partnership in return for an interest
 42 in the partnership;
 - 43 (c) By a general or limited partnership to another person upon dissolution of the part-
 44 nership or withdrawal of a member of the partnership;
 - 45 (d) During the conversion of either a general partnership or a limited partnership into a

1 general partnership, a limited partnership, a corporation, a tenancy in common, a joint
 2 tenancy or a tenancy by the entirety; or

3 (e) By a joint venture, which shall be considered a partnership for purposes of the tax
 4 imposed under sections 1 to 26 of this 2007 Act.

5 (11) The transfer of real property between a corporation and its shareholders, officers,
 6 corporate affiliates or other persons, including partnerships, except as provided under sec-
 7 tion 9 of this 2007 Act.

8 (12) An exchange of real property for consideration. If real property is exchanged for
 9 other real property, the transfer of each property is subject to the tax imposed under
 10 sections 1 to 26 of this 2007 Act in the full amount of the consideration given.

11 **SECTION 9. "Transfer" does not include any of the following:**

12 (1) A sale or other transfer by or to a state, commonwealth, territory or possession of
 13 the United States, the District of Columbia, a foreign country or any board, commission,
 14 agency or instrumentality thereof or any city, county, district, people's utility district or
 15 other municipal or public corporation or political subdivision of a state, commonwealth, ter-
 16 ritory or possession of the United States, the District of Columbia, a foreign country or any
 17 board, commission, agency or instrumentality thereof.

18 (2) A sale or transfer to a private condemner, as defined in ORS 35.215, by appropriation
 19 or judgment.

20 (3) An earnest money or preliminary sales agreement, an option (except as provided un-
 21 der section 8 of this 2007 Act) or a right of first refusal.

22 (4) A transfer for the creation or dissolution of a tenancy by the entirety or other joint
 23 tenancy with right of survivorship if no consideration passes.

24 (5) The transfer of the vendor's interest in a contract of the sale of real property or any
 25 estate or interest therein.

26 (6) A reconveyance of real property from a vendee to a vendor such that, immediately
 27 upon completion of the reconveyance, the parties are in the same position they were in im-
 28 mediately prior to the original conveyance, if the reconveyance occurs within 90 days of the
 29 original conveyance.

30 (7) A mortgage, trust deed or other transfer of an interest in real property merely to
 31 secure a debt, or the assignment of the mortgage, interest of the beneficiary or other secu-
 32 rity interest.

33 (8) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real
 34 property whether or not the contract contains a forfeiture clause or a deed in lieu of forfei-
 35 ture of the vendee's interest in a contract of sale when no consideration passes otherwise.

36 (9) The assumption by a grantee of the balance owing on an obligation that is secured
 37 by a mortgage or trust deed. This subsection does not apply to transfers:

38 (a) Between a corporation and its shareholders, officers or affiliated corporations;

39 (b) Between a partnership and its members, another partnership or corporation owned
 40 by the same members, joint venturers, joint tenants, tenants by the entirety or tenants in
 41 common; or

42 (c) During the conversion of a joint tenancy, tenancy by the entirety, tenancy in com-
 43 mon, joint venture, partnership or corporation from one form of ownership to another.

44 (10) A transfer by which a nominee who has received title to or an interest in real
 45 property on behalf of a third-party principal transfers the property to the third party if:

1 (a) The tax imposed under sections 1 to 26 of this 2007 Act was paid at the time of the
2 first transaction;

3 (b) An affidavit is filed for the second transaction;

4 (c) The third-party principal was in legal existence at the time of the first transaction;

5 (d) The consideration used by the nominee to acquire the real property was provided by
6 the third-party principal; and

7 (e) The second transaction from the nominee to the third-party principal is not for a
8 greater consideration than that given in the first transaction.

9 (11) An option to purchase real property when the option does not accompany a lease.

10 (12) A transfer of any leasehold interest, including a lessee's interest as described under
11 ORS 92.305 (4) or 100.005 (26), or a timeshare estate or timeshare license as described under
12 ORS 94.803 except as provided under section 8 of this 2007 Act.

13 (13) The sale or offer for sale of a membership camping contract, as described under ORS
14 94.953.

15 (14) The creation or transfer of a license to use real property. This subsection is not in-
16 tended to exempt the creation or transfer of an easement.

17 (15)(a) The act by itself of causing land to be subdivided or series partitioned, as de-
18 scribed under ORS 92.305 to 92.495.

19 (b) The act by itself of creating unit ownership as described under ORS chapter 100.

20 (c) The act by itself of creating a planned community as described under ORS 94.550 to
21 94.783.

22 (d) The act by itself of creating timeshare estates as described under ORS 94.803 to
23 94.945.

24 (e) The partition of property by tenants in common by agreement or as a result of court
25 decree.

26 (16) A transfer, conveyance or assignment of real property or any estate or interest
27 therein from one spouse to another in accordance with the terms of a decree of dissolution
28 or in fulfillment of a property settlement agreement incidental thereto.

29 (17) A transfer or conveyance made pursuant to an order of sale by the court in any
30 mortgage, trust deed or lien foreclosure proceeding or upon execution of a judgment, a deed
31 in lieu of foreclosure to satisfy a mortgage or lien or a conveyance by trustee's deed pursu-
32 ant to foreclosure of a trust deed by advertisement and sale.

33 (18) A conveyance by an authorized mortgagee made to one of the following pursuant to
34 a contract of insurance or guaranty with one of the following:

35 (a) The Federal Housing Administration, the United States Department of Veterans Af-
36 fairs, the Farmers Home Administration of the United States, the Federal National Mortgage
37 Association, the Government National Mortgage Association or the Federal Home Loan
38 Mortgage Corporation;

39 (b) Any department, bureau, board, commission or agency of the United States or the
40 State of Oregon or any corporation wholly owned, directly or indirectly, by the United States
41 or the State of Oregon; or

42 (c) A private mortgage insurer or guarantor in settlement of an insurance claim.

43 (19)(a) A transfer by gift, devise or inheritance to a conservator, receiver, trustee in
44 bankruptcy or assignee for the benefit of creditors; or

45 (b) Other transfer for which no consideration is given.

1 **(20) A sale or other transfer of a lot, plot, burial space or grave in a cemetery or burial**
2 **park, or a crypt, vault or niche, all as defined under ORS 97.010.**

3 **(21)(a) A transfer through corporate merger or consolidation if the transfer is accom-**
4 **plished by means of stock transfers.**

5 **(b) A corporate dissolution, except when the shareholders assume or agree by contract**
6 **to assume the liabilities of the dissolving corporation. The consideration in the case of as-**
7 **sumption of liabilities is the amount of the liabilities assumed.**

8 **(c) A transfer between a parent corporation and its wholly owned subsidiary or between**
9 **two or more subsidiaries, each of which is wholly owned by the same parent corporation, if**
10 **no consideration is exchanged between the corporate entities.**

11 **(d) A transfer to a newly formed beneficiary corporation from an incorporator to the**
12 **newly formed corporation if:**

13 **(A) The tax was paid on the transfer to the incorporator; and**

14 **(B) There is documentation to substantiate that the transfer was made to the**
15 **incorporator on behalf of the corporation during the process of incorporation.**

16 **(22) A conveyance into a revocable trust if the beneficiaries of the trust are the grantor,**
17 **the spouse of the grantor or the lineal descendants of the grantor, or any combination**
18 **thereof, or a conveyance by the trustee to the original grantor, the grantor's spouse or a**
19 **lineal descendant, or any combination thereof, if no consideration is given for the conveyance**
20 **by the trustee.**

21 **(23)(a) A transfer to a corporation or partnership that is wholly owned by any or all of**
22 **the following:**

23 **(A) The seller;**

24 **(B) The spouse of the seller; or**

25 **(C) The children of the seller.**

26 **(b) Notwithstanding paragraph (a) of this subsection, if within five years after the date**
27 **of sale the transferee corporation or partnership voluntarily transfers the real property, or**
28 **the seller, spouse or children, or any combination thereof, voluntarily sells or transfers the**
29 **shares or partnership interest, resulting in the creation of a beneficial interest in the real**
30 **property, shares or partnership interest for a person other than the seller, spouse or chil-**
31 **dren, the tax shall become due and payable on the date of original transfer as otherwise**
32 **provided under sections 1 to 26 of this 2007 Act.**

33 **(24) A transfer to a contractor for the purpose of constructing an improvement to the**
34 **real property transferred, with an agreement to reconvey the property after construction**
35 **of the improvement.**

36 **(25) A conveyance made under a post-petition chapter 11 plan that is exempt under 11**
37 **U.S.C. 1146.**

38 **(26) A sale in compliance with the terms of any lease or contract upon which the tax as**
39 **imposed under sections 1 to 26 of this 2007 Act has been paid, including but not limited to a**
40 **conveyance in fulfillment of the contract.**

41 **(27) The sale of a manufactured structure or floating home located outside this state if**
42 **the sale was to an individual who was a nonresident of this state on the date of sale, the**
43 **manufactured structure or floating home was used by the nonresident individual in another**
44 **state and the date of sale is more than 30 days prior to the date that the manufactured**
45 **structure or floating home is brought into this state for use in this state.**

1 **(28) The sale in this state of a manufactured structure or floating home to a nonresident**
 2 **individual for use outside this state even if the delivery is in this state if:**

3 **(a) The manufactured structure will be taken directly from the point of delivery in this**
 4 **state to a point outside this state under authority of a trip permit and will not be used in**
 5 **this state more than 90 days during any annual period or the floating home will not be used**
 6 **in this state more than 45 days in any annual period; and**

7 **(b) The manufactured structure will be titled, licensed or registered, if required, in the**
 8 **state of residence of the nonresident individual and will not be required to be titled, licensed**
 9 **or registered to the nonresident individual in this state or the floating home will not be ti-**
 10 **tled, registered, licensed or numbered by this state but will be titled, registered, licensed or**
 11 **numbered by the state of residence of the nonresident individual.**

12 **(29) The rerecording of an instrument to make a correction or a change, including but**
 13 **not limited to the following:**

14 **(a) Correcting a legal description;**

15 **(b) Changing the terms of a contract; or**

16 **(c) Correcting the spelling of a name of a party, but only if an affidavit described in**
 17 **section 16 of this 2007 Act is filed at the time of the rerecording, the affidavit refers to the**
 18 **instrument and affidavit filed for the prior transaction in the manner provided by rule of the**
 19 **Department of Revenue, the affidavit explains completely the necessity for the rerecording**
 20 **and there is no additional consideration.**

21 **(30)(a) A transfer to or from individual Indians or Indian tribes if the federal government**
 22 **acts as trustee on behalf of the individual Indian or tribe.**

23 **(b) A sale of timber made by an individual Indian or tribe holding a trust allotment if,**
 24 **after the execution of the contract, the individual Indian or tribe received a beneficial in-**
 25 **terest in the land.**

26 **(31) A sale or other transfer by a nonprofit corporation as defined in ORS 65.001 to a low**
 27 **income person. For purposes of this subsection, “low income” means an income not exceed-**
 28 **ing 80 percent of the prevailing median income, based on family size, within this state.**

29 **(32) Transfers of real property to effect a mere change in the identity, form or place of**
 30 **an organization.**

31 **(33) A transfer of property subject to tax under sections 1 to 26 of this 2007 Act to an**
 32 **individual in which the property:**

33 **(a) Is to be the transferee’s personal residence; and**

34 **(b) The development of the property was funded in whole or part by the Oregon Housing**
 35 **Fund established under ORS 458.620.**

36 **SECTION 10. “Transferor” means a person who sells or transfers real property.**

37 **SECTION 11. (1) An excise tax is imposed upon each transfer of real property. The rate**
 38 **of the tax is one percent of the consideration given.**

39 **(2) In the case of the transfer of a manufactured structure or floating home located**
 40 **outside this state and purchased and brought into this state for use in this state, an excise**
 41 **tax is imposed upon the use of the manufactured structure or floating home. The rate of the**
 42 **tax is one percent of the consideration given.**

43 **SECTION 11a. A real estate transfer occurring on or after January 1, 2008, that is made**
 44 **pursuant to a contract entered into prior to January 1, 2008, is exempt from the tax imposed**
 45 **under section 11 of this 2007 Act.**

1 **SECTION 12.** (1) If a transfer is pursuant to an installment sale of the property, the
2 amount of tax due under section 11 of this 2007 Act may be paid in installments. Each in-
3 stallment shall be due at the time that an installment payment is due to the seller. The
4 amount of each installment shall equal that portion of the total amount of tax that corre-
5 sponds to the proportion that the installment payment due to the seller bears to the total
6 amount of installment payments due to the seller.

7 (2) A taxpayer electing to pay the real estate transfer tax under this section shall make
8 the election by filing the election with the recording officer at the time the affidavit is filed
9 under section 16 of this 2007 Act.

10 (3) The election shall be made on such form as is prescribed by the Department of Re-
11 venue. The election form shall include a schedule listing payment amounts and dates. The
12 department may by rule require taxpayers making the election to file a copy of the install-
13 ment sales contract applicable to the transfer when making the election.

14 (4) In the event an installment of tax is not paid as provided on the election filed with
15 the recording officer, the entire unpaid amount of the tax shall be considered delinquent and
16 shall be treated like other unpaid tax under sections 1 to 26 of this 2007 Act.

17 **SECTION 13.** (1) Except as provided in sections 12 and 14 of this 2007 Act, or as required
18 by the context of sections 1 to 26 of this 2007 Act, the tax imposed under sections 1 to 26 of
19 this 2007 Act is due and payable immediately on the date of transfer.

20 (2)(a) If the tax is not paid within 30 days after the date of transfer, the tax shall bear
21 interest at the rate established for deficiencies under ORS 305.220 per month or fraction of
22 a month from the date of sale until the date of payment.

23 (b) If the tax is paid within 30 days after the date of sale, no interest shall be charged.

24 (c) The tax is due on the date of transfer whether or not the instrument of sale or
25 transfer is recorded or filed on the date of transfer or within 30 days after the date of
26 transfer.

27 (3) The tax shall be paid to and collected by the recording officer.

28 (4) Upon collection of the tax and receipt of the affidavit described in section 16 of this
29 2007 Act, the recording officer shall cause a stamp evidencing satisfaction of the lien for the
30 tax to be affixed to the instrument of sale or transfer. If the sale or transfer is of a manu-
31 factured structure or floating home, the stamp shall be affixed to the affidavit. If another
32 method of evidencing payment of the tax and extinguishment of the lien on the instrument
33 or on the affidavit is adopted by the Department of Revenue by rule, that method shall be
34 used in lieu of the stamp.

35 (5) An instrument of sale or transfer of real property shall not be accepted for recording
36 unless the tax imposed under sections 1 to 26 of this 2007 Act has been paid and the affidavit
37 required under section 16 of this 2007 Act has been filed.

38 (6) A registration card or certificate of title to a manufactured structure shall not be
39 issued until the Department of Transportation has determined that any tax imposed under
40 sections 1 to 26 of this 2007 Act has been paid and the affidavit required under section 16 of
41 this 2007 Act has been filed. A trip permit may not be issued under ORS 803.600 and 820.560
42 authorizing a manufactured structure to be moved upon the highways of this state unless
43 the Department of Transportation determines that the tax imposed under sections 1 to 26
44 of this 2007 Act has been paid and the affidavit required under section 16 of this 2007 Act has
45 been filed.

1 (7) A certificate of title to a floating home may not be issued under ORS 830.855 and
 2 830.860 until the State Marine Board has determined that any tax due under sections 1 to 26
 3 of this 2007 Act has been paid and the affidavit required under section 16 of this 2007 Act has
 4 been filed.

5 (8) Notwithstanding subsections (5) to (7) of this section, if the tax is not due upon the
 6 transfer, the instrument of transfer and affidavit may not be accepted by the recording of-
 7 ficer until a suitable notation describing the reason the tax is not due is entered on the in-
 8 strument or affidavit by the recording officer.

9 **SECTION 14.** (1) In the case of a lease with an option to purchase, the tax imposed under
 10 sections 1 to 26 of this 2007 Act is not due and payable until the date that the option is ex-
 11 exercised. However, the tax may be paid on or after the date the lease is entered into and be-
 12 fore the date the option is exercised, but if so paid, a refund of the tax shall not bear
 13 interest. If:

14 (a) The option is exercised, the amount paid for the option shall be part of the consider-
 15 ation.

16 (b) The option is not exercised or is surrendered prior to its expiration date, the amount
 17 paid for the option may not be subject to the tax imposed under sections 1 to 26 of this 2007
 18 Act.

19 (c) Periodic payments are required under the lease-option agreement, whether or not the
 20 payments are part of the consideration rather than rent shall be determined using the cri-
 21 teria used for making these determinations for federal income tax purposes.

22 (2)(a) The following are subject to tax as follows:

23 (A) A conditional sale of mining property in which the buyer has the right to terminate
 24 the contract at any time shall be taxable upon the consideration received by the conditional
 25 seller for execution of the contract at the time of the contract.

26 (B) A lease and option to buy mining property in which the lessee has the right to ter-
 27 minate the lease at any time shall be taxable upon the consideration received by the lessor
 28 for execution of the lease at the time of the lease.

29 (b) The tax on any additional consideration given for the contract or lease mentioned in
 30 this subsection shall be due and payable to the recording officer on the earliest of the fol-
 31 lowing dates:

32 (A) The date of termination;

33 (B) The date that all of the consideration due to the seller has been paid and all that
 34 remains to complete the transaction is to deliver the deed to the buyer; or

35 (C) The date that the buyer unequivocally exercises an option to purchase the property.

36 (3) Any tax or portion of tax not paid on the due date as specified in this section shall
 37 bear interest at the rate established for deficiencies under ORS 305.220 from the due date
 38 of the tax or portion of tax until paid.

39 **SECTION 15.** (1) In any case in which the consideration given upon the sale or other
 40 transfer of real property is not separately stated or is not ascertainable on the date of
 41 transfer, consideration shall be the real market value as reflected upon the most recent as-
 42 sessment and tax rolls.

43 (2) Alternatively, the parties to the transfer may request that the Department of Re-
 44 venue ascertain the consideration given upon the transfer of the property. The department
 45 may do any one of the following to ascertain the consideration given:

1 (a) Require security for payment of the tax.

2 (b) Require an appraisal that shall be performed by an appraiser employed by or under
3 contract with the county. The results of the appraisal are prima facie evidence of the con-
4 sideration given.

5 (c) Enter into a settlement agreement fixing the consideration for purposes of the tax.

6 (3) The department may by rule require persons making a request under subsection (2)
7 of this section to pay a fee to the department to recoup department expenses in ascertaining
8 the consideration given for the transfer.

9 **SECTION 16.** (1) The Department of Revenue shall prescribe and furnish to the recording
10 officer a form that shall be used to prepare a real estate transfer tax affidavit.

11 (2) A real estate transfer tax affidavit shall contain or indicate:

12 (a) The identification and current mailing address of the transferor and of the transferee.

13 (b) A description and tax lot or assessor account number for the real property sold or
14 transferred.

15 (c) The date of transfer.

16 (d) The type of the instrument of sale or transfer and the nature of the transfer.

17 (e) The amount of the consideration.

18 (f) A description of any personal property involved in the transfer.

19 (g) Whether the real property is exempt, partially exempt or subject to special assess-
20 ment for ad valorem property tax purposes and the statutory basis of the exemption, partial
21 exemption or special assessment.

22 (h) A form for verification.

23 (i) Any other information that the department may require by rule.

24 (3) In the case of a manufactured structure that is sold with the land upon which it is
25 located, the recording officer may require the completion of either two affidavits, both real
26 property and manufactured structure, or a single real property affidavit. At the recording
27 officer's option, a separate manufactured structure affidavit need not be required if the real
28 property affidavit lists the make, model, year, size and serial number of the manufactured
29 structure. The manufactured structure information shall be contained as a separate item
30 with the property description portion of the affidavit.

31 (4) The affidavit in the form prescribed under subsections (1) and (2) of this section shall
32 be verified by at least one of the parties to the transfer in the manner provided under and
33 subject to the penalty prescribed under ORS 305.810, 305.815 and 305.990 (4).

34 (5) A recording officer may not accept an affidavit that is incomplete. The recording of-
35 ficer shall require that the appropriate documentation be furnished to substantiate the in-
36 formation contained in or accompanying the affidavit.

37 (6) An affidavit is due on the date of transfer. If an affidavit is not filed with a recording
38 officer, the department may require that an affidavit be filed with the department. For pur-
39 poses of the revenue and tax laws of this state, an affidavit may be considered a return.

40 (7) An affidavit filed under this section shall be retained for four years after the date the
41 affidavit is filed.

42 **SECTION 17.** (1) If the tax imposed under sections 1 to 26 of this 2007 Act is not paid
43 within 30 days after the date of transfer, or if the required affidavit is not filed within 30 days
44 after the date of transfer, or if there is both a failure to pay the tax and to file the affidavit,
45 in addition to the interest charged under section 13 of this 2007 Act, a penalty in the amount

1 specified under ORS 314.400 (1) shall be added to the amount of tax and shall bear interest
 2 from the due date of the tax until paid.

3 (2) If the failure to pay the tax or to file the affidavit, or both, continues for a period of
 4 more than 90 days after the due date of the tax, ORS 314.400 (2) and (4) shall apply.

5 **SECTION 18.** (1) The recording officer shall issue a receipt evidencing payment of a tax
 6 imposed under sections 1 to 26 of this 2007 Act. The receipt shall include the date of payment
 7 of the tax, identification of the parties and the amount of tax paid, in addition to any other
 8 information required by the Department of Revenue to appear on the receipt.

9 (2) Subject to rules adopted by the department, the recording officer shall retain a copy
 10 of each issued receipt to be made available or forwarded to the department. Copies of re-
 11 cepts shall be retained for a period of four years from the date of issuance, unless the de-
 12 partment requests a longer period of retention.

13 (3) The receipt shall be evidence of the satisfaction of the lien imposed by section 19 of
 14 this 2007 Act and may be recorded in the manner prescribed for the recording of a satisfac-
 15 tion of a judgment lien.

16 **SECTION 19.** (1) The tax imposed under sections 1 to 26 of this 2007 Act shall be an ob-
 17 ligation of the seller and the buyer.

18 (2) The tax and any interest thereon or penalties attributable thereto shall be a lien upon
 19 the real property sold from the day preceding the date of sale until the date the tax is paid.
 20 The lien may be foreclosed in the manner provided under ORS 314.419.

21 (3) The tax, interest and penalties shall constitute a personal debt due the State of
 22 Oregon from the seller and may be collected by the Department of Revenue, together with
 23 interest and costs, by appropriate judicial proceeding. The debt shall arise on the day pre-
 24 ceding the date of sale.

25 (4) The tax, interest and penalties may be collected by the department in the same
 26 manner as income taxes are collected under ORS chapters 305 and 314. The department may
 27 issue a warrant as provided under ORS 314.430 and record the warrant in the County Clerk
 28 Lien Record maintained under ORS 205.130. A warrant issued under this section has the
 29 same force and effect as a warrant issued under ORS 314.430. If the warrant is not recorded
 30 in the County Clerk Lien Record, the warrant shall not be considered a lien.

31 (5) The lien for the tax, interest and penalties shall have the same validity and priority
 32 as provided an income tax lien under ORS 314.421 and 314.423.

33 (6) An action or proceeding (including issuance of a warrant) for collection of the tax
 34 shall be instituted or commenced before the expiration of seven years from the date the tax
 35 was due, except as follows:

36 (a) If there is a showing of fraud or a misrepresentation of a material fact, an action or
 37 proceeding may be instituted or commenced after the expiration of the seven-year period.

38 (b) If an affidavit is not filed and the sale is not otherwise reported to a recording officer,
 39 an action or proceeding may be instituted or commenced after the expiration of the seven-
 40 year period.

41 (7) If the department finds that a seller intends to quickly depart from this state or to
 42 remove the property of the seller from this state, or to do any other act tending to prejudice
 43 or to render wholly or partially ineffectual proceedings to collect the tax, interest and pen-
 44 alties unless proceedings be brought without delay:

45 (a) The department shall declare the tax, interest and penalties immediately due and

1 payable and shall cause notice of such findings and declaration to be given to the seller.

2 (b) Simultaneously, the department, on the basis of the affidavit or the best information
 3 available to it, shall determine the amount of tax, interest and penalties due and payable
 4 (whether or not the time otherwise allowed by law for paying the tax has expired) and give
 5 notice to the taxpayer of the amount of tax, interest and penalties so determined.

6 (c) On the date that the notice and findings are issued to the taxpayer or are mailed to
 7 the last known address of the taxpayer, the tax, interest and penalties are due and payable.

8 (d) In any proceeding in court brought to enforce payment of tax made due and payable
 9 under this subsection, the findings of the department, made as provided in this subsection,
 10 whether or not made after notice to the seller, are for all purposes presumptive evidence of
 11 the seller's design. The certificate of the department of the mailing or issuing of the notice
 12 and findings specified in this subsection is presumptive evidence that the notice and findings
 13 were mailed or issued.

14 (8) Any proceeding mentioned in this section is in addition to all other existing remedies.

15 **SECTION 20.** (1) The Department of Revenue may adopt rules requiring uniformity in
 16 application, procedure, reporting and collection of the real estate transfer tax and that oth-
 17 erwise carry out the provisions of sections 1 to 26 of this 2007 Act.

18 (2) Sections 1 to 26 of this 2007 Act shall be considered a revenue or tax law of this state.

19 (3) It being the intention of the Legislative Assembly that sections 1 to 26 of this 2007
 20 Act shall be administered as uniformly as possible with the other revenue and tax laws of
 21 this state, except where the context requires otherwise, ORS chapters 305 and 314, as
 22 amended, or as they may hereafter be amended, together with other general revenue and tax
 23 laws administered by the department, are applicable to the tax imposed under sections 1 to
 24 26 of this 2007 Act.

25 (4) For purposes of this section and unless the context requires otherwise:

26 (a) An affidavit as described under section 16 of this 2007 Act may be considered a return.

27 (b) A recording officer may be considered an officer or employee of the department.

28 (c) The tax imposed under sections 1 to 26 of this 2007 Act may be treated in the same
 29 manner as a tax imposed upon or measured by net income.

30 **SECTION 21.** (1) An application for a refund of an erroneous payment or overpayment
 31 of the tax imposed under sections 1 to 26 of this 2007 Act shall be made on a form prescribed
 32 by the Department of Revenue and furnished to the recording officer. An application may
 33 be made only by the seller or other person who paid the tax, or an authorized representative
 34 of the seller or other taxpayer.

35 (2) An application for a refund of tax, together with the appropriate substantiation or
 36 documentation, shall be submitted to the recording officer or office of the recording officer
 37 who collected the tax.

38 (3) The recording officer may void the affidavit and receipt and, at the request of the
 39 recording officer, the department may pay the refund if the following circumstances exist:

40 (a) Rescission of a sale or other transfer prior to closing;

41 (b) Overpayment of tax through error in computation; or

42 (c) Nonpayment of consideration by the transferee.

43 (4) If the seller or other taxpayer submits the application for refund and the recording
 44 officer denies or partially denies an application for refund first filed under subsection (2) of
 45 this section, the recording officer shall verify the information on the application and forward

1 it to the department with a copy of the affidavit and any other substantiation or documen-
 2 tation furnished by the taxpayer.

3 (5) The department may refund the tax under the following circumstances:

4 (a) The sale or other transfer is rescinded, resulting in the retransference to the
 5 transferor and the consideration restored to the transferee;

6 (b) The sale or other transfer is rescinded in whole or in part as finally determined by a
 7 court and a copy of the court order or decree is submitted to the department;

8 (c) The sale or other transfer is exempt and the taxpayer failed to claim the exemption;
 9 or

10 (d) Any of the grounds upon which a recording officer may make a refund under this
 11 section.

12 (6)(a) The department shall approve, partially deny or wholly deny the application for
 13 refund.

14 (b) If the application for refund is denied or partially denied, the department shall issue
 15 an order denying or partially denying the refund and stating the grounds for denial, and mail
 16 or deliver a copy of the order to the applicant. An appeal may be taken from the denial by
 17 the applicant in the manner and within the time described under ORS 305.275 and 305.280.

18 (c) If the department approves a refund or partial refund of tax, the department shall
 19 mail or deliver a copy of the order to the recording officer. The department shall pay the
 20 refund from the suspense account referred to in section 23 of this 2007 Act. In either case,
 21 the refund shall be paid to the applicant or applicants without interest. If the recording of-
 22 ficer is the county clerk, the payment shall be noted in the county real estate transfer tax
 23 records.

24 (7) A refund approved by the recording officer or by the department may not be paid:

25 (a) If the instrument of transfer has not been recorded or new certificate of title or
 26 registration issued, until the stamp or other indication that the tax has been paid on the
 27 transfer instrument or affidavit and receipt is voided; or

28 (b) If the instrument of transfer has been recorded or a new certificate of title or regis-
 29 tration issued, until an instrument of transfer that reverses the effect of the transfer is re-
 30 corded or issued.

31 (8) A refund may not be paid if the application for the refund is not filed within three
 32 years after the date of sale.

33 **SECTION 22.** (1) The Department of Revenue shall administer the tax imposed by
 34 sections 1 to 26 of this 2007 Act. The Department of Revenue shall designate the recording
 35 officer of each county to act as its agent to collect the tax. In the case of a sale of a man-
 36 ufactured structure for which the certificate of title has not been surrendered or has been
 37 surrendered and reissued, the Department of Revenue shall designate the Department of
 38 Transportation to act as its agent to collect the tax. In the case of a sale of a floating home,
 39 the Department of Revenue shall designate the State Marine Board to act as its collecting
 40 agent. In the case of a manufactured structure or a floating home, the tax need not be
 41 collected by the Department of Transportation or the State Marine Board if proof of payment
 42 of the tax to the recording officer of the county is presented with the application for a new
 43 certificate of title.

44 (2) The Department of Revenue shall prescribe any forms needed for administering
 45 sections 1 to 26 of this 2007 Act and may require periodic reports concerning collection of

1 the tax from the recording officers, as described in section 23 of this 2007 Act.

2 **SECTION 23.** (1) No later than the fifth day of each calendar month, each recording of-
3 ficer shall prepare and file a report with the Department of Revenue. The report shall be in
4 such form and contain such information as the department may prescribe, and shall sum-
5 marize for the preceding month the affidavits filed under section 16 of this 2007 Act and the
6 receipts issued under section 18 of this 2007 Act by the recording officer.

7 (2) All revenues from tax imposed under sections 1 to 26 of this 2007 Act for the pre-
8 ceding month shall be transferred to the department at the time the report described in
9 subsection (1) of this section is filed. The department shall deposit these revenues in a sus-
10 pense account established under ORS 293.445.

11 **SECTION 24.** After payment of administrative expenses incurred by the Department of
12 Revenue in the administration of sections 1 to 26 of this 2007 Act and after payment of re-
13 funds or credits arising from erroneous overpayments of tax, interest or penalties, the bal-
14 ance of the moneys in the department suspense account referred to in section 23 of this 2007
15 Act shall be deposited in the Shared Services Fund established under section 24a of this 2007
16 Act.

17 **SECTION 24a.** (1) The Shared Services Fund is established in the State Treasury, sepa-
18 rate and distinct from the General Fund. Interest earned by the Shared Services Fund shall
19 be credited to the fund.

20 (2) All moneys in the Shared Services Fund are continuously appropriated to the Oregon
21 Department of Administrative Services, to be distributed as follows:

- 22 (a) _____;
- 23 (b) _____;
- 24 (c) _____; and
- 25 (d) _____.

26 **SECTION 25.** (1) Any person who fails to pay the tax imposed under sections 1 to 26 of
27 this 2007 Act and any person who violates any provision of sections 1 to 26 of this 2007 Act,
28 or any reasonable rule adopted pursuant to sections 1 to 26 of this 2007 Act by the Depart-
29 ment of Revenue, shall be punished, upon conviction, as described under ORS 305.990 (4).

30 (2) A person or an officer or employee of a corporation or a member or employee of a
31 partnership shall not, with the intent to evade any requirement of sections 1 to 26 of this
32 2007 Act:

33 (a) Fail to pay the tax imposed by sections 11 to 26 of this 2007 Act or fail to make, sign
34 or verify an affidavit or to supply any information required by sections 1 to 26 of this 2007
35 Act;

36 (b) Make, render, sign or verify any false or fraudulent affidavit or other writing; or

37 (c) Supply any false or fraudulent information.

38 (3) Violation of subsection (2) of this section is a Class C felony.

39 (4) If any affidavit or other writing required under sections 1 to 26 of this 2007 Act is not
40 filed within three years after the due date of the tax, there shall be imposed a penalty equal
41 to 100 percent of the tax liability determined after any credits or prepayments. The total
42 amount of penalties imposed for any taxable year under this subsection, section 17 of this
43 2007 Act and ORS 305.265 (13) shall not exceed 100 percent of the tax liability.

44 (5) Except when specifically provided otherwise, any penalty provided by or made appli-
45 cable to the tax imposed by sections 1 to 26 of this 2007 Act, or to any provision of sections

1 **1 to 26 of this 2007 Act or the rules of the department relative thereto, is in addition to any**
 2 **other criminal or civil penalty so provided.**

3 **SECTION 26. The failure to do any act required by sections 1 to 26 of this 2007 Act shall**
 4 **be considered an act committed in part at the office of the Department of Revenue in Salem,**
 5 **Oregon.**

6 **SECTION 26a. Sections 1 to 26 of this 2007 Act apply to real estate transfers occurring**
 7 **on or after January 1, 2008.**

8 **SECTION 27. ORS 205.110 is amended to read:**

9 205.110. (1) The county clerk in each county shall keep and maintain the records of the county
 10 governing body.

11 (2) The county clerk of any county in which the county court has judicial functions shall, for
 12 the county court:

13 (a) Keep the seal of the court, and affix it in all cases required by law.

14 (b) Record the proceedings of the court.

15 (c) Keep the records, files, books and papers pertaining to the court.

16 (d) File all papers delivered to the clerk for that purpose in any action or proceeding in the
 17 court.

18 (e) Attend the terms of the court, administer oaths and receive the verdict of a jury in any
 19 action or proceeding therein, in the presence and under the direction of the court.

20 (f) Under the direction of the court enter its orders and judgments.

21 (g) Authenticate, by certificate or transcript, as may be required, the records, files or pro-
 22 ceedings of the court, or any paper pertaining thereto, and filed with the clerk.

23 (h) Exercise the powers and perform the duties conferred upon the clerk by statute.

24 (i) In the performance of duties pertaining to the court, conform to the direction of the court.

25 (3) The county clerk may take and certify the proof and acknowledgment of a conveyance of real
 26 property or any other written instrument authorized or required to be proved or acknowledged.

27 **(4) The county clerk in each county shall administer the real estate transfer tax imposed**
 28 **under sections 1 to 26 of this 2007 Act.**

29 **SECTION 28. ORS 305.230 is amended to read:**

30 305.230. (1) Notwithstanding ORS 9.320:

31 (a) Any person who is qualified to practice law or public accountancy in this state, any person
 32 who has been granted active enrollment to practice before the Internal Revenue Service and who
 33 is qualified to prepare tax returns in this state or any person who is the authorized employee of a
 34 taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer be-
 35 fore a tax court magistrate or the Department of Revenue in any conference or proceeding with
 36 respect to the administration of any tax.

37 (b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from
 38 such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer
 39 before a tax court magistrate or the department in any conference or proceeding with respect to the
 40 administration of any tax on or measured by net income.

41 (c) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue
 42 Code, as amended and in effect on December 31, 2004, may represent the corporation in any pro-
 43 ceeding before a tax court magistrate or the department in the same manner as if the shareholder
 44 were a partner and the S corporation were a partnership. The S corporation must designate in
 45 writing a tax matters shareholder authorized to represent the S corporation.

1 (d) Any person who is licensed as a real estate broker or principal real estate broker under ORS
 2 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310 or is a reg-
 3 istered appraiser under ORS 308.010 may represent a taxpayer before a tax court magistrate or the
 4 department in any conference or proceeding with respect to the administration of **the tax imposed**
 5 **by sections 1 to 26 of this 2007 Act** or any ad valorem property tax.

6 (e) A general partner who has been designated by members of a partnership as their tax matters
 7 partner under ORS 305.242 may represent those partners in any conference or proceeding with re-
 8 spect to the administration of any tax on or measured by net income.

9 (f) Any person authorized under rules adopted by the department may represent a taxpayer be-
 10 fore the department in any conference or proceeding with respect to any tax. Rules adopted under
 11 this paragraph, to the extent feasible, shall be consistent with federal law that governs represen-
 12 tation before the Internal Revenue Service, as federal law is amended and in effect on December 31,
 13 2004.

14 (g) Any person authorized under rules adopted by the tax court may represent a taxpayer in a
 15 proceeding before a tax court magistrate.

16 (2) A person may not be recognized as representing a taxpayer pursuant to this section unless
 17 there is first filed with the magistrate or department a written authorization, or unless it appears
 18 to the satisfaction of the magistrate or department that the representative does in fact have au-
 19 thority to represent the taxpayer. A person recognized as an authorized representative under rules
 20 or procedures adopted by the tax court shall be considered an authorized representative by the de-
 21 partment.

22 (3) A taxpayer represented by someone other than an attorney is bound by all things done by
 23 the authorized representative, and may not thereafter claim any proceeding was legally defective
 24 because the taxpayer was not represented by an attorney.

25 (4) Prior to the holding of a conference or proceeding before the tax court magistrate or de-
 26 partment, written notice shall be given by the magistrate or department to the taxpayer of the
 27 provisions of subsection (3) of this section.

28 **SECTION 29.** ORS 305.380 is amended to read:

29 305.380. As used in ORS 305.385:

30 (1) "Agency" means any department, board, commission, division or authority of the State of
 31 Oregon, or any political subdivision of this state which imposes a local tax administered by the
 32 Department of Revenue under ORS 305.620.

33 (2) "License" means any written authority required by law or ordinance as a prerequisite to the
 34 conduct of a business, trade or profession.

35 (3) "Provider" means any person who contracts to supply goods, services or real estate space
 36 to an agency.

37 (4) "Tax" means a state tax imposed by ORS 401.792 to 401.816 and 320.005 to 320.150 and ORS
 38 chapters 118, 314, 316, 317, 318, 321 and 323 **and sections 1 to 26 of this 2007 Act** and the elderly
 39 rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the De-
 40 partment of Revenue under ORS 305.620.

41 **SECTION 30.** ORS 820.570 is amended to read:

42 820.570. (1) A person commits the offense of violating trip permit requirements for manufactured
 43 structures if the person does any of the following:

44 (a) Moves a manufactured structure on a highway of this state without a trip permit for the
 45 movement. This paragraph does not apply to movements of manufactured structures by vehicle

1 transporters as permitted under ORS 822.310.

2 (b) Fails to prominently display a trip permit on the rear of a manufactured structure being
3 moved when a trip permit is required for the move.

4 (c) Moves a manufactured structure when a trip permit is required without completing the per-
5 mit prior to the movement.

6 (d) **Issues a trip permit for movement of a manufactured structure:**

7 (A) **Before payment is made to the recording officer of all real estate transfer tax im-**
8 **posed under sections 1 to 26 of this 2007 Act and the interest and penalties thereon; or**

9 (B) **If the manufactured structure is subject to a real estate transfer tax installment**
10 **election under section 12 of this 2007 Act and the tax is delinquent.**

11 (2) The offense described under this section, violating trip permit requirements for manufactured
12 structures, is a Class B traffic violation.

13 **SECTION 31.** ORS 830.855 is amended to read:

14 830.855. (1) The owner of a floating home or boathouse that is used principally on the waters
15 of this state shall apply to the State Marine Board for an identifying plate. The application shall
16 include the true name of the owner, the residence or business address of the owner, a description
17 of the floating home or boathouse, the location of the floating home or boathouse and any other
18 information required by the board. The application shall be signed by the owner and be accompanied
19 by a fee of \$20.

20 (2) Subject to ORS 830.860 **and compliance with sections 1 to 26 of this 2007 Act**, if the ap-
21 plication is in order, the board shall issue to the owner a certificate of title. The title shall contain
22 the name and address of the owner, a description of the floating home or boathouse, the issue date,
23 the location of the floating home or boathouse and a statement that the title is valid and effective
24 only so long as ownership and location remain the same.

25 **SECTION 32.** ORS 830.860 is amended to read:

26 830.860. (1) A certificate of title for a floating home or boathouse is valid and effective only as
27 long as ownership and location remain the same.

28 (2) The State Marine Board shall require the surrender of the certificate of title before issuing
29 a new certificate of title unless the floating home was abandoned by a tenant under ORS chapter
30 90. **The board shall require that a copy of the affidavit required under section 16 of this 2007**
31 **Act be filed with the board before a new certificate of title is issued.**

32 (3) The identifying plate issued by the board shall remain the same when a new certificate of
33 title is issued.

34 (4) Application for a new certificate of title shall be made in the manner provided in ORS
35 830.855. The application shall be accompanied by a fee of \$20. The board shall issue the new cer-
36 tificate of title in the manner provided in ORS 830.855.

37
