

House Bill 3187

Sponsored by Representative JENSON

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**.

Enacts uniform sales and use tax administration provisions. Directs Department of Revenue to enter into Streamlined Sales and Use Tax Agreement. Imposes sales tax on sales of tangible personal property or services. Imposes use tax on use of tangible personal property purchased out-of-state.

Provides that sales and use tax provisions become operative on January 1, 2009, and apply to transactions occurring on or after January 1, 2009, but do not become operative if Streamlined Sales and Use Tax Agreement is not executed prior to January 1, 2009.

Takes effect only if constitutional amendment proposed by House Joint Resolution 40 (2007) is approved by people at next regular general election. Takes effect on effective date of House Joint Resolution 40 (2007).

A BILL FOR AN ACT

Relating to taxation; creating new provisions; amending ORS 305.130, 305.140, 305.265, 305.270, 305.280, 305.565, 305.850, 305.895, 731.840, 801.040, 802.110 and 803.585; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

UNIFORM SALES AND USE TAX ADMINISTRATION ACT

SECTION 1. Title. Sections 1 to 9 of this 2007 Act shall be known and may be cited as the Uniform Sales and Use Tax Administration Act.

SECTION 2. Definitions. As used in sections 1 to 9 of this 2007 Act:

(1) "Streamlined Sales and Use Tax Agreement" means the Streamlined Sales and Use Tax Agreement adopted by the Streamlined Sales Tax Project on November 12, 2002, as amended and in effect on the effective date of this 2007 Act.

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(5) "Sales tax" means the tax levied under sections 34 to 42 of this 2007 Act.

(6) "Seller" means any person making sales, leases or rentals of personal property or services.

(7) "State" means any state of the United States and the District of Columbia.

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 (8) "Use tax" means the tax levied under sections 43 to 51 of this 2007 Act.

2 **SECTION 3. Findings and declarations.** The Legislative Assembly finds and declares that
 3 entering into the Streamlined Sales and Use Tax Agreement with one or more states to
 4 simplify and modernize sales and use tax administration will substantially reduce the burden
 5 of tax compliance for all sellers and for all types of commerce.

6 **SECTION 4. Authority to enter agreement.** (1) The Department of Revenue is authorized
 7 and directed to enter into the Streamlined Sales and Use Tax Agreement with one or more
 8 states to simplify and modernize sales and use tax administration in order to substantially
 9 reduce the burden of tax compliance for all sellers and for all types of commerce. In
 10 furtherance of the agreement, the department is authorized to act jointly with other states
 11 that are members of the agreement to establish standards for certification of a certified
 12 service provider and certified automated system, and to establish performance standards for
 13 multistate sellers.

14 (2) The department is further authorized to take other actions reasonably required to
 15 implement the provisions set forth in sections 1 to 9 of this 2007 Act. Other actions author-
 16 ized by this section include, but are not limited to, the adoption of rules and the joint pro-
 17 curement, with other member states, of goods and services in furtherance of the agreement.

18 (3) The department or the designee of the department is authorized to represent this
 19 state before the other states that are signatories to the agreement.

20 **SECTION 5. Relationship to state law.** No provision of the Streamlined Sales and Use Tax
 21 Agreement authorized by sections 1 to 9 of this 2007 Act in whole or part invalidates or
 22 amends any provision of the law of this state. Adoption of the agreement by this state does
 23 not amend or modify any law of this state. Implementation of any condition of the agree-
 24 ment in this state, whether adopted before, at the time of or after membership of this state
 25 in the agreement, must be by the action of this state.

26 **SECTION 6. Agreement requirements.** The Department of Revenue may not enter into
 27 the Streamlined Sales and Use Tax Agreement unless the agreement requires each signatory
 28 state to abide by all of the following requirements:

29 (1) The agreement must set restrictions to achieve more state uniform sales and use tax
 30 rates through the following:

- 31 (a) Limiting the number of state rates;
- 32 (b) Eliminating maximums on the amount of state tax that is due on a transaction; and
- 33 (c) Eliminating thresholds on the application of state tax.

34 (2) The agreement must establish uniform standards for the following:

- 35 (a) The sourcing of transactions to taxing jurisdictions;
- 36 (b) The administration of exempt sales;
- 37 (c) The allowances a seller can take for bad debts; and
- 38 (d) Sales and use tax returns and remittances.

39 (3) The agreement must require states to develop and adopt uniform definitions of sales
 40 and use tax terms. The definitions must enable a state to preserve its ability to make policy
 41 choices not inconsistent with the uniform definitions.

42 (4) The agreement must provide a central, electronic registration system that allows a
 43 seller to register to collect and remit sales and use taxes for all signatory states.

44 (5) The agreement must provide that registration with the central registration system
 45 and the collection of sales and use taxes in the signatory states will not be used as a factor

1 in determining whether the seller has nexus with a state for any tax.

2 (6) The agreement must provide for reduction of the burdens of complying with local
3 sales and use taxes through the following:

4 (a) Eliminating variances between the state and local tax bases;

5 (b) Requiring states to administer any sales and use taxes levied by local jurisdictions
6 within the state so that sellers collecting and remitting these taxes will not have to register
7 or file returns with, remit funds to or be subject to independent audits from local taxing
8 jurisdictions;

9 (c) Restricting the frequency of changes in the local sales and use tax rates and setting
10 effective dates for the application of local jurisdictional boundary changes to local sales and
11 use taxes; and

12 (d) Providing notice of changes in local sales and use tax rates and of changes in the
13 boundaries of local taxing jurisdictions.

14 (7) The agreement must outline any monetary allowances that are to be provided by the
15 states to sellers or certified service providers.

16 (8) The agreement must require each state to certify compliance with the terms of the
17 agreement prior to joining and to maintain compliance, under the laws of the member state,
18 with all provisions of the agreement while a member.

19 (9) The agreement must require each state to adopt a uniform policy for certified service
20 providers that protects the privacy of consumers and maintains the confidentiality of tax
21 information.

22 (10) The agreement must provide for the appointment of an advisory council of private
23 sector representatives and an advisory council of nonmember state representatives to con-
24 sult with in the administration of the agreement.

25 **SECTION 7. Cooperating states.** The Streamlined Sales and Use Tax Agreement author-
26 ized by sections 1 to 9 of this 2007 Act is to be an accord among individual states in
27 furtherance of their governmental functions. The agreement shall provide a mechanism
28 among the member states to establish and maintain a cooperative, simplified system for the
29 application and administration of sales and use taxes under the laws of each member state.

30 **SECTION 8. Effect of agreement.** (1) The Streamlined Sales and Use Tax Agreement au-
31 thorized by sections 1 to 9 of this 2007 Act binds and inures only to the benefit of this state
32 and the other member states. No person, other than a member state, is an intended benefi-
33 ciary of the agreement. Any benefit to a person other than a state is established by the law
34 of this state and the other member states and not by the terms of the agreement.

35 (2) A person may not have any cause of action or defense under the agreement or by
36 virtue of the approval by this state of the agreement. A person may not challenge, in any
37 action brought under any provision of law, any action or inaction by any department, agency
38 or other instrumentality of this state, or any political subdivision of this state, on the ground
39 that the action or inaction is inconsistent with the agreement.

40 (3) No law of this state, or the application thereof, may be declared invalid as to any
41 person or circumstance on the ground that the provision or application is inconsistent with
42 the agreement.

43 **SECTION 9. Seller and third-party liability.** (1) A certified service provider is the agent
44 of a seller, with whom the certified service provider has contracted, for the collection and
45 remittance of sales and use taxes pursuant to the Streamlined Sales and Use Tax Agreement

1 authorized by sections 1 to 9 of this 2007 Act. As the seller's agent, the certified service
 2 provider is liable for sales and use tax due each member state on all sales transactions the
 3 certified service provider processes for the seller except as set out in this section.

4 (2)(a) A seller that contracts with a certified service provider is not liable to this state
 5 for sales or use tax due on transactions processed by the certified service provider unless
 6 the seller misrepresented the type of items the seller sells or committed fraud. In the ab-
 7 sence of probable cause to believe that the seller has committed fraud or made a material
 8 misrepresentation, the seller is not subject to audit on transactions processed by a certified
 9 service provider. A seller is subject to audit for transactions not processed by a certified
 10 service provider.

11 (b) Member states acting jointly may perform a system check of the seller and review
 12 the seller's procedures to determine if a certified service provider's system is functioning
 13 properly and the extent to which the seller's transactions are being processed by the certi-
 14 fied service provider.

15 (3) A person that provides a certified automated system is responsible for the proper
 16 functioning of that system and is liable to the state for underpayments of tax attributable
 17 to errors in the functioning of the certified automated system. A seller that uses a certified
 18 automated system remains responsible and is liable to the state for reporting and remitting
 19 tax.

20 (4) A seller that has a proprietary system for determining the amount of tax due on
 21 transactions and has signed an agreement establishing a performance standard for that
 22 system is liable for the failure of the system to meet the performance standard.

23
 24 **SALES AND USE TAX**

25
 26 **SECTION 10. Construction.** Unless the context requires otherwise, the definitions in
 27 sections 11 to 31 of this 2007 Act govern the construction of sections 10 to 125 of this 2007
 28 Act.

29
 30 (Definitions)

31
 32 **SECTION 11. Business.** "Business" includes any activity engaged in by any person or
 33 caused to be engaged in by a person with the object of gain, benefit or advantage, either di-
 34 rect or indirect.

35 **SECTION 12. Delivery charge.** "Delivery charge" means a charge by the seller of personal
 36 property or services for preparation and delivery to a location designated by the purchaser
 37 of personal property or services.

38 **SECTION 13. Department; director.** "Department" means the Department of Revenue,
 39 and "director" means the Director of the Department of Revenue.

40 **SECTION 14. Floating home.** "Floating home" has the meaning given that term in ORS
 41 830.700.

42 **SECTION 15. Gross receipts.** (1) "Gross receipts" means the total amount of consider-
 43 ation, including cash, credit, property and services, for which personal property or services
 44 are sold, leased or rented, without any deduction for the following:

- 45 (a) The seller's cost of the property that is being sold;

1 (b) The cost of materials, labor, interest, losses, transportation to the seller, taxes im-
2 posed on the seller or other expense of the seller;

3 (c) Charges by the seller for any services necessary to complete the sale, other than de-
4 livery and installation charges;

5 (d) Delivery charges;

6 (e) Installation charges;

7 (f) The value of exempt personal property given to the purchaser, if taxable and exempt
8 personal property have been sold by the seller as a single product; or

9 (g) Credit for a trade-in of property.

10 (2) "Gross receipts" means the consideration described in subsection (1) of this section
11 that is valued in money, whether the consideration is received in money or otherwise.

12 (3) "Gross receipts" does not include:

13 (a) Discounts, including cash, term or coupons that are not reimbursed by a third party,
14 that are allowed by a seller and taken by a purchaser on a sale;

15 (b) Interest, financing or carrying charges from credit extended on the sale of personal
16 property or services, if the amount is separately stated on the invoice; or

17 (c) Taxes that are legally imposed directly on the purchaser and that are separately
18 stated on the invoice, bill of sale or similar document given to the purchaser.

19 **SECTION 16. In this state.** "In this state" or "within this state" means within the exte-
20 rior limits of the State of Oregon and includes all territory within these limits owned by or
21 ceded to the United States of America.

22 **SECTION 17. Internal Revenue Code.** "Internal Revenue Code" means the federal Inter-
23 nal Revenue Code, as amended and in effect on December 31, 2006.

24 **SECTION 18. Lease.** (1) "Lease" means a transfer of possession or control of tangible
25 personal property for a fixed or indeterminate term for consideration, or a future option to
26 purchase or extend the possession or control of tangible personal property.

27 (2) "Lease" does not include:

28 (a) A transfer of possession or control of property under a security agreement or de-
29 rferred payment plan that requires the transfer of title upon completion of the required pay-
30 ments;

31 (b) A transfer of possession or control of property under an agreement that requires the
32 transfer of title upon completion of required payments and payment of an option price that
33 does not exceed the greater of \$100 or one percent of the total of required payments;

34 (c) The provision of tangible personal property and an operator of the tangible personal
35 property for a fixed or indeterminate period of time, if the operator is required for the
36 equipment to perform as designed. For purposes of this paragraph, an operator must do more
37 than maintain, inspect or set up the tangible personal property;

38 (d) An agreement covering the rental of a motor vehicle, if the rental agreement contains
39 a terminal rental adjustment clause as defined in section 7701(h)(3) of the Internal Revenue
40 Code; or

41 (e) A rental agreement that was executed prior to the date the Department of Revenue
42 enters into the Streamlined Sales and Use Tax Agreement.

43 **SECTION 19. Manufactured structure.** "Manufactured structure" has the meaning given
44 that term in ORS 801.333.

45 **SECTION 20. Motor vehicle or vehicle.** (1) "Motor vehicle" has the meaning given that

1 term in ORS 801.360.

2 (2) "Vehicle" has the meaning given that term in ORS 801.590.

3 **SECTION 21. Nonresident; resident.** (1) "Nonresident" means an individual who is not a
4 resident of this state.

5 (2) "Resident" means:

6 (a) An individual who is domiciled in this state, unless the individual maintains no per-
7 manent place of abode in this state, does maintain a permanent place of abode elsewhere and
8 spends in the aggregate not more than 30 days of the tax year in this state; or

9 (b) An individual who is not domiciled in this state but maintains a permanent place of
10 abode in this state and spends in the aggregate more than 200 days of the tax year in this
11 state, unless the individual proves to the satisfaction of the Department of Revenue that the
12 individual's presence in this state is only for a temporary or transitory purpose.

13 **SECTION 22. Occasional sale.** "Occasional sale" includes:

14 (1) A sale of property not held or used by a seller in the course of activities for which
15 the seller is required to hold a seller's permit or permits or would be required to hold a
16 seller's permit or permits if the activities were conducted in this state, but only if such sale
17 is not one of a series of sales sufficient in number, scope and character to constitute an
18 activity for which the seller is required to hold a seller's permit or would be required to hold
19 a seller's permit if the activity were conducted in this state; and

20 (2) Any transfer of 80 percent or more of the tangible personal property, in terms of its
21 selling price, held or used by a person in the course of an activity requiring the holding of
22 a seller's permit if, after such transfer, the real or ultimate ownership of such property is
23 substantially similar to that which existed before such transfer. For the purposes of this
24 subsection, stockholders, bondholders, partners or other persons holding an interest in a
25 corporation or other entity are regarded as having the "real or ultimate ownership" of the
26 property of such corporation or other entity.

27 **SECTION 23. Purchase price; sales price.** "Purchase price" or "sales price" means the
28 total amount of gross receipts derived from the sale or lease of tangible personal property
29 or services.

30 **SECTION 24. Retail sale.** "Retail sale" or "sale at retail" means a sale or lease for any
31 purpose other than for resale, sublease or subrent.

32 **SECTION 25. Sales tax.** "Sales tax" means the tax levied under sections 34 to 42 of this
33 2007 Act.

34 **SECTION 26. Seller.** "Seller" means a person who makes, leases or rents personal prop-
35 erty or services.

36 **SECTION 27. Services.** "Services" means all activities engaged in for the benefit of other
37 persons for a fee, retainer, commission or other monetary charge, if the activities predomi-
38 nantly involve the performance of a service as distinguished from selling property.

39 **SECTION 28. Storage and use.** (1) "Storage" includes any keeping or retention in this
40 state for any purpose except sale in the regular course of business or subsequent use solely
41 outside this state of tangible personal property purchased from a retailer.

42 (2) "Use" includes the exercise of any right or power over tangible personal property in-
43 cident to the ownership of that property, and also includes the possession of, or the exercise
44 of any right or power over, tangible personal property by a lessee under a lease, except that
45 "use" does not include the sale of that property in the regular course of business.

1 (3) “Storage” and “use” do not include the keeping, retaining or exercising of any right
 2 or power over tangible personal property for the purpose of subsequently transporting it
 3 outside this state for use thereafter solely outside this state, or for the purpose of being
 4 processed, fabricated or manufactured into, attached to or incorporated into, other tangible
 5 personal property to be transported outside this state and thereafter used solely outside this
 6 state.

7 **SECTION 29. Streamlined Sales and Use Tax Agreement.** “Streamlined Sales and Use
 8 Tax Agreement” has the meaning given that term in section 2 of this 2007 Act.

9 **SECTION 30. Tangible personal property.** “Tangible personal property” means personal
 10 property that can be seen, weighed, measured, felt or touched, that is in any other manner
 11 perceptible to the senses or that is electricity, water, gas, steam or prewritten computer
 12 software.

13 **SECTION 31. Use tax.** “Use tax” means the tax levied under sections 43 to 51 of this 2007
 14 Act.

15
 16 (Sourcing Rules and Definitional Rules)

17
 18 **SECTION 32.** The Department of Revenue shall adopt rules for sourcing the retail sale
 19 of products or services. The rules shall conform to the sourcing provisions of the Stream-
 20 lined Sales and Use Tax Agreement.

21 **SECTION 33.** The Department of Revenue may adopt rules defining terms for purposes
 22 of imposing and administering the sales or use tax, including rules defining categories of
 23 products or services. The rules shall conform to definitions set forth in the Streamlined
 24 Sales and Use Tax Agreement.

25
 26 (Sales Tax)

27
 28 **SECTION 34. Imposition of tax; rate.** In addition to all other taxes of every kind, for the
 29 privilege of selling tangible personal property or services at retail, a tax is imposed upon all
 30 retailers at the rate of _____ percent of the gross receipts of any retailer from the sale
 31 of all tangible personal property sold at retail in this state.

32 **SECTION 35. Reimbursement.** (1) The sales tax imposed by section 34 of this 2007 Act is
 33 a tax upon the gross receipts of retailers. Whether a retailer may add sales tax reimburse-
 34 ment to the sales price of the tangible personal property or services sold at retail to a pur-
 35 chaser depends solely upon the terms of the agreement of sale. It shall be presumed that the
 36 parties agreed to the addition of sales tax reimbursement to the sales price of tangible per-
 37 sonal property sold at retail to a purchaser if:

38 (a) The agreement of sale expressly provides for such addition of sales tax reimburse-
 39 ment;

40 (b) Sales tax reimbursement is shown on the sales check or other proof of sale; or

41 (c) The retailer posts in the retailer’s premises in a location visible to purchasers, or
 42 includes on a price tag or in an advertisement or other printed material directed to pur-
 43 chasers, a notice to the effect that reimbursement for sales tax will be added to the sales
 44 price of all items or certain items, whichever is applicable.

45 (2) It shall be presumed that the property or services, the gross receipts from the sale

1 of which are subject to the sales tax, are sold at a price that includes tax reimbursement if
2 the retailer posts in the premises or includes on a price tag or in an advertisement, which-
3 ever is applicable, one of the following notices:

4 (a) "All prices of taxable items include sales tax reimbursement computed to the nearest
5 mill."

6 (b) "The price of this item includes sales tax reimbursement computed to the nearest
7 mill."

8 **SECTION 36. Collection schedule.** (1) The Department of Revenue shall prepare a sales
9 tax collection schedule showing the total amount that shall be collected by the retailer from
10 a consumer in reimbursement of the sales tax, computed on each sales price, from one cent
11 to and including \$100, at the rate of _____ percent. The schedule shall be identical to the
12 following table up to the amounts specified:

	Price			Tax	
16	\$ 0.01	to	0.09	\$	_____
17	0.10	to	0.29		_____
18	0.30	to	0.49		_____
19	0.50	to	0.69		_____
20	0.70	to	0.89		_____
21	0.90	to	1.09		_____

22
23
24 (2) Reimbursement on sales prices in excess of those shown in the schedules may be
25 computed by applying the applicable tax rate to the sales price, rounded off to the nearest
26 cent by eliminating any fraction less than one-half cent and increasing any fraction of one-
27 half cent or more to the next higher cent.

28 (3) The sales tax collection schedule shall be made available for inspection and repro-
29 duction.

30 (4) Each retailer who collects amounts from a consumer in reimbursement of the sales
31 tax shall either:

32 (a) Use the schedule prepared by the department or the method provided under sub-
33 section (2) of this section in computing the amount to be collected, based upon the sales price
34 of the item sold if one item is sold, and if more than one item is sold in any one transaction,
35 upon the sum of the sales prices of the items sold; or

36 (b) If authorized under rules adopted by the department, include in the sales price of each
37 item an amount of reimbursement computed to the nearest one-tenth of a cent at the ap-
38 plicable tax rate and post a notice in the retailer's premises stating that each posted or ad-
39 vertised price includes reimbursement so computed. When both taxable and nontaxable items
40 are included in the same transaction, the requirement of paragraph (a) of this subsection
41 regarding computation of tax reimbursement upon the sum of the aggregate sales prices
42 applies only if the purchaser requests at the time of the sale that the computation be made
43 in this way.

44 (5) Each retailer may retain from the taxes otherwise due under the Sales and Use Tax
45 Law, out of the remittances by the retailer under sections 100 and 101 of this 2007 Act, an

1 amount equal to 1.5 percent of the tax owed by such retailer for each reporting period. Such
2 amounts may be retained only if the remittances were paid when due as required by sections
3 100 and 101 of this 2007 Act.

4 **SECTION 37. Vending machines.** (1)(a) The Department of Revenue may authorize a
5 seller to pay the sales tax upon sales made through vending machines and similar devices,
6 or under conditions of business such as to render impracticable the collection of the tax as
7 a separate item, and waive collection of the tax from the purchaser.

8 (b) If sales are made by receipt of a coin or coins dropped into a receptacle that results
9 in delivery of the merchandise in single purchases of smaller value than the minimum sale
10 upon which a one cent tax may be collected from the purchaser, according to the schedule
11 prescribed under section 36 of this 2007 Act, and if the design of the device is such that
12 multiple sales of items are not possible or cannot be detected so as practicably to assess a
13 tax, then no tax shall be assessed or collected on the gross receipts from such sales if ade-
14 quate and complete records are kept by the vending machine operator, readily available for
15 inspection by the department. If such records are not maintained, the gross receipts for the
16 purposes of the sales tax are 50 percent of the gross receipts of the vending machine through
17 which such sales are made, determined by the department according to the best of its in-
18 formation and belief, using such records as are available.

19 (c) As used in this section, "adequate and complete records" means that the vending
20 machine operator regularly maintains records that would enable a department auditor to
21 accurately ascertain liability for sales taxes under section 34 of this 2007 Act, showing the
22 location or locations of each machine operated by the vending machine operator during each
23 reporting period, the serial number thereof, purchases and inventories of merchandise
24 bought for sale through all such machines and the gross receipts derived from the operation
25 at each location during each reporting period.

26 (2) No authority under subsection (1) of this section may be granted except upon appli-
27 cation to the department and unless the department finds that the conditions of the appli-
28 cant's business are such as to render impracticable the collection of the tax in the manner
29 otherwise provided. If required by the department, an applicant under this section must
30 furnish a proper bond sufficient to secure the payment of the tax. One permit is sufficient
31 for all machines of one operator. A statement shall be affixed upon each vending machine in
32 a conspicuous space by the operator thereof, stating the operator's name, place of business
33 and permit number.

34 **SECTION 38. Excess collection.** (1) When an amount represented by a person to a pur-
35 chaser as constituting reimbursement for taxes due under section 34 of this 2007 Act is
36 computed upon an amount that is not taxable or is in excess of the taxable amount and is
37 actually paid by the purchaser to the person, the amount so paid shall be returned by the
38 person to the purchaser upon notification by the Department of Revenue or by the purchaser
39 that such excess has been ascertained. In the event of the person's failure or refusal to do
40 so, the amount paid, if knowingly or mistakenly computed by the person upon an amount
41 that is not taxable or is in excess of the taxable amount, shall be remitted by that person
42 to this state. However, those amounts remitted to this state shall be credited by the de-
43 partment on any amounts due and payable under section 34 of this 2007 Act on the same
44 transaction from the person by whom it was paid to this state and the balance, if any, shall
45 constitute an obligation due from the person to this state.

1 (2) Subsection (1) of this section does not apply to an amount computed by using a
2 schedule designed to result in collection in an amount as nearly equivalent as practicable to
3 the tax applicable to total taxable sales and to the average amount of individual taxable sales.

4 **SECTION 39. Worthless accounts.** (1) A person is relieved from liability for sales tax or
5 use tax insofar as the measure of the tax is represented by accounts that, for federal income
6 tax purposes, constitute deductible bad debt under section 166 of the Internal Revenue Code,
7 except that the amount of bad debt for which liability is relieved under this section shall be
8 reduced by:

9 (a) Interest or other financing charges;

10 (b) Sales or use taxes charged on the sale of the property or services from which the bad
11 debt is derived;

12 (c) Uncollectible amounts on property that remains in the possession of the seller until
13 the full purchase price is paid;

14 (d) Expenses incurred in attempting to collect any debt; or

15 (e) The value of repossessed property.

16 (2) Any deduction allowed under this section for bad debt may not include interest.

17 (3) Bad debt may be deducted only on the sales or use tax return for the period during
18 which the bad debt is written off as uncollectible in the books and records of the taxpayer
19 and is eligible for deduction for federal tax purposes, or would be eligible for deduction if the
20 sales or use taxpayer were required to file a federal income tax return.

21 (4) If bad debt that is deducted under subsection (1) of this section is subsequently col-
22 lected, the amount collected shall be added to the sales tax liability of the taxpayer for the
23 reporting period in which the amount is collected.

24 (5) If the amount of bad debt that may be deducted exceeds the sales or use tax liability
25 of the taxpayer, the excess may be refunded to the taxpayer.

26 (6) The Department of Revenue shall adopt rules for the allocation of bad debt between
27 Oregon and other states in cases in which the amount of bad debt for federal income tax
28 purposes is attributable to debt from both within and outside of Oregon.

29
30 (Seller Registration)

31
32 **SECTION 40.** (1) The Department of Revenue shall design and implement an online sales
33 tax registration system that complies with the Streamlined Sales and Use Tax Agreement.

34 (2) A person may not be required to pay a fee in order to register for sales tax purposes.

35 (3) The department may adopt any rules necessary to implement the registration system
36 or facilitate registration or the operation of the registration system.

37 **SECTION 41.** (1) Each person seeking to conduct business in this state as a seller shall
38 register with the Department of Revenue through the online registration system described
39 in section 40 of this 2007 Act.

40 (2) A person acting as an agent of a seller may register on behalf of the seller.

41 (3) A person may not conduct business as a seller in this state without registering under
42 this section.

43 (4) Each officer of a corporation that conducts business in violation of subsection (3) of
44 this section is guilty of violating that subsection.

45

(Presumptions)

SECTION 42. For the purpose of the proper administration of the Sales and Use Tax Law and to prevent evasion of the sales tax, all gross receipts are presumed subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property or services is not a sale at retail is upon the person who makes the sale.

(Use Tax)

SECTION 43. Imposition of tax; rate. An excise tax is imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this state, at the rate of _____ percent of the purchase price of the property.

SECTION 44. Liability for tax. Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the use tax. The person's liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Department of Revenue, under such rules as it may adopt, to collect the tax and who, for the purposes of the use tax, is regarded as a retailer engaged in business in this state, given to the purchaser pursuant to section 45 of this 2007 Act, is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

SECTION 45. Collection by retailer; tax as debt; itemization of tax. (1) Except as provided in section 69 of this 2007 Act, every retailer engaged in business in this state, every retailer required to collect the use tax and every retailer to whom authorization to collect tax has been granted by the Department of Revenue, who makes sales of tangible personal property for storage, use or other consumption in this state, not exempt for purposes of the Sales and Use Tax Law, at the time of making the sales or if the storage, use or other consumption of the tangible personal property is not then taxable, at the time the storage, use or other consumption becomes taxable, shall collect the tax from the purchaser and shall give to the purchaser a receipt therefor in the manner and form prescribed by the department.

(2) The tax required to be collected under subsection (1) of this section by the retailer and any amount unreturned to the purchaser that is not tax but was collected under representation by the retailer that it was a tax constitutes a debt owed by the retailer to this state.

(3) With respect to leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(4) Unless the department otherwise provides under its rules, the use tax required to be collected by the retailer from the purchaser under subsections (1) to (3) of this section shall be displayed separately from the list price, the price advertised in the premises, the marked price or other price on the sales check or other proof of sale.

SECTION 46. Retailer engaged in business in this state. For purposes of sections 43 to 51 of this 2007 Act, "retailer engaged in business in this state" means:

(1) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or other agent, by whatever name, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of

1 **business.**

2 (2) Any retailer having any representative, agent, salesperson, canvasser or solicitor op-
 3 erating in this state under the authority of the retailer or its subsidiary for the purpose of
 4 selling, delivering or taking orders for any tangible personal property.

5 (3) With respect to a lease, any retailer deriving rentals from a lease of tangible personal
 6 property situated in this state.

7 **SECTION 47. Registration of retailers.** Every retailer selling tangible personal property
 8 for storage, use or consumption in this state shall register with the Department of Revenue
 9 in the manner prescribed in section 41 of this 2007 Act.

10 **SECTION 48. Collection of tax by retailer maintaining or not maintaining place of busi-**
 11 **ness in state.** The Director of the Department of Revenue may, in the director's discretion,
 12 upon application of the retailer, authorize the collection of the use tax imposed by section
 13 43 of this 2007 Act by any retailer who maintains or who does not maintain a place of busi-
 14 ness within this state and who furnishes adequate security to ensure collection and payment
 15 of the tax. The retailer shall be issued, without charge, a permit to collect the tax in the
 16 manner and subject to the rules and agreements as the director shall prescribe or require.
 17 When so authorized, it shall be the duty of the retailer to collect the tax upon all tangible
 18 personal property sold by the retailer for use, storage or other consumption within this
 19 state, in the same manner and subject to the same requirements as any other retailer. The
 20 permit may be canceled if, at any time, the director considers the security inadequate or that
 21 the tax can more effectively be collected from the person using the property in this state.

22 **SECTION 49. Excessive collections.** When an amount represented by a person to a pur-
 23 chaser as constituting reimbursement for taxes due under section 43 of this 2007 Act is
 24 computed upon an amount that is not taxable or is in excess of the taxable amount and is
 25 actually paid by the purchaser to the person, the amount so paid shall be returned by the
 26 person to the purchaser upon notification by the Department of Revenue or by the purchaser
 27 that such excess has been ascertained. In the event of the person's failure or refusal to do
 28 so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount
 29 that is not taxable or is in excess of the taxable amount, shall be remitted by that person
 30 to this state. However, those amounts remitted to this state shall be credited by the de-
 31 partment on any amounts due and payable under section 43 of this 2007 Act on the same
 32 transaction from the person by whom it was paid to this state and the balance, if any, shall
 33 constitute an obligation due from the person to this state.

34 **SECTION 50. Presumptions.** For the purpose of the proper administration of the Sales
 35 and Use Tax Law and to prevent evasion of the use tax and the duty to collect the use tax,
 36 the following presumptions are established:

37 (1) Tangible personal property sold by any person for delivery in this state is sold for
 38 storage, use or other consumption in this state unless the contrary is established. The bur-
 39 den of proving the contrary is upon the person who makes the sale unless the person takes
 40 from the purchaser a resale certificate to the effect that the property is purchased for re-
 41 sale.

42 (2) Tangible personal property shipped or brought to this state by the purchaser was
 43 purchased from a retailer on or after the operative date of this section for storage, use or
 44 other consumption in this state.

45 (3) Tangible personal property delivered outside this state to a purchaser known by the

1 retailer to be a resident of this state was purchased from a retailer for storage, use or other
 2 consumption in this state and stored, used or otherwise consumed in this state. This
 3 presumption may be controverted by a statement in writing, signed by the purchaser or the
 4 authorized representative, and retained by the vendor, that the property was purchased for
 5 use at a designated point or points outside this state. This presumption may also be
 6 controverted by other evidence satisfactory to the Department of Revenue that the property
 7 was not purchased for storage, use or other consumption in this state.

8 (4) A motor vehicle purchased outside of this state that is brought into this state on or
 9 before the 90th day after its purchase, was acquired for storage, use or other consumption
 10 in this state. However, a member of the Armed Forces of the United States on active duty
 11 who purchases a motor vehicle prior to the effective date of discharge of the member is not
 12 subject to this presumption. The member is not considered to have purchased the motor
 13 vehicle for storage, use or other consumption in this state unless at the time of purchase
 14 the member intended to use it in this state, such intent resulting from the member's own
 15 determination rather than from official orders received as a member of the Armed Forces
 16 transferring the member to this state.

17 SECTION 51. Credit for tax paid to another jurisdiction. (1) A credit shall be allowed
 18 against, but shall not exceed, the taxes imposed on any person by the Sales and Use Tax Law
 19 by reason of the storage, use or other consumption of tangible personal property in this state
 20 to the extent that the person has paid a general retail sales or use tax, or reimbursement
 21 therefor, imposed with respect to that property by any other state or political subdivision
 22 thereof prior to the storage, use or other consumption of that property in this state.

23 (2) A credit otherwise permitted under subsection (1) of this section shall not be allowed
 24 against taxes that are measured by periodic payments made under a lease, to the extent that
 25 the taxes imposed by any other state or political subdivision thereof were also measured by
 26 periodic payments made under a lease for a period prior to the storage, use or other con-
 27 sumption of the property in this state.

28
 29 (Resale Certificates)

30
 31 SECTION 52. Effect of certificate. The resale certificate referred to in section 50 of this
 32 2007 Act relieves the person selling the property from liability for sales tax or the duty to
 33 collect use tax only if it is taken from a person who is engaged in the business of selling
 34 tangible personal property or services and who is registered under section 41 or 47 of this
 35 2007 Act.

36 SECTION 53. Form of certificate. A resale certificate must be signed by and bear the
 37 name and address of the purchaser, indicate the number of the permit issued to the pur-
 38 chaser and indicate the general character of the tangible personal property sold by the pur-
 39 chaser in the regular course of business. The resale certificate shall be substantially in such
 40 form as the Department of Revenue prescribes.

41 SECTION 54. Retention, demonstration or display; liability of purchaser. (1) If a pur-
 42 chaser who gives a resale certificate or purchases property for the purpose of reselling it
 43 makes any storage or use of the property other than retention, demonstration or display
 44 while holding it for sale in the regular course of business, the storage or use is taxable to
 45 the purchaser under section 43 of this 2007 Act as of the time the property is first so stored

1 or used by the purchaser and, except as provided in subsections (2) and (3) of this section,
 2 the sales price of the property to the purchaser is the measure of the tax.

3 (2) If the use is limited to the loan of the property to customers as an accommodation
 4 while awaiting delivery of property purchased or leased from the lender or while property is
 5 being repaired for customers by the lender, the measure of the tax is the fair rental value
 6 of the property for the duration of each loan so made.

7 (3) If the property is used frequently for purposes of demonstration or display while
 8 holding it for sale in the regular course of business and is used partly for other purposes,
 9 the measure of the tax is the fair rental value of the property for the period of such other
 10 use or uses.

11 **SECTION 55. Leases; election to pay use tax.** If a purchaser acquires property in a
 12 transaction described in section 22 (2) of this 2007 Act and leases such property, the pur-
 13 chaser may elect at the time the property is first leased, after the operative date of this
 14 section, to pay use tax measured by the purchase price of the property. For purposes of this
 15 section:

16 (1) "Purchaser" shall include a transferee who acquires property in a transaction that
 17 qualifies under the provisions of section 22 (2) of this 2007 Act; and

18 (2) The purchase price paid by the transferee shall be the same as that paid by the ori-
 19 ginal purchaser.

20 **SECTION 56. Resale certificate; fungible goods.** If a purchaser gives a resale certificate
 21 with respect to the purchase of fungible goods and thereafter commingles these goods with
 22 other fungible goods not so purchased but of such similarity that the identity of the con-
 23 stituent goods in the commingled mass cannot be determined, sales from the mass of
 24 commingled goods shall be deemed to be sales of the goods so purchased until a quantity of
 25 commingled goods equal to the quantity of purchased goods so commingled has been sold.

26 **SECTION 57. Improper use of certificate.** No person shall give, for the purpose of evading
 27 payment to the seller or other person selling the property of the amount of the tax applicable
 28 to the transaction, a resale certificate for property that the person knows, at the time of
 29 purchase, is not to be resold by the person in the regular course of business.

30
 31 (Direct Payment Permits)

32
 33 **SECTION 58. Direct payment permits.** (1) The Department of Revenue may authorize a
 34 purchaser of substantial amounts of tangible personal property or services to pay the sales
 35 or use tax directly to the department and to waive the collection of the tax by the seller.

36 (2) The department shall design and implement a direct pay permit program that com-
 37 plies with the requirements of the Streamlined Sales and Use Tax Agreement.

38 (3) In order to directly pay sales or use tax under subsection (1) of this section, a pur-
 39 chaser shall obtain a direct pay permit from the department in the time and manner pre-
 40 scribed by the department by rule.

41 (4)(a) The department may revoke a direct pay permit and the authority granted to a
 42 purchaser under a direct pay permit for failure to comply with the conditions under which
 43 the authority was granted or for other reasons constituting the misuse of the authority.

44 (b) Upon revocation of the direct pay permit, a purchaser shall give written notice of the
 45 revocation to each seller with whom the purchaser has transacted business using a direct

1 pay permit, and shall supply the department with evidence that the notice has been given.
2 Notwithstanding section 117 of this 2007 Act, if the purchaser fails to notify a seller of the
3 revocation, the department may give notice of the revocation to the seller.

4 (c) Notwithstanding paragraphs (a) and (b) of this subsection, a direct pay permit may
5 be revoked only to the extent the revocation is allowable under the Streamlined Sales and
6 Use Tax Agreement.

7
8 (Absorption of Tax by Retailer)

9
10 **SECTION 59. Unlawful advertising.** Except as otherwise provided by law or rule of the
11 Department of Revenue, no retailer shall advertise, hold out or state to the public or to any
12 customer, directly or indirectly, that the sales tax or use tax on tangible personal property
13 or services or any part thereof:

- 14 (1) Will be assumed or absorbed by the retailer;
15 (2) Will not be added to the selling price of the property sold; or
16 (3) If added, will be refunded in whole or in part.

17
18 (Vehicles, Vessels and Aircraft)

19
20 **SECTION 60. Definitions.** (1) As used in sections 60 to 71 of this 2007 Act, unless the
21 context requires otherwise:

22 (a) "Aircraft" means any powered contrivance used or designed for navigation of or flight
23 in the air, except a rocket or missile.

24 (b) "Vessel" means any boat, ship, barge, craft or floating object designed for navigation
25 in the water except:

- 26 (A) A seaplane;
27 (B) A watercraft specifically designed to operate on a permanently fixed course, the
28 movement of which is restricted to or guided on such permanently fixed course by means
29 of a mechanical device on a fixed track or arm to which the watercraft is attached or by
30 which the watercraft is controlled, or by means of a mechanical device attached to the
31 watercraft itself;
32 (C) A watercraft of a type designed to be propelled solely by oars or paddles;
33 (D) A watercraft of eight feet or less in length of a type designed to be propelled by sail;
34 (E) A floating home; or
35 (F) A boathouse, as defined in ORS 830.700.

36 (c) "Vehicle" means a vehicle or motor vehicle for which registration or a certificate of
37 title is required under ORS 803.025 or 803.300, or would be required if the vehicle were not
38 exempted from registration or certification requirements under ORS 801.026. "Vehicle" does
39 not include any of the following:

- 40 (A) A manufactured structure.
41 (B) A snowmobile, as defined in ORS 801.490.
42 (C) A school bus, as defined in ORS 801.460.
43 (D) An ambulance, as defined in ORS 801.115, an emergency vehicle, as defined in ORS
44 801.260, or other fire apparatus or fire engine.
45 (E) A bicycle, as defined in ORS 801.150.

1 (F) A farm tractor, as defined in ORS 801.265, or a farm trailer, as defined in ORS 801.270,
 2 or other implements of husbandry, as defined in ORS 801.310.

3 (G) Fixed load vehicles, as defined in ORS 801.285, that are subject to ad valorem property
 4 taxation.

5 (H) Golf carts, as defined in ORS 801.295, and similar vehicles described in ORS 803.030
 6 (13).

7 (I) Road rollers.

8 (J) A trolley.

9 (K) Well drilling machinery.

10 (L) Wheelchairs.

11 (2) A motor or other component part of a vessel, whether or not detachable, is considered
 12 to be a part of the vessel when sold with the vessel.

13 **SECTION 61. Persons that are retailers of vehicles, vessels or aircraft.** Every person
 14 making a retail sale of a vehicle, vessel or aircraft is a retailer of the vehicle, vessel or air-
 15 craft for purposes of the Sales and Use Tax Law, regardless of whether the person is a
 16 retailer by reason of other provisions of the Sales and Use Tax Law unless another person
 17 is the retailer, as provided in section 62 of this 2007 Act.

18 **SECTION 62. Sales through certified dealers or dismantlers.** Every person holding a
 19 certificate as a dealer or a dismantler under ORS chapter 822 is the retailer of a vehicle when
 20 a retail sale of the vehicle is made through the person and the person provides to the De-
 21 partment of Transportation a notice of transfer with respect to the vehicle. That person
 22 shall hold a seller's permit and remit tax to the Department of Revenue with respect to those
 23 sales in the same manner as a dealer or dismantler making sales on the dealer's or
 24 dismantler's own account. For purposes of this section, "sale" does not include a lease.

25 **SECTION 63. Sales tax; exemption if seller other than dealer or dismantler.** There are
 26 exempted from the computation of the amount of the sales tax the gross receipts from sales
 27 of vehicles required to be registered or titled by the Department of Transportation when the
 28 retailer is other than a person certified as a dealer or a dismantler under ORS chapter 822.
 29 However, this exemption does not extend to the rentals payable under a lease of tangible
 30 personal property.

31 **SECTION 64. Boat trailers.** Notwithstanding section 63 of this 2007 Act, the gross re-
 32 cepts from the sales of boat trailers by persons in the business of selling boats or boat
 33 trailers are not exempt from the computation of the amount of sales tax.

34 **SECTION 65. Vessels and aircraft; sellers.** There are exempted from the computation of
 35 the amount of the sales tax the gross receipts from the sale of a vessel or aircraft when the
 36 retailer is other than a person required to hold a seller's permit issued under the Sales and
 37 Use Tax Law by reason of the number, scope and character of the sales by the person of
 38 vessels or aircraft, as the case may be.

39 **SECTION 66. Seller's permit requirements.** If a person is engaged in the business of
 40 selling vehicles, vessels or aircraft, the person is not excused from the requirements of the
 41 Sales and Use Tax Law relating to seller's permits, collection and payment of sales tax or
 42 any other provision of the Sales and Use Tax Law by reason of the exemptions provided in
 43 sections 63 and 65 of this 2007 Act.

44 **SECTION 67. Family sales.** There are exempted from the taxes imposed by the Sales and
 45 Use Tax Law the gross receipts from the sale of, and the storage, use or other consumption

1 in this state of, a vehicle, vessel or aircraft, when the person selling the property is either
2 by blood, marriage or adoption the parent, grandparent, child or spouse of the purchaser and
3 the person selling is not engaged in the business of selling the type of property for which the
4 exemption is claimed.

5 **SECTION 68. Substantially same ownership after transfer.** There are exempted from the
6 taxes imposed by the Sales and Use Tax Law the gross receipts from the sale of, and the
7 storage, use or other consumption in this state of, a vehicle, vessel or aircraft, when such
8 property is included in any transfer of 80 percent or more of the tangible personal property,
9 in terms of its selling price, held or used in the course of a business activity of the person
10 selling the property, and when after such transfer the real or ultimate ownership of such
11 property is substantially similar to that which existed before such transfer. For the purposes
12 of this section, stockholders, bondholders, partners or other persons holding an interest in
13 a corporation or other entity are regarded as having the "real or ultimate ownership" of the
14 property of such corporation or other entity.

15 **SECTION 69. Use tax; payment; interest and penalties.** (1) Notwithstanding section 100
16 or 101 of this 2007 Act, except when the sale is by lease, the use taxes imposed with respect
17 to the storage, use or other consumption in this state of vehicles, vessels and aircraft are
18 due and payable by the purchaser at the time the storage, use or other consumption of the
19 property first becomes taxable to the Department of Revenue or to the following, whichever
20 is applicable:

21 (a) In the case of a vehicle required to be titled or registered, to the Department of
22 Transportation before a certificate of title or registration may be issued to the purchaser
23 by the Department of Transportation.

24 (b) In the case of a boat that is subject to certification of title, or registration if no
25 certificate of title is to be issued, by the State Marine Board pursuant to ORS 830.700 to
26 830.870, to the Department of Revenue before it may be certified or registered by the State
27 Marine Board.

28 (c) In the case of aircraft subject to registration for the first time to the purchaser by
29 the Oregon Department of Aviation pursuant to ORS 837.040 to 837.070, to the Department
30 of Revenue before it may be registered by the Oregon Department of Aviation.

31 (2) If the purchaser of a vehicle, boat or aircraft mentioned in subsection (1) of this
32 section does not make application for registration or certification to the Department of
33 Transportation, the Oregon Department of Aviation or the State Marine Board, whichever
34 is applicable, within 30 days after the date of purchase of the vehicle, boat or aircraft, the
35 purchaser then becomes liable for a penalty as specified in section 102 (1) of this 2007 Act,
36 but no interest shall accrue. However, if the purchaser does not make application for cer-
37 tification or registration or does not pay the amount of use tax due within 90 days after the
38 date of purchase, or files a return with the Department of Revenue that is not timely, the
39 purchaser shall become fully liable for the penalties and interest as provided in section 102
40 of this 2007 Act, which shall be collectible by the Department of Revenue or the Department
41 of Transportation in the same manner and subject to the same procedures as for other de-
42 linquent sales and use taxes. The Department of Transportation shall collect delinquent use
43 tax, penalties and interest as provided in this section and section 71 of this 2007 Act with
44 respect to any delinquent application for certification of title or registration of a vehicle.

45 (3) Application to the Department of Transportation for certification of title or registra-

1 tion of a vehicle accompanied by payment of the use tax by the purchaser relieves the pur-
 2 chaser of the obligation to file a separate return with the Department of Revenue under
 3 section 101 of this 2007 Act.

4 **SECTION 70. Presumption on sale to lessee.** There shall be a presumption that a transfer
 5 of a vehicle to a lessee by a lessor was a sale for resale if the lessee transfers title and reg-
 6 istration to a third party within 10 days from the date the lessee acquired title from the
 7 lessor at the expiration or termination of a lease. The presumption may be rebutted by evi-
 8 dence that the sale was not for resale prior to use.

9 **SECTION 71. Use tax; collection by Department of Transportation; disposition of pro-**
 10 **ceeds.** (1) Except when the sale is by lease, in the collection of the use tax on motor vehicles
 11 for which a certificate of title or registration is required, the Department of Transportation
 12 shall act as collecting agent. The Department of Transportation shall collect the use tax, and
 13 any penalty or interest that may be due, at the time an applicant applies for the registration
 14 of, or certification or transfer of title to, the motor vehicle, unless:

15 (a) The applicant exhibits a retailer's receipt showing that the retail sales tax has been
 16 collected by the retailer;

17 (b) The application is for the renewal of registration;

18 (c) The applicant presents an exemption certificate provided by the Department of Re-
 19 venue under section 99 of this 2007 Act; or

20 (d) The applicant presents satisfactory evidence showing that the sales tax or the use tax
 21 has been paid on the vehicle in question.

22 (2) Every applicant for registration or issuance or transfer of certificate of title who is
 23 subject to payment of the use tax shall declare the value of the vehicle for which application
 24 is made, which shall consist of the consideration paid or contracted to be paid therefor. No
 25 person wilfully shall misrepresent or fail to declare such value.

26 (3) The moneys collected by the Department of Transportation under this section shall
 27 be deposited promptly in the suspense account created under ORS 802.100 (1). As much as is
 28 necessary of the moneys so collected is appropriated continuously to the Department of
 29 Transportation to pay the administrative expenses of the Department of Transportation in
 30 collecting the use tax under this section. All moneys in excess of these administrative ex-
 31 penses shall be transferred monthly to the Sales Tax Fund established under section 122 of
 32 this 2007 Act. At least once each month the Department of Transportation shall account to
 33 the Department of Revenue for all use tax moneys collected and administrative expenses
 34 retained under this section. The Department of Transportation shall turn over to the De-
 35 partment of Revenue all reports, applications and other information required by the De-
 36 partment of Revenue that have been obtained in the collection and administration of the use
 37 tax on motor vehicles.

38 (4) An applicant who has paid a use tax under this section may apply to the Department
 39 of Revenue for a refund within the time and in the manner provided under ORS 305.270 if the
 40 applicant has reason to believe the use tax was not due and owing.

41 (5) The provisions of this section are in addition to any other methods prescribed in the
 42 Sales and Use Tax Law for the collection of the use tax.

43
 44 (Exemptions Generally)
 45

1 **SECTION 72. Exemptions must be specific.** Notwithstanding any other provision of law,
 2 no exemption may be made from the sales tax or use tax unless such exemption is provided
 3 in the Sales and Use Tax Law.

4 **SECTION 73. Exempted from the taxes imposed by the Sales and Use Tax Law.** “Ex-
 5 empted from the taxes imposed by the Sales and Use Tax Law,” as used in sections 67, 68
 6 and 74 to 87 of this 2007 Act, means, in the case of the sales tax, exempted from the com-
 7 putation of the amount of tax imposed.

8 **SECTION 74. Constitutional exemptions; Indians.** (1) There are exempted from the taxes
 9 imposed by the Sales and Use Tax Law those transactions that this state is prohibited from
 10 taxing under the laws or Constitution of the United States or under the Oregon Constitution,
 11 including but not limited to gross receipts derived from contracts in existence prior to the
 12 effective date of this 2007 Act.

13 (2) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 14 receipts from the sale, storage, use or consumption of tangible personal property to an In-
 15 dian tribe or Indian enterprise within an Indian reservation.

16 **SECTION 75. Water.** There are exempted from the taxes imposed by the Sales and Use
 17 Tax Law the gross receipts from the sales, furnishing or service of and the storage, use or
 18 other consumption in this state of water. As used in this section, “water” does not include
 19 ice.

20 **SECTION 76. Food products.** (1) There are exempted from the taxes imposed by the Sales
 21 and Use Tax Law the gross receipts from the sale of and the storage, use or other con-
 22 sumption in this state of food and food ingredients.

23 (2) The exemption under this section does not apply to prepared food.

24 **SECTION 77. Alcoholic beverages taxable.** Notwithstanding ORS 471.725, 471.730 or 471.745
 25 or any other provision of law to the contrary, the taxes imposed by sections 34 and 43 of this
 26 2007 Act apply to the gross receipts from the sale of, or the storage, use or other consump-
 27 tion of alcoholic beverages.

28 **SECTION 78. Manufacturing machinery and equipment.** There are exempted from the
 29 taxes imposed by the Sales and Use Tax Law the gross receipts from the sale or use of ma-
 30 chinery and equipment used in manufacturing.

31 **SECTION 79. Drugs and medical devices.** There are exempted from the taxes imposed by
 32 the Sales and Use Tax Law the gross receipts from the sale of or the storage, use or other
 33 consumption in this state of drugs, durable medical equipment for home use, mobility en-
 34 hancing equipment and prosthetic devices.

35 **SECTION 80. Animals; feed; seed; fertilizer; farm machinery and equipment.** There are
 36 exempted from the taxes imposed by the Sales and Use Tax Law the gross receipts from sales
 37 of and the storage, use or other consumption of:

38 (1) Animals, feed, seed, plants, fertilizer and pesticides that, or the products of which,
 39 are ordinarily used or for use in commercial, agricultural, horticultural or silvicultural ac-
 40 tivities.

41 (2) Equipment, machinery and implements for use in conducting a farming activity.

42 **SECTION 81. Tobacco.** There are exempted from the taxes imposed by the Sales and Use
 43 Tax Law the gross receipts from the sale of, and the storage, use or other consumption in
 44 this state of, tobacco.

45 **SECTION 82. Motor vehicle and aircraft fuel.** (1) There are exempted from the taxes

1 imposed by the Sales and Use Tax Law the gross receipts from the sale or distribution and
 2 the storage, use or other consumption in this state of motor vehicle fuel, fuel or aircraft
 3 fuel, the sale, use or other consumption of which in this state is:

4 (a) Subject to tax under ORS 319.010 to 319.430 or 319.510 to 319.880, and not subject to
 5 refund; or

6 (b) Exempt from the tax imposed under ORS 319.510 to 319.880 by ORS 825.484 (2).

7 (2) The Department of Transportation shall collect the sales tax upon sales of motor ve-
 8 hicle fuel, fuel and aircraft fuel that are subject to tax and refund under ORS chapter 319.
 9 Collection may be accomplished by way of deduction from refunds otherwise allowable under
 10 ORS chapter 319. For the purpose of establishing gross receipts upon which the sales tax is
 11 computed, the Department of Transportation shall use estimated average fuel sales prices.
 12 At the request of a refund claimant, the Department of Transportation may adjust the sales
 13 tax so computed upon presentation by the claimant of information showing the exact amount
 14 paid for the fuel upon which refund is claimed. The Department of Transportation shall
 15 transfer the amount of the sales tax deductions from the appropriate General Fund account
 16 from which refunds are made under ORS chapter 319. The moneys transferred by the De-
 17 partment of Transportation under this subsection shall be deposited promptly in the sus-
 18 pense account created under ORS 802.100 (1). As much as is necessary of the moneys so
 19 collected is appropriated continuously to the Department of Transportation to pay the ad-
 20 ministrative expenses and refunds of the Department of Transportation in collecting the
 21 sales tax under this subsection. All moneys in excess of these administrative expenses and
 22 refunds shall be transferred monthly to the State Highway Fund. At least once each month
 23 the Department of Transportation shall account to the Department of Revenue for all sales
 24 tax moneys collected under this subsection.

25 (3) In accordance with joint rules of the Department of Revenue, the Public Utility
 26 Commission and the Department of Transportation:

27 (a) Sales taxes collected on fuel exempt from the tax imposed under ORS 319.510 to
 28 319.880 by ORS 825.484 (2) may be offset against taxes imposed under ORS chapter 825 in
 29 returns made under that chapter. On the 15th day of each month, the Public Utility Com-
 30 mission shall certify to the Department of Revenue and the State Treasurer the amount so
 31 offset and the State Treasurer shall cause that amount to be transferred from the Sales Tax
 32 Fund established under section 122 of this 2007 Act to the Motor Carrier Account in the
 33 General Fund.

34 (b) Sales tax collected on fuel subject to tax under ORS 319.010 to 319.430 or 319.510 to
 35 319.880, and not subject to refund, may be offset against taxes imposed under ORS 319.010
 36 to 319.430 or 319.510 to 319.880 in returns made under those statutes. On the 15th day of each
 37 month, the Department of Transportation shall certify to the Department of Revenue and
 38 the State Treasurer the amount so offset and the State Treasurer shall cause that amount
 39 to be transferred from the Sales Tax Fund established under section 122 of this 2007 Act to
 40 the State Highway Fund.

41 SECTION 83. Fuel oil and natural gas, electricity, firewood, coal, nuclear fuel and other
 42 fuel products and waste by-products. (1) There are exempted from the taxes imposed by the
 43 Sales and Use Tax Law the gross receipts from the sales, furnishing or service of and the
 44 storage, use or other consumption in this state of:

45 (a) Fuel oil, natural gas, liquefied petroleum gas, electricity or geothermal resources

1 when delivered to consumers through mains, lines, pipes or by tank truck or for purposes
 2 of residential heating and of exhaust steam, waste steam, heat or resultant energy, produced
 3 in connection with cogeneration technology.

4 (b) Coal.

5 (c) Firewood.

6 (d) Organic products grown expressly for fuel purposes.

7 (e) Waste by-products from agricultural or forest products operations, municipal refuse
 8 or manufacturing that are delivered in bulk and are used in an industrial facility as a fuel
 9 source in lieu of the use of either oil, natural gas or coal.

10 (f) Nuclear fuel. For purposes of this paragraph, "nuclear fuel" means special nuclear
 11 material and source material used for fueling or refueling nuclear reactors.

12 (2) As used in this section, "cogeneration" means the sequential use of energy for the
 13 production of electrical and useful thermal energy. The sequence can be thermal use followed
 14 by power production or the reverse, subject to the following standards:

15 (a) At least five percent of the cogeneration project's total annual energy output shall
 16 be in the form of useful thermal energy.

17 (b) Where useful thermal energy follows power production, the useful annual power out-
 18 put plus one-half of the useful annual thermal energy output equals not less than 42.5 per-
 19 cent of any natural gas or oil energy input.

20 SECTION 84. Manufactured structures and floating homes. There are exempted from the
 21 taxes imposed by the Sales and Use Tax Law the gross receipts from the sale, lease or rental
 22 of, and the storage, use or other consumption in this state of, any manufactured structure
 23 or any floating home.

24 SECTION 85. United States Government and instrumentalities. (1) There are exempted
 25 from the taxes imposed by the Sales and Use Tax Law the gross receipts from the sale of
 26 any tangible personal property to:

27 (a) The United States and its unincorporated agencies and instrumentalities;

28 (b) Any incorporated agency or instrumentality of the United States wholly owned by the
 29 United States or by a corporation wholly owned by the United States; or

30 (c) The American Red Cross and its chapters and branches.

31 (2) The exemption provided under this section does not extend to the rentals payable
 32 under a lease of tangible personal property.

33 SECTION 86. United States contractors. A sale of tangible personal property to a con-
 34 tractor purchasing such property, either as the agent of the United States or for the con-
 35 tractor's own account and subsequent resale to the United States for use in the performance
 36 of a contract with the United States for the construction of improvements on or to real
 37 property in this state, is a retail sale. The gross receipts from the sale or the sales price of
 38 the property so sold shall be included in the measure of the taxes imposed under the Sales
 39 and Use Tax Law.

40 SECTION 87. Cargo containers for use in interstate or foreign commerce. (1) If a cargo
 41 container is purchased for use outside of this state and is delivered by an in-state manufac-
 42 turer to the purchaser within this state, and the purchaser moves the cargo container to
 43 any point outside this state within 30 days after the date of delivery, there are exempted
 44 from the taxes imposed by the Sales and Use Tax Law the gross receipts from the sale of
 45 and the storage, use or other consumption of the cargo container within this state provided

1 that the purchaser furnishes both of the following to the manufacturer:

2 (a) The purchaser’s affidavit attesting that the purchaser purchased the cargo container
 3 at a specified location for use exclusively outside of this state, or exclusively in interstate
 4 commerce.

5 (b) The purchaser’s affidavit that the cargo container has been moved to a point outside
 6 this state within 30 days of the date of the delivery of the cargo container to the purchaser.

7 (2) As used in this section, “cargo container” means a receptacle that:

8 (a) Is of a permanent character and accordingly strong enough to be suitable for repeated
 9 use;

10 (b) Is specially designed to facilitate the carriage of goods, by one or more modes of
 11 transport, one of which shall be by vessel, without intermediate reloading;

12 (c) Is fitted with devices permitting its ready handling, particularly its transfer from one
 13 mode of transport to another;

14 (d) Is designed to be easy to fill and empty; and

15 (e) Has a displacement of 1,000 cubic feet or more.

16
 17 (Exemptions from Sales Tax)

18
 19 **SECTION 88. Sales to common carriers.** (1) There are exempted from the computation
 20 of the amount of the sales tax imposed under section 34 of this 2007 Act the gross receipts
 21 from sales of tangible personal property to a common carrier, shipped by the seller via the
 22 purchasing carrier under a bill of lading, whether the freight is paid in advance or the ship-
 23 ment is made freight charges collect, to a point outside this state and the property is actu-
 24 ally transported to the out-of-state destination for use by the carrier in the conduct of its
 25 business as a common carrier.

26 (2) As used in this section with respect to water transportation, “common carrier”
 27 means any person that engages in the business of transporting persons or property for hire
 28 or compensation and that offers such services indiscriminately to the public or some portion
 29 of the public and includes any vessel engaged for compensation in transporting persons or
 30 property in interstate or foreign commerce.

31 (3)(a) There are exempted from the computation of the amount of the sales tax imposed
 32 under section 34 of this 2007 Act the gross receipts from sales of tangible personal property,
 33 other than aircraft fuel and petroleum products, purchased by a foreign air carrier and
 34 transported by the foreign air carrier to a foreign destination for use by the air carrier in
 35 the conduct of its business as a common carrier by air of persons or property.

36 (b) To qualify for this exemption, the foreign air carrier shall timely furnish to the seller
 37 a certificate in writing that the property shall be transported and used in the manner de-
 38 scribed in this subsection. Such certificate shall be substantially in the form prescribed by
 39 the Department of Revenue. Acceptance in good faith of such a certificate shall relieve the
 40 seller from liability for the sales tax. The foreign air carrier shall maintain records in this
 41 state, such as a copy of a bill of lading, an air waybill or cargo manifest, documenting its
 42 transportation of the tangible personal property to a foreign destination.

43 (4) Pursuant to subsection (3) of this section, any use of the property by the purchasing
 44 foreign air carrier, other than that incident to delivery of the property to the foreign air
 45 carrier and the transportation of the property by the carrier to a foreign destination and

1 subsequent use in the conduct of its business as a common carrier, or a failure of the foreign
 2 air carrier to document its transporting the property to a foreign destination, shall subject
 3 the carrier to liability for payment of sales tax as if it were a retailer making a retail sale
 4 of the property at the time of such use or failure, and the cost of the property to it shall
 5 be deemed to be the gross receipts from such retail sale.

6 (5) "Foreign air carrier," as used in this section, means a foreign air carrier as defined
 7 in 49 U.S.C. 40102, as amended and in effect on December 31, 2006.

8 (6) Nothing in section 15 or 23 of this 2007 Act shall affect the exemption afforded under
 9 this section to sales of tangible personal property to a common carrier under the circum-
 10 stances set forth in this section.

11 **SECTION 89. Sales to water, air or rail carriers.** There are exempted from the taxes
 12 imposed by section 34 of this 2007 Act the gross receipts from sales of tangible personal
 13 property, other than tangible personal property described in sections 85 to 99 of this 2007
 14 Act, for use by the purchaser in connection with the business of operating as a private or
 15 common carrier by water, air or rail in interstate or foreign commerce. However:

16 (1) Any actual use of such property or services in this state shall be subject to the tax
 17 imposed by section 43 of this 2007 Act at the time of such actual use; and

18 (2) Charges made by one railroad to another railroad for maintenance and repair of
 19 jointly owned and used, or singly owned and jointly used, railroad facilities do not constitute
 20 a sale.

21 **SECTION 90. Occasional sales.** (1) There are exempted from the computation of the
 22 amount of the sales tax imposed under section 34 of this 2007 Act the gross receipts from
 23 occasional sales of tangible personal property as described under section 22 (1) of this 2007
 24 Act. This exemption does not apply to the gross receipts from the sale of, or the storage,
 25 use or other consumption in this state of, a vehicle, vessel or aircraft as defined in section
 26 60 of this 2007 Act.

27 (2) This section does not preclude the exemptions granted under section 68 of this 2007
 28 Act.

29 **SECTION 91. Export packers.** There are exempted from the computation of the amount
 30 of the sales tax imposed under section 34 of this 2007 Act the gross receipts from sales of
 31 tangible personal property purchased for use outside the continental limits of the United
 32 States and delivered to a forwarding agent, export packer or other person engaged in the
 33 business of preparing goods for export or arranging for their exportation, and actually de-
 34 livered to a port outside the continental limits of the United States prior to making any use
 35 thereof.

36 **SECTION 92. Out-of-state contractors.** There are exempted from the computation of the
 37 amount of the sales tax imposed under section 34 of this 2007 Act the gross receipts from
 38 the sale in this state of tangible personal property to a seller registered under section 41 of
 39 this 2007 Act if the property is used by the purchaser outside of this state in the performance
 40 of a contract to improve real property and, as a result of such use, is incorporated into and
 41 becomes a part of real property located outside this state. This exemption applies only if the
 42 purchaser certifies in writing to the seller, in such form as the Department of Revenue may
 43 prescribe, that the property will be used in a manner and for a purpose specified in this
 44 section.

45 **SECTION 93. Rentals included in use tax or outside this state.** There are exempted from

1 the computation of the amount of the sales tax imposed under section 34 of this 2007 Act the
 2 rentals payable under a lease of tangible personal property when such rentals are required
 3 to be included in the measure of the use tax imposed under section 43 of this 2007 Act or
 4 when such property is situated outside this state.

5 **SECTION 94. Interstate shipments.** (1) There are exempted from the computation of the
 6 amount of the sales tax imposed under section 34 of this 2007 Act the gross receipts from
 7 the sale of tangible personal property that, pursuant to the contract of sale, is required to
 8 be shipped and is shipped to a point outside this state by the retailer by means of:

9 (a) Facilities operated by the retailer; or

10 (b) Delivery by the retailer to a carrier, customs broker or forwarding agent, whether
 11 hired by the purchaser or not, for shipment to the point outside this state.

12 (2) For purposes of this section:

13 (a) "Carrier" means a person or firm engaged in the business of transporting for com-
 14 pensation tangible personal property owned by other persons, and includes both common and
 15 contract carriers.

16 (b) "Forwarding agent" means a person or firm engaged in the business of preparing
 17 property for shipment or arranging for its shipment.

18
 19 (Exemptions from Use Tax)
 20

21 **SECTION 95. Items on which sales tax imposed.** (1) Subject to subsection (2) of this sec-
 22 tion, the storage, use or other consumption in this state of tangible personal property, the
 23 gross receipts from the sale of which are required to be included in the measure of the sales
 24 tax imposed under section 34 of this 2007 Act, is exempted from the use tax imposed under
 25 section 43 of this 2007 Act. However, this exemption does not extend to the possession of,
 26 or the exercise of, any right or power over tangible personal property by a lessee under a
 27 lease.

28 (2) No credit or refund of any amount of use tax paid may be allowed on the ground that
 29 the storage, use or other consumption of the property was exempted under subsection (1)
 30 of this section, unless the person who paid the amount reimburses the vendor for the
 31 amount of the sales tax imposed upon the vendor with respect to the sale of the property
 32 and paid by the vendor to this state.

33 **SECTION 96. Occasional sales.** (1) The storage, use or other consumption in this state
 34 of tangible personal property is exempted from the use tax imposed under section 43 of this
 35 2007 Act if:

36 (a) The sales price of the particular item of tangible personal property involved in the
 37 occasional sale does not exceed \$500 and the purchase is for personal use or consumption and
 38 not for use or consumption in carrying on a trade, occupation, business or profession; or

39 (b) The transfer is an occasional sale under section 22 of this 2007 Act.

40 (2) This exemption does not apply to the gross receipts from the sale of, or the storage,
 41 use or other consumption in this state of, a vehicle, vessel or aircraft as defined in section
 42 60 of this 2007 Act.

43 **SECTION 97. Property of nonresident temporarily in state.** (1) The storage, use or other
 44 consumption in this state of tangible personal property brought into this state by a nonres-
 45 ident for the nonresident's use or enjoyment while temporarily within this state is exempted

1 from the use tax imposed under section 43 of this 2007 Act unless the tangible personal
 2 property is used in conducting a nontransitory business activity within this state.

3 (2) The use in this state, by a nonresident, of a motor vehicle that is registered or li-
 4 censed under the laws of the state of the nonresident's residence, and that is not required
 5 to be registered or titled under the laws of this state, is exempted from the use tax.

6 **SECTION 98. New resident's purchases while nonresident.** The storage, use or other
 7 consumption in this state of tangible personal property by a bona fide resident of this state
 8 is exempted from the use tax imposed under section 43 of this 2007 Act if the tangible per-
 9 sonal property was acquired by the person in another state while a bona fide resident thereof
 10 primarily for use outside this state and if the use was actual and substantial. If the tangible
 11 personal property was acquired by the person less than three months prior to the time the
 12 person entered this state, it is presumed that the tangible personal property was acquired
 13 for use in this state and that its use outside this state was not actual and substantial.

14
 15 (Exemption Procedures)

16
 17 **SECTION 99. Rules; forms.** (1) The Department of Revenue shall adopt rules establishing
 18 procedures for claiming exemption from sales or use taxes, and may prescribe forms, ex-
 19 emption certificates or other documentation requirements pertaining to exemptions.

20 (2) Procedures, forms, certificates and other requirements prescribed under subsection
 21 (1) of this section shall comply with the Streamlined Sales and Use Tax Agreement.

22
 23 (Returns and Payments)

24
 25 **SECTION 100. Due date.** The taxes imposed by the Sales and Use Tax Law are due and
 26 payable to the Department of Revenue as follows:

27 (1) If the taxes may reasonably be expected to be \$500 or less for the entire calendar
 28 year, the taxes are due and payable to the department not later than the January 31 follow-
 29 ing the end of the calendar year.

30 (2) If the taxes may reasonably be expected to be more than \$500, but \$5,000 or less for
 31 the entire calendar year, the taxes are due and payable to the department semiannually not
 32 later than the last day of the calendar month next following June 30 and December 31.

33 (3) Except for estimated taxes that may be required to be paid under section 101 of this
 34 2007 Act, if the taxes imposed by the Sales and Use Tax Law may reasonably be expected to
 35 exceed \$5,000 for the entire calendar year, the taxes are due and payable quarterly not later
 36 than the 15th day of the calendar month next following the calendar quarter.

37 **SECTION 101. Remittance of funds and filing returns.** (1) The Department of Revenue
 38 shall prescribe methods for the remittance of sales and use taxes, including but not limited
 39 to the remittance of estimated taxes. The department shall design sales or use tax return
 40 forms and prescribe procedures for the filing of sales or use tax returns.

41 (2) Methods of remittance and return forms and procedures shall be in compliance with
 42 the Streamlined Sales and Use Tax Agreement.

43 **SECTION 102. Delinquencies; penalties.** (1) If a person fails to file a return required un-
 44 der the Sales and Use Tax Law at the time prescribed for filing, or fails to pay a tax at the
 45 time the tax becomes due, there shall be added to the amount of tax required to be shown

1 on the return a delinquency penalty of five percent of the amount of the tax.

2 (2) If the failure to file a return continues for a period in excess of three months after
3 the due date:

4 (a) There shall be added to the amount of tax required to be shown on the return a fail-
5 ure to file penalty of 20 percent of the amount of the tax; and

6 (b) The Department of Revenue may send a notice to the person demanding that the
7 person file a return within 30 days of the mailing of the notice. If, after the notice and de-
8 mand, no return is filed within 30 days, the department may determine the tax according to
9 the best of its information and belief, assess the tax with appropriate penalty and interest,
10 plus an additional penalty of 25 percent of the tax deficiency determined by the department,
11 and give written notice of the determination and assessment to the person required to make
12 the filing.

13 (3) A penalty equal to 100 percent of any deficiency determined by the department shall
14 be assessed and collected if:

15 (a) There is a failure to file a return with intent to evade the tax; or

16 (b) A return was falsely prepared and filed with intent to evade the tax.

17 (4) Interest shall be collected on the unpaid tax at the rate established under ORS
18 305.220, for each month or fraction of a month, computed from the time the tax became due,
19 during which the tax remains unpaid.

20 (5) Each penalty imposed under this section is in addition to any other penalty imposed
21 under this section. However, the total amount of penalty imposed under this section with
22 respect to any deficiency shall not exceed 100 percent of the deficiency.

23 **SECTION 103. Proceeding to compel return.** (1) If a person fails to file a report or return
24 required under the Sales and Use Tax Law within 60 days of the time prescribed by any tax
25 law administered by the Department of Revenue, the department may petition the Oregon
26 Tax Court for an order requiring the person to show cause why the person is not required
27 to file the report or return.

28 (2) Within 10 days after the filing of the petition, the tax court shall enter an order di-
29 recting the person to appear and show cause why no report or return is required to be filed.
30 The petition and order shall be served upon the person in the manner provided by law. Not
31 later than 20 days after service, the person shall:

32 (a) File the requested report or return with the department;

33 (b) Request from the tax court an order granting reasonable time within which to file the
34 requested report or return with the department; or

35 (c) File with the tax court an answer to the petition showing cause why the report or
36 return is not required to be filed.

37 (3) If an answer is filed, the tax court shall set the matter for hearing within 20 days
38 after the filing of the answer, and shall determine the matter in an expeditious manner,
39 consistent with the rights of the parties.

40 (4) An appeal may be taken to the Supreme Court as provided in ORS 305.445 from an
41 order of the tax court made and entered after a hearing and determination under subsection
42 (3) of this section.

43 (5) Costs shall be awarded to the prevailing party.

44 **SECTION 104. Penalty; discount; temporary provisions.** Notwithstanding sections 36 (5)
45 and 102 of this 2007 Act, no penalty for late filing of a return or late payment of tax due shall

1 be assessed and the right of a retailer to retain a percentage of sales tax due shall not be
 2 denied during the six-month period beginning on the operative date of this section.

3 **SECTION 105. Duty to file proper returns.** (1) A retailer or other person may not:

4 (a) Fail to furnish any return required to be made pursuant to the Sales and Use Tax
 5 Law;

6 (b) Fail to furnish a supplemental return or other data required by the Department of
 7 Revenue; or

8 (c) Render a false or fraudulent return, report or claim for refund.

9 (2) A person who is required to make, render, sign or verify any return under the Sales
 10 and Use Tax Law may not make a false or fraudulent return or fail to furnish a return with
 11 intent to defeat or evade the determination of an amount due required by law.

12
 13 (Determinations)

14
 15 **SECTION 106. Audits; deficiencies; assessments; refunds; appeals.** The provisions of ORS
 16 chapters 305 and 314 relating to the audits and examinations of returns, periods of limita-
 17 tions, determinations of deficiencies, assessments, liens, delinquencies, claims for refund,
 18 conferences and appeals to the Oregon Tax Court, and the procedures relating thereto, shall
 19 apply to the determinations of taxes, penalties and interest under the Sales and Use Tax
 20 Law, except where the context requires otherwise.

21
 22 (Deficiencies)

23
 24 **SECTION 107. Deficiency determination.** If, under the Sales and Use Tax Law, the De-
 25 partment of Revenue is not satisfied with the return of the tax or the amount of tax required
 26 to be paid to this state by any person, it may compute and determine the amount required
 27 to be paid upon the basis of the facts contained in the return or upon the basis of any in-
 28 formation within its possession or that may come into its possession. One or more deficiency
 29 determinations may be made of the amount due for one or more periods. Notices of defi-
 30 ciency shall be given within the time for giving notices of deficiencies under the various
 31 circumstances described under ORS 314.410. Notices of deficiency shall be given and interest
 32 on deficiencies shall be computed as provided in ORS 305.265. Subject to ORS 314.421 and
 33 314.423, liens for taxes or deficiencies shall arise at the time of assessment, shall continue
 34 until the taxes, interest and penalties are fully satisfied and may be recorded and collected
 35 in the manner provided for the collection of delinquent income taxes.

36
 37 (Collection of Tax)

38
 39 **SECTION 108. Tax as debt.** All taxes, interest and penalties due and unpaid under the
 40 Sales and Use Tax Law shall become, from the time liability is incurred, a personal debt, due
 41 the State of Oregon, from the person or persons liable for the taxes, interest and penalties.

42 **SECTION 109. Jeopardy determination.** If the Department of Revenue believes that any
 43 determination or collection of any sales or use tax or any amount of sales or use tax required
 44 to be collected and paid to the state will be jeopardized by delay, it shall make a determi-
 45 nation of the tax or amount of tax required to be collected, noting that fact upon the de-

1 termination. The amount determined is immediately due and payable, and the department
 2 shall assess the tax, notify the person and proceed to collect the tax in the same manner and
 3 using the same procedures as for the collection of income taxes under ORS 314.440.

4 **SECTION 110. Warrant for collection.** (1) If any tax imposed under the Sales and Use Tax
 5 Law or any portion of the tax is not paid within the time provided by law and no provision
 6 is made to secure the payment of the tax by bond, deposit or otherwise, pursuant to rules
 7 adopted by the Department of Revenue, the department may issue a warrant under its offi-
 8 cial seal directed to the sheriff of any county of this state commanding the sheriff to levy
 9 upon and sell the real and personal property of the taxpayer found within the county, for the
 10 payment of the amount of the tax, with the added penalties, interest and the sheriff's cost
 11 of executing the warrant, and to return the warrant to the department and pay to it the
 12 money collected from the sale, within 60 days after the date of receipt of the warrant.

13 (2) The sheriff shall, within five days after the receipt of the warrant, record with the
 14 clerk of the county a copy of the warrant, and the clerk shall immediately enter in the
 15 County Clerk Lien Record the name of the taxpayer mentioned in the warrant, the amount
 16 of the tax or portion of the tax and penalties for which the warrant is issued and the date
 17 the copy is recorded. The amount of the warrant so recorded shall become a lien upon the
 18 title to and interest in real property of the taxpayer against whom it is issued in the same
 19 manner as a judgment duly docketed. The sheriff immediately shall proceed upon the war-
 20 rant in all respects, with like effect and in the same manner prescribed by law in respect to
 21 executions issued against property upon judgment of a court of record, and shall be entitled
 22 to the same fees for services in executing the warrant, to be added to and collected as a part
 23 of the warrant liability.

24 (3) In the discretion of the department, a warrant of like terms, force and effect may be
 25 issued and directed to any agent authorized to collect the taxes imposed by the Sales and
 26 Use Tax Law. In the execution of the warrant, the agent shall have all the powers conferred
 27 by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses
 28 paid in the performance of such duty.

29 (4) If a warrant is returned not satisfied in full, the department shall have the same
 30 remedies to enforce the claim for taxes against the taxpayer as if the people of this state
 31 had recovered judgment against the taxpayer for the amount of the tax.

32 **SECTION 111. Indian reservations; refund agreements.** (1) The Director of the Depart-
 33 ment of Revenue is authorized to enter into a sales and use tax refund agreement with the
 34 governing body of any Indian reservation in Oregon. The agreement may provide for a mu-
 35 tually agreed upon amount as a refund to the governing body of any sales or use tax collected
 36 under the Sales and Use Tax Law in connection with the sale, use, storage or consumption
 37 of tangible personal property on the Indian reservation. This provision is in addition to other
 38 laws allowing tax refunds.

39 (2) There is annually appropriated to the director, from the suspense account established
 40 under section 121 of this 2007 Act, the amounts necessary to make the refunds provided by
 41 subsection (1) of this section.

42 **SECTION 112. Security.** (1) If the Department of Revenue considers such action neces-
 43 sary to ensure compliance with the Sales and Use Tax Law, it may require any person sub-
 44 ject to the Sales and Use Tax Law to place with the department such security as the
 45 department may determine.

1 (2) The amount of the security shall be fixed by the department but may not be greater
 2 than twice the estimated tax liability of a person for the reporting period under the Sales
 3 and Use Tax Law, determined in such manner as the department considers proper.

4 (3) The limitations provided in this section apply regardless of the type of security placed
 5 with the department. The required amount of the security may be increased or decreased
 6 by the department subject to the limitations provided in this section.

7
 8 (Administration)

9
 10 SECTION 113. Department to administer and enforce Sales and Use Tax Law; rules. The
 11 Department of Revenue shall administer and enforce the Sales and Use Tax Law. The de-
 12 partment shall adopt and enforce rules relating to the administration and enforcement of the
 13 Sales and Use Tax Law. Notwithstanding any provision of law to the contrary, the Sales and
 14 Use Tax Law shall be administered in a way that is consistent with the Streamlined Sales
 15 and Use Tax Agreement.

16 SECTION 114. Records required. Every seller, every retailer, every person described un-
 17 der section 41 of this 2007 Act and every person storing, using or otherwise consuming in this
 18 state tangible personal property purchased from a retailer shall keep records, receipts, in-
 19 voices and other pertinent papers in a form that the Department of Revenue may require,
 20 consistent with the Streamlined Sales and Use Tax Agreement.

21 SECTION 115. Examination of records. (1) The Department of Revenue or any person
 22 authorized in writing by the department may examine, during reasonable business hours, the
 23 books, papers, records and equipment of any person selling tangible personal property and
 24 any person liable for the use tax and may investigate the character of the business of the
 25 person in order to verify the accuracy of any return made, or, if no return is made by the
 26 person, to ascertain and determine the amount required to be paid. The department may
 27 require the attendance of any such person and any other person having knowledge of the
 28 premises, and may take testimony and require proof material for the information, with
 29 power to administer oaths to such persons. The department may, by order or subpoena, to
 30 be served with the same force and effect and in the same manner that a subpoena is served
 31 in a civil action in the circuit court, require the production, at any time and place it may
 32 designate, of any books, papers, accounts or other information necessary to carry out the
 33 Sales and Use Tax Law.

34 (2) If any person fails to comply with any subpoena or order of the department or to
 35 produce or permit the examination or inspection of any books, papers, records or equipment
 36 pertinent to any investigation or inquiry under this section, or to testify to any matter re-
 37 garding which the person may be lawfully interrogated, the department may apply to the
 38 Oregon Tax Court, or to the circuit court for the county in which the person resides, for an
 39 order to the person to attend and testify or otherwise comply with the demand or request
 40 of the department. The application to the court shall be by ex parte motion, upon which the
 41 court shall make an order requiring the person against whom it is directed to comply with
 42 the request or demand of the department within 10 days after service of the order (or such
 43 further time as the court may grant) or to justify the failure within that time. The order
 44 shall be served upon the person to whom it is directed in the manner required by this state
 45 for service of process, the service of which shall be required to confer jurisdiction upon the

1 court. Failure to obey any order issued by the court under this section is contempt of court.
 2 The remedy provided by this section is in addition to other remedies, civil or criminal, ex-
 3 isting under the tax laws or other laws of this state.

4 **SECTION 116. Reports required.** (1) In the administration of the use tax, the Department
 5 of Revenue may require the filing of reports by any person or class of persons having in their
 6 possession or custody information relating to sales of tangible personal property, the stor-
 7 age, use or other consumption of which may be subject to the tax imposed under section 43
 8 of this 2007 Act.

9 (2) The reports shall be filed when the department requires and must set forth:

10 (a) The names and addresses of purchasers of the tangible personal property;

11 (b) The sales price of the property;

12 (c) The date of sale; and

13 (d) Such other information as the department requires.

14 (3) The department may require reports under this section only if the reports are per-
 15 mitted to be required under the Streamlined Sales and Use Tax Agreement.

16 **SECTION 117. Divulging particulars of returns prohibited.** Except as otherwise specif-
 17 ically provided by law, it is unlawful for the Department of Revenue or any officer or em-
 18 ployee of the department or other person having administrative duty under the Sales and
 19 Use Tax Law to divulge or make known in any manner the amount of gross receipts or
 20 purchase price or any particulars set forth or disclosed in any report, return, claim or other
 21 document required in the administration of the Sales and Use Tax Law. It is unlawful for
 22 any person or entity to whom information is disclosed or given by the department pursuant
 23 to section 118 (2) of this 2007 Act or any other provision of state law to divulge or use such
 24 information for any purpose other than that specified in the provisions of law authorizing
 25 the use or disclosure. A subpoena or judicial order may not be issued compelling the De-
 26 partment of Revenue, the Department of Transportation, the State Marine Board, the
 27 Oregon Department of Aviation or any of their officers or employees, or any person who has
 28 acquired information pursuant to section 118 (2) of this 2007 Act or any other provision of
 29 state law to divulge or make known the amount of gross receipts or purchase price or any
 30 particulars set forth or disclosed in any report, return, claim or other document required in
 31 the administration of the Sales and Use Tax Law except where the taxpayer's liability for
 32 sales or use tax is to be adjudicated by the court from which such process issues. As used
 33 in this section, "officer," "employee" or "person" includes an authorized representative of
 34 the officer, employee or person, or any former officer, employee or person, or an authorized
 35 representative of the former officer, employee or person.

36 **SECTION 118. Persons to whom information may be furnished.** (1) The Department of
 37 Revenue, the Department of Transportation, the State Marine Board and the Oregon De-
 38 partment of Aviation may:

39 (a) Furnish any taxpayer or authorized representative of the taxpayer, upon request of
 40 the taxpayer or representative, with a copy of the taxpayer's sales or use tax return filed for
 41 any reporting period, with a copy of any report filed by the taxpayer in connection with the
 42 return or with a copy of a sales tax refund claim filed under ORS 305.270.

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

44 (c) Publish statistics so classified as to prevent the identification of gross receipts or
 45 purchase price or any particulars contained in any report or return.

1 (d) Publish lists of retailers or sellers to whom permits have been issued or whose per-
 2 mits have been suspended or revoked under the Sales and Use Tax Law.

3 (2) The Department of Revenue, the Department of Transportation, the State Marine
 4 Board and the Oregon Department of Aviation also may disclose and give access to infor-
 5 mation described in section 117 of this 2007 Act to:

6 (a) The Governor or the authorized representative of the Governor:

7 (A) With respect to an individual who is designated as being under consideration for ap-
 8 pointment or reappointment to an office or for employment in the office of the Governor.
 9 The information disclosed shall be used only for the purpose of making the appointment,
 10 reappointment or decision to employ or not to employ the individual in the office of the
 11 Governor and shall be confined to whether the individual:

12 (i) Has filed returns with respect to the taxes imposed by the Sales and Use Tax Law for
 13 those of the not more than three immediately preceding years for which the individual was
 14 required to file an Oregon sales or use tax return.

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

17 (iii) Has been assessed any penalty under the Sales and Use Tax Law and the nature of
 18 the penalty.

19 (iv) Has been or is under investigation for possible criminal offenses under the Sales and
 20 Use Tax Law.

21 (B) For use by an officer or employee of the Oregon Department of Administrative Ser-
 22 vices duly authorized or employed to prepare revenue estimates, or a person contracting
 23 with the Oregon Department of Administrative Services to prepare revenue estimates, in the
 24 preparation of revenue estimates required for the Governor's budget under ORS 291.201 to
 25 291.226, or required for submission to the Emergency Board or, if the Legislative Assembly
 26 is in session, to the Joint Committee on Ways and Means and to the Legislative Revenue
 27 Officer under ORS 291.342. Any officer, employee or person furnished or granted access to
 28 information under this subparagraph shall not remove the information from the premises
 29 of the Department of Revenue, the Department of Transportation, the State Marine Board
 30 or the Oregon Department of Aviation.

31 (b) The United States Commissioner of Internal Revenue or authorized representative,
 32 for tax purposes only.

33 (c) The proper officer of any state or the District of Columbia, or their authorized rep-
 34 resentatives, for tax purposes only, if the state or district has a provision of law that meets
 35 the requirements of section 117 of this 2007 Act and this section as to confidentiality.

36 (d) The Multistate Tax Commission or its authorized representatives, for tax purposes
 37 only. However, the Multistate Tax Commission may make the information available to the
 38 United States Commissioner of Internal Revenue or the proper officer of any state or the
 39 District of Columbia, or their authorized representatives, for tax purposes only, if the state
 40 or district has a provision of law that meets the requirements of section 117 of this 2007 Act
 41 and this section as to confidentiality.

42 (e) The Attorney General, assistants and employees in the Department of Justice or
 43 other legal representative of the State of Oregon, to the extent the Department of Revenue,
 44 the Department of Transportation, the State Marine Board or the Oregon Department of
 45 Aviation deems disclosure or access necessary for the performance of the duties of advising

1 or representing the Department of Revenue, the Department of Transportation, the State
2 Marine Board or the Oregon Department of Aviation pursuant to ORS 180.010 to 180.240 and
3 the tax laws of this state.

4 (f) Employees of the State of Oregon, to the extent the Department of Revenue, the De-
5 partment of Transportation, the State Marine Board or the Oregon Department of Aviation
6 deems disclosure or access necessary for the employees to perform their duties under con-
7 tracts or agreements between the Department of Revenue, the Department of Transporta-
8 tion, the State Marine Board or the Oregon Department of Aviation and any other
9 department, division, agency or subdivision of the State of Oregon, in the administration of
10 the tax laws.

11 (g) Other persons, partnerships, corporations and other legal entities, and their employ-
12 ees, to the extent the Department of Revenue, the Department of Transportation, the State
13 Marine Board or the Oregon Department of Aviation deems disclosure or access necessary
14 for the performance of the others' duties under contracts or agreements between the De-
15 partment of Revenue, the Department of Transportation, the State Marine Board or the
16 Oregon Department of Aviation and such legal entities, in the administration of the tax laws.

17 (h) The Legislative Revenue Officer or authorized representatives upon compliance with
18 ORS 173.850. The officer or representative shall not remove from the premises of the De-
19 partment of Revenue, the Department of Transportation, the State Marine Board or the
20 Oregon Department of Aviation any materials that would reveal the identity of any taxpayer
21 or any other person.

22 (i) The Secretary of State as Auditor of Public Accounts under section 2, Article VI of
23 the Oregon Constitution.

24 (3) Each officer or employee of the Department of Revenue, the Department of Trans-
25 portation, the State Marine Board or the Oregon Department of Aviation and each person
26 described or referred to in subsection (2)(a) or (e) to (i) of this section to whom disclosure
27 or access to the tax information is given under subsection (2) of this section or any other
28 provision of state law, prior to beginning employment or the performance of duties involving
29 the disclosure or access, shall be advised in writing of the provisions of sections 117 and 123
30 of this 2007 Act, relating to penalties for the violation of section 117 of this 2007 Act, and
31 shall as a condition of employment or performance of duties execute a certificate, in a form
32 prescribed by the Department of Revenue, stating in substance that the person has read
33 these provisions of law, that the person has had them explained and that the person is aware
34 of the penalties for the violation of section 117 of this 2007 Act.

35 **SECTION 119. Publication of statistics.** The Department of Revenue shall prepare and
36 publish statistics, reasonably available, with respect to the operation of the Sales and Use
37 Tax Law, including amounts collected, classification of taxpayers and other facts considered
38 by the department to be pertinent and valuable.

39
40 (Disposition of Proceeds)

41
42 **SECTION 120. Payments to Department of Revenue.** All fees, taxes, interest and penal-
43 ties imposed and all amounts of tax required to be paid to this state under the Sales and Use
44 Tax Law, except those collected by the Department of Transportation, shall be paid to the
45 Department of Revenue, and upon receipt by the Department of Revenue shall be turned over

1 to the State Treasurer, to be disposed of as provided in sections 121 and 122 of this 2007 Act.

2 **SECTION 121. Suspense account.** All moneys received by the Department of Revenue
 3 under the Sales and Use Tax Law shall be deposited in the State Treasury and credited to a
 4 suspense account established under ORS 293.445. Refunds, including refunds of erroneous
 5 overpayments or refunds of other moneys received under the Sales and Use Tax Law in
 6 which the department has no legal interest, shall be paid out of the suspense account. After
 7 payments of refunds, the balance shall be deposited in the Sales Tax Fund established under
 8 section 122 of this 2007 Act.

9 **SECTION 122. Sales Tax Fund.** (1) The Sales Tax Fund is established in the State Treas-
 10 ury, separate and distinct from the General Fund. Interest earned by the Sales Tax Fund
 11 shall be credited to the fund.

12 (2) Moneys in the Sales Tax Fund are dedicated to funding:

13 (a) Kindergarten through grade 12 public education in this state; and

14 (b) The Oregon Health Plan and other health care needs in this state. Moneys may be
 15 appropriated under the dedication made in this paragraph only for purposes for which federal
 16 financial participation is available.

17 (3) Notwithstanding subsection (2) of this section, moneys described in section 3a, Article
 18 IX of the Oregon Constitution, shall be transferred to the State Highway Fund.

19
 20 (Penalties)

21
 22 **SECTION 123. Penalties; failure to file proper returns.** (1) If a person or an officer or
 23 employee of a corporation or a member or employee of a partnership violates section 105
 24 (1)(a) or (b) of this 2007 Act, the Department of Revenue shall assess against the person a
 25 civil penalty of not more than \$1,000. The penalty shall be recovered as provided in subsection
 26 (5) of this section.

27 (2) A person or an officer or employee of a corporation or a member or employee of a
 28 partnership who violates section 105 (1)(c) or (2) of this 2007 Act is liable to a penalty of not
 29 more than \$1,000, to be recovered in the manner provided in subsection (5) of this section,
 30 and is also guilty of a Class C felony.

31 (3) Violation of section 117 of this 2007 Act is a Class C felony. If the offender is an officer
 32 or employee of this state, the offender shall be dismissed from office and shall be incapable
 33 of holding any public office in this state for a period of five years thereafter.

34 (4) If any person violates any provision of the Sales and Use Tax Law other than sections
 35 105 and 117 of this 2007 Act, the department shall assess against the person a civil penalty
 36 of not more than \$1,000, to be recovered as provided in subsection (5) of this section.

37 (5) Any person against whom a penalty is assessed under this section may appeal to the
 38 Oregon Tax Court as provided in ORS 305.275. If the penalty is not paid within 10 days after
 39 the order of the department becomes final, the department may record the order and collect
 40 the amount assessed in the same manner as income tax deficiencies are recorded and col-
 41 lected under ORS 314.430.

42 **SECTION 124. Penalties additional to all other penalties.** The penalties provided in section
 43 123 of this 2007 Act are in addition to all other penalties provided under the Sales and Use
 44 Tax Law.

MISCELLANEOUS PROVISIONS

SECTION 125. Sales and use tax in addition to other taxes; local sales tax prohibited. (1) Unless otherwise specifically provided by law, the taxes imposed under the Sales and Use Tax Law are in addition to and not in lieu of any other taxes or excises imposed by the State of Oregon or any county, city, district or other municipal corporation or political subdivision of this state.

(2) No general retail sales and use tax upon the sale of or the storage, use or consumption of tangible personal property shall be imposed by any county, city, district or other municipal corporation or political subdivision of this state.

(Conforming Changes)

SECTION 126. ORS 305.130 is amended to read:

305.130. (1) The Department of Revenue may be made a party in any action in any court of this state or of the United States having jurisdiction of the subject matter to quiet title to, to remove a cloud from the title to, or for the foreclosure of a mortgage or other lien upon, any real property or personal property, or both, upon which the State of Oregon has or claims to have a lien under ORS 311.673, 311.679, 311.771, 314.430 or 321.570 or ORS chapter 323 **or the Sales and Use Tax Law**, and the judgment in such action shall be conclusive and binding upon the State of Oregon and such department.

(2) The complaint in such action shall set forth with particularity the nature of any such lien had or claimed by the State of Oregon. The summons in such action, together with a copy of the complaint therein, shall be served on such department in the manner prescribed by ORCP 7 D(3)(d), and such summons shall require such department to appear and answer the complaint within 60 days from the date of such service.

SECTION 127. ORS 305.140 is amended to read:

305.140. (1) Any person having an interest in or lien upon any real property may request the Department of Revenue in writing to release such real property from a cloud on the title of or lien on such property existing, created or continued under any one or more of the following:

(a) A warrant provided for in ORS 314.430, 321.570 or 323.610 **or section 110 of this 2007 Act**;
or

(b) The provisions of ORS 311.673, 311.679, 311.689, 311.711 or 311.771.

(2) If, upon a request under subsection (1) of this section, the department finds that a sale of such real property would not result in satisfaction in whole or in part of the taxes due, it shall execute a release of such cloud or lien upon such property, and such release shall be conclusive evidence of the removal and extinguishment of such cloud or lien in respect of such real property.

(3) In addition to the release of cloud or lien provided for in subsection (1) of this section, the department may execute releases on part or all of any real property in the following cases, which releases shall be conclusive evidence of the removal and extinguishment of such cloud or lien:

(a) If the department finds that liability for the amount assessed, together with all interest thereon and penalties and costs in respect thereof, has been satisfied;

(b) If the department finds that the fair market value of that part of the property remaining subject to the cloud or lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon the property;

1 (c) If there is supplied to the department either an irrevocable letter of credit issued by an in-
 2 sured institution as defined in ORS 706.008 or a bond, in such form and with such surety as the
 3 department considers sufficient, conditioned upon the payment of the amount of the warrant, to-
 4 gether with all interest in respect thereof, within 60 days after the issuance of the release; or

5 (d) If there is paid to the department in partial satisfaction of the amount of the warrant pro-
 6 vided for in ORS 314.430, 321.570 or 323.610 **or section 110 of this 2007 Act** or the amount of any
 7 lien under ORS 311.673, 311.679, 311.689, 311.711 or 311.771, an amount not less than the value, as
 8 determined by the department, of the lien of the State of Oregon upon the part of the property so
 9 to be released. In determining such value the department shall give consideration to the fair market
 10 value of the part of the property so to be released and to such liens thereon as have priority to the
 11 lien of the State of Oregon.

12 **SECTION 128.** ORS 305.265 is amended to read:

13 305.265. (1) Except as provided in ORS 305.305, the provisions of this section apply to all reports
 14 or returns of tax or tax liability including claims under ORS 310.630 to 310.706 **and the Sales and**
 15 **Use Tax Law**, filed with the Department of Revenue under the revenue and tax laws administered
 16 by it, except those filed under ORS 320.005 to 320.150.

17 (2) As soon as practicable after a report or return is filed, the department shall examine or audit
 18 it, if required by law or the department deems such examination or audit practicable. If the de-
 19 partment discovers from an examination or an audit of a report or return or otherwise that a defi-
 20 ciency exists, it shall compute the tax and give notice to the person filing the return of the
 21 deficiency and of the department's intention to assess the deficiency, plus interest and any appro-
 22 priate penalty. Except as provided in subsection (3) of this section, the notice shall:

23 (a) State the reason for each adjustment;

24 (b) Give a reference to the statute, regulation or department ruling upon which the adjustment
 25 is based; and

26 (c) Be certified by the department that the adjustments are made in good faith and not for the
 27 purpose of extending the period of assessment.

28 (3) When the notice of deficiency described in subsection (2) of this section results from the
 29 correction of a mathematical or clerical error and states what would have been the correct tax but
 30 for the mathematical or clerical error, such notice need state only the reason for each adjustment
 31 to the report or return.

32 (4) With respect to any tax return filed under ORS chapter 314, 316, 317 or 318, deficiencies
 33 shall include but not be limited to the assertion of additional tax arising from:

34 (a) The failure to report properly items or amounts of income subject to or which are the
 35 measure of the tax;

36 (b) The deduction of items or amounts not permitted by law;

37 (c) Mathematical errors in the return or the amount of tax shown due in the records of the de-
 38 partment; or

39 (d) Improper credits or offsets against the tax claimed in the return.

40 (5)(a) The notice of deficiency shall be accompanied by a statement explaining the person's right
 41 to make written objections, the person's right to request a conference and the procedure for re-
 42 questing a conference. The statement, and an accompanying form, shall also explain that conference
 43 determinations are routinely transmitted via regular mail and that a person desiring to have con-
 44 ference determinations transmitted by certified mail may do so by indicating on the form the per-
 45 son's preference for certified mail and by returning the form with the person's written objections

1 as described in paragraph (b) of this subsection.

2 (b) Within 30 days from the date of the notice of deficiency, the person given notice shall pay
3 the deficiency with interest computed to the date of payment and any penalty proposed. Or within
4 that time the person shall advise the department in writing of objections to the deficiency, and may
5 request a conference with the department, which shall be held prior to the expiration of the one-year
6 period set forth in subsection (7) of this section.

7 (6) If a request for a conference is made, the department shall notify the person of a time and
8 place for conference and appoint a conference officer to meet with the person for an informal dis-
9 cussion of the matter. After the conference, the conference officer shall send the determination of
10 the issues to the person. The determination letter shall be sent by regular mail, or by certified mail
11 if the person given notice has indicated a preference for transmission of the determination by cer-
12 tified mail. The department shall assess any deficiency in the manner set forth in subsection (7) of
13 this section. If no conference is requested and written objections are received, the department shall
14 make a determination of the issues considering such objections, and shall assess any deficiency in
15 the manner provided in subsection (7) of this section. The failure to request or have a conference
16 shall not affect the rights of appeal otherwise provided by law.

17 (7) If neither payment nor written objection to the deficiency is received by the department
18 within 30 days after the notice of deficiency has been mailed, the department shall assess the defi-
19 ciency, plus interest and penalties, if any, and shall send the person a notice of assessment, stating
20 the amount so assessed, and interest and penalties. The notice of assessment shall be mailed within
21 one year from the date of the notice of deficiency unless an extension of time is agreed upon as
22 described in subsection (8) of this section. The notice shall advise the person of the rights of appeal.

23 (8) If, prior to the expiration of any period of time prescribed in subsection (7) of this section
24 for giving of notice of assessment, the department and the person consent in writing to the defi-
25 ciency being assessed after the expiration of such prescribed period, such deficiency may be assessed
26 at any time prior to the expiration of the period agreed upon. The period so agreed upon may be
27 extended by subsequent agreements in writing made before the expiration of the period agreed upon.

28 (9) The failure to hold a requested conference within the one-year period prescribed in sub-
29 section (5) of this section shall not invalidate any assessment of deficiency made within the one-year
30 period pursuant to subsection (7) of this section or within any extension of time made pursuant to
31 subsection (8) of this section, but shall invalidate any assessment of interest or penalties attributable
32 to the deficiency. After an assessment has been made, the department and the person assessed may
33 still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day
34 period under ORS 305.280 (2) shall run from the date of the conference officer's written determi-
35 nation of the issues.

36 (10)(a) In the case of a failure to file a report or return on the date prescribed therefor (deter-
37 mined with regard to any extension for filing), the department shall determine the tax according to
38 the best of its information and belief, assess the tax plus appropriate penalty and interest, and give
39 written notice of the failure to file the report or return and of the determination and assessment to
40 the person required to make the filing. The amount of tax shall be reduced by the amount of any
41 part of the tax which is paid on or before the date prescribed for payment of the tax and by the
42 amount of any credit against the tax which may be lawfully claimed upon the return.

43 (b) Notwithstanding subsection (14) of this section and ORS 305.280, and only to the extent al-
44 lowed by rules adopted by the department, the department may accept the filing of a report or re-
45 turn submitted by a person who has been assessed a tax under paragraph (a) of this subsection.

- 1 (c) The department may reject a report or return:
- 2 (A) That is not verified as required by ORS 305.810;
- 3 (B) That the department determines is not true and correct as to every material matter as re-
- 4 quired by ORS 305.815; or
- 5 (C) If the department may impose a penalty under ORS 316.992 (1) with respect to the report
- 6 or return.
- 7 (d) If the department rejects a report or return of a person assessed a tax under paragraph (a)
- 8 of this subsection, the department shall issue a notice of rejection to the person. The person may
- 9 appeal the rejection to the magistrate division of the Oregon Tax Court only if:
- 10 (A) The report or return was filed within 90 days of the date the department's assessment under
- 11 paragraph (a) of this subsection was issued; and
- 12 (B) The appeal is filed within 90 days of the date shown on the notice of rejection.
- 13 (e) If the person assessed under paragraph (a) of this subsection submits a report or return to
- 14 the department and appeals the assessment to the tax court, the department may request a stay of
- 15 action from the court pending review of the report or return. If the department:
- 16 (A) Accepts the filing of the report or return, the appeal shall be dismissed as moot.
- 17 (B) Rejects the report or return, the stay of action on the appeal shall be lifted.
- 18 (f) If the department accepts the filing of a report or return, the department may reduce the
- 19 assessment issued under paragraph (a) of this subsection. A report or return filed under this sub-
- 20 section that is accepted by the department, whether or not the assessment has been reduced, shall
- 21 be considered a report or return described in subsection (1) of this section and shall be subject to
- 22 the provisions of this section, including but not limited to examination and adjustment pursuant to
- 23 subsection (2) of this section.
- 24 (g) The department may refund payments made with respect to a report or return filed and ac-
- 25 cepted pursuant to this subsection. If the report or return is filed within three years of the due date
- 26 for filing the report or return, excluding extensions, the refund shall be made as provided by ORS
- 27 305.270 and 314.415. If the report or return is not filed within three years of the due date for filing
- 28 the report or return, excluding extensions, the refund shall be limited to payments received within
- 29 the two-year period ending on the date the report or return is received by the department and
- 30 payments received after the date the report or return is received by the department. Interest shall
- 31 be paid at the rate established under ORS 305.220 for each month or fraction of a month from the
- 32 date the report or return is received by the department to the time the refund is made.
- 33 (11) Mailing of notice to the person at the person's last-known address shall constitute the giv-
- 34 ing of notice as prescribed in this section.
- 35 (12) If a return is filed with the department accompanied by payment of less than the amount
- 36 of tax shown on or from the information on the return as due, the difference between the tax and
- 37 the amount submitted is considered as assessed on the due date of the report or return (determined
- 38 with regard to any extension of time granted for the filing of the return) or the date the report or
- 39 return is filed, whichever is later. For purposes of this subsection, the amount of tax shown on or
- 40 from the information on the return as due shall be reduced by the amount of any part of the tax that
- 41 is paid on or before the due date prescribed for payment of the tax, and by any credits against the
- 42 tax that are claimed on the return. If the amount required to be shown as tax on a return is less
- 43 than the amount shown as tax on the return, this subsection shall be applied by substituting the
- 44 lesser amount.
- 45 (13) Every deficiency shall bear interest at the rate established under ORS 305.220 for each

1 month or fraction of a month computed from the due date of the return to date of payment. If the
2 return was falsely prepared and filed with intent to evade the tax, a penalty equal to 100 percent
3 of the deficiency shall be assessed and collected. All payments received shall be credited first to
4 penalty, then to interest accrued, and then to tax due.

5 (14) If the deficiency is paid in full before a notice of assessment is issued, the department is
6 not required to send a notice of assessment, and the tax shall be considered as assessed as of the
7 date which is 30 days from the date of the notice of deficiency or the date the deficiency is paid,
8 whichever is the later. A partial payment of the deficiency shall constitute only a credit to the ac-
9 count of the person assessed. Assessments and billings of taxes shall be final after the expiration
10 of the appeal period specified in ORS 305.280, except to the extent that an appeal is allowed under
11 ORS 305.280 (3) following payment of the tax.

12 (15) Appeal may be taken to the tax court from any notice of assessment. The provisions of this
13 chapter with respect to appeals to the tax court apply to any deficiency, penalty or interest as-
14 sessed.

15 **SECTION 129.** ORS 305.270 is amended to read:

16 305.270. (1) If the amount of the tax shown as due on a report or return originally filed with the
17 Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314,
18 316, 317, 318 or 321 **or the Sales and Use Tax Law**, or collected pursuant to ORS 305.620, or as
19 corrected by the department, is less than the amount theretofore paid, or if a person files a claim
20 for refund of any tax paid to the department under such laws within the period specified in sub-
21 section (2) of this section, any excess tax paid shall be refunded by the department with interest as
22 provided in this section and ORS 314.415.

23 (2) The claim shall be made on a form prescribed by the department, except that an amended
24 report or return showing a refund due and filed within the time allowed by this subsection for the
25 filing of a claim for refund, shall constitute a claim for refund. The claim shall be filed within the
26 period specified in ORS 314.415 (2) for taxes imposed under ORS chapters 310, 314, 316, 317 [*and*]
27 **or 318 or the Sales and Use Tax Law**, or collected pursuant to ORS 305.620 (except where any
28 applicable ordinance specifies another period), within the period specified in ORS 118.100 (2) for
29 taxes imposed under ORS chapter 118 and within two years of the payment of any tax under ORS
30 chapter 308, 308A or 321.

31 (3) Upon receipt of a claim for refund, or original report or return claiming a refund, the de-
32 partment shall either refund the amount requested or send to the claimant a notice of any proposed
33 adjustment to the refund claim, stating the basis upon which the adjustment is made. A proposed
34 adjustment may either increase or decrease the amount of the refund claim or result in the finding
35 of a deficiency. If the proposed adjustment results in a determination by the department that some
36 amount is refundable, the department may send the claimant the adjusted amount with the notice.

37 (4)(a) The notice of proposed adjustment shall be accompanied by a statement explaining the
38 claimant's right to make written objections to the refund adjustment, the claimant's right to request
39 a conference and the procedure for requesting a conference. The statement, and an accompanying
40 form, shall also explain that conference determinations are routinely transmitted via regular mail
41 and that a claimant desiring to have conference determinations transmitted by certified mail may
42 do so by indicating on the form the claimant's preference for certified mail and by returning the
43 form with the claimant's written objections as described in paragraph (b) of this subsection.

44 (b) The claimant may, within 30 days of the date of the notice of proposed adjustment, advise
45 the department in writing of objections to the refund adjustment and may request a conference with

1 the department, which shall be held within one year of the date of the notice. The department shall
 2 notify the claimant of a time and place for the conference, and appoint a conference officer to meet
 3 with the claimant for an informal discussion of the claim. After the conference, the conference offi-
 4 cer shall send a determination of the matter to the claimant. The determination letter shall be sent
 5 by regular mail, or by certified mail if the claimant has indicated a preference for transmission of
 6 the determination by certified mail. The department shall issue either a notice of refund denial or
 7 payment of any amount found to be refundable, together with any applicable interest provided by
 8 this section. If the conference officer determines that a deficiency exists, the department shall issue
 9 a notice of assessment.

10 (5) If no conference is requested, and the adjustments have not resulted in the finding of a de-
 11 ficiency, the following shall apply:

12 (a) If written objections have been made by the claimant, the department shall consider the ob-
 13 jections, determine any issues raised and send the claimant a notice of refund denial or payment of
 14 any amount found to be refundable, together with any interest provided by this section.

15 (b) If no written objections are made, the notice of any proposed adjustment shall be final after
 16 the period for requesting a conference or filing written objections has expired.

17 (6) If no conference is requested, and the notice of proposed adjustment has asserted a defi-
 18 ciency, the department shall consider any objections made by the person denied the refund, make
 19 a determination of any issues raised, pay any refunds found due, with applicable interest, or assess
 20 any deficiency and mail a notice thereof within one year from the date of the notice of deficiency,
 21 unless an extension of time is agreed upon as described in subsection (7) of this section.

22 (7) If, prior to the expiration of any period of time prescribed in subsection (6) of this section
 23 for giving of notice of assessment, the department and the person consent in writing to the defi-
 24 ciency being assessed after the expiration of such prescribed period, such deficiency may be assessed
 25 at any time prior to the expiration of the period agreed upon. The period so agreed upon may be
 26 extended by subsequent agreements in writing made before the expiration of the period agreed upon.

27 (8) If the department refunds the amount requested as provided in subsection (3) of this section,
 28 without examination or audit of the refund claim, the department shall give notice of this to the
 29 claimant at the time of making the refund. Thereafter, the department shall have one year in which
 30 to examine or audit the refund claim, and send the notice of proposed adjustment provided for in
 31 subsection (3) of this section, in addition to any time permitted in ORS 314.410 or 314.415.

32 (9) The failure to hold a requested conference within the one-year period prescribed in sub-
 33 section (4) of this section shall not invalidate any assessment of deficiency made within the one-year
 34 period pursuant to subsection (8) of this section or within any extension of time made pursuant to
 35 subsection (7) of this section, but shall invalidate any assessment of interest or penalties attributable
 36 to the deficiency. After an assessment has been made, the department and the person assessed may
 37 still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day
 38 period under ORS 305.280 (2) shall run from the date of the conference officer's written determi-
 39 nation of the issues.

40 (10) The claimant may appeal any notice of proposed adjustment, refund denial or notice of as-
 41 sessment in the manner provided in ORS 305.404 to 305.560. The failure to file written objections
 42 or to request or have a conference shall not affect the rights of appeal so provided. All notices and
 43 determinations shall set forth rights of appeal.

44 **SECTION 130.** ORS 305.280 is amended to read:

45 305.280. (1) Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2)

1 shall be filed within 90 days after the act, omission, order or determination becomes actually known
2 to the person, but in no event later than one year after the act or omission has occurred, or the
3 order or determination has been made. An appeal under ORS 308.505 to 308.665 shall be filed within
4 the time prescribed under ORS 308.595. An appeal from a supervisory order or other order or de-
5 termination of the Department of Revenue shall be filed within 90 days after the date a copy of the
6 order or determination or notice of the order or determination has been served upon the appealing
7 party by mail as provided in ORS 306.805.

8 (2) An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial
9 issued by the Department of Revenue with respect to a tax imposed under ORS chapter 118, 308,
10 308A, 310, 314, 316, 317, 318, 321 or this chapter **or the Sales and Use Tax Law**, or collected pur-
11 suant to ORS 305.620, shall be filed within 90 days after the date of the notice. An appeal from a
12 proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of
13 adjustment is final.

14 (3) Notwithstanding subsection (2) of this section, an appeal from a notice of assessment of taxes
15 imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the
16 amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.

17 (4) Except as provided in subsection (2) of this section or as specifically provided in ORS chapter
18 321, an appeal to the tax court under ORS chapter 321 or from an order of a county board of
19 property tax appeals shall be filed within 30 days after the date of the notice of the determination
20 made by the department or date of mailing of the order, date of publication of notice of the order
21 or date of mailing of the notice of the order to the taxpayer, whichever is applicable.

22 (5) If the tax court denies an appeal made pursuant to this section on the grounds that it does
23 not meet the requirements of this section or ORS 305.275 or 305.560, the tax court shall issue a
24 written decision rejecting the petition and shall set forth in the decision the reasons the tax court
25 considered the appeal to be defective.

26 **SECTION 131.** ORS 305.565 is amended to read:

27 305.565. (1) Except as provided in subsection (2) of this section, proceedings for the collection
28 of any taxes, interest or penalties resulting from an assessment of additional taxes imposed by ORS
29 chapter 118, 310, 314, 316, 317, 318, 321 or this chapter **or the Sales and Use Tax Law** shall be
30 stayed by the taking or pendency of any appeal to the tax court.

31 (2) Notwithstanding subsection (1) of this section, the Department of Revenue may proceed to
32 collect any taxes, interest or penalties described in subsection (1) of this section if the department
33 determines that collection will be jeopardized if collection is delayed or that the taxpayer has taken
34 a frivolous position in the appeal. For purposes of this subsection:

35 (a) Collection of taxes, interest or penalties will be jeopardized if the taxpayer designs quickly
36 to depart from the state or to remove the taxpayer's property from the state, or to do any other act
37 tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax.

38 (b) A taxpayer's position in an appeal is frivolous if that position is of the kind described in ORS
39 316.992 (5).

40 (3) No proceeding for the apportionment, levy or collection of taxes on any property shall be
41 stayed by the taking or pendency of any appeal to the tax court, or from an order of the county
42 board of property tax appeals or the Oregon Tax Court, unless the assessor or tax collector either
43 as a party to the suit or an intervenor, requests a stay and it appears to the satisfaction of the court
44 that a substantial public interest requires the issuance of a stay.

45 (4) The tax court may, as a condition of a stay, require the posting of a bond sufficient to

1 guarantee payment of the tax. Payment of taxes while appeal is pending shall not operate as a
2 waiver of the appeal or of a right to refund of taxes found to be excessively charged or assessed.

3 **SECTION 132.** ORS 305.850 is amended to read:

4 305.850. (1) Notwithstanding any provision to the contrary in ORS 9.320 and 305.610, the Direc-
5 tor of the Department of Revenue may engage the services of a collection agency to collect any
6 taxes, interest and penalties resulting from an assessment of taxes or additional taxes imposed by
7 ORS chapter 118, 310, 314, 316, 317, 318, 321 or 323 or ORS 320.005 to 320.150 **or the Sales and**
8 **Use Tax Law** and any other tax laws administered by the Department of Revenue. The director may
9 engage the services of a collection agency by entering into an agreement to pay reasonable charges
10 on a contingent fee or other basis.

11 (2) The director shall cause to be collected, in the same manner as provided in subsection (1)
12 of this section, assessments, taxes and penalties due under ORS chapter 656. All amounts collected
13 pursuant to this subsection shall be credited as provided in ORS 293.250.

14 (3) The director may assign to the collection agency, for collection purposes only, any of the
15 taxes, penalties, interest and moneys due the state.

16 (4) The collection agency may bring such action or take such proceedings, including but not
17 limited to attachment and garnishment proceedings, as may be necessary.

18 **SECTION 133.** ORS 305.895 is amended to read:

19 305.895. (1) Except as provided in ORS 314.440 or other jeopardy assessment procedure, the
20 Department of Revenue shall take no action against a taxpayer's real or personal property before
21 issuing a warrant for the collection of the tax as provided in ORS 314.430, 320.080, 321.570 and
22 324.190 **and section 110 of this 2007 Act.**

23 (2) Prior to issuing a warrant for collection of any tax collected by the department, the depart-
24 ment shall send the taxpayer a written notice and demand for payment. The notice shall:

25 (a) Be sent by mail, addressed to the taxpayer at the taxpayer's last-known address.

26 (b) Inform the taxpayer that if the tax or any portion of the tax is not paid within 30 days after
27 the date of the notice and demand for payment, a warrant may be issued and recorded as provided
28 in ORS 314.430, 320.080, 321.570 and 324.190 **and section 110 of this 2007 Act.**

29 (c) Describe in clear nontechnical terms the legal authority for the warrant.

30 (d) Contain the name, office mailing address and office telephone number of the person issuing
31 the warrant and advise the taxpayer that questions or complaints concerning the warrant, other
32 than liability for the underlying tax, may be directed to that person.

33 (e) Include alternatives available to the taxpayer which would prevent issuance of the warrant.

34 **SECTION 134.** ORS 731.840 is amended to read:

35 731.840. (1) The retaliatory tax imposed upon a foreign or alien insurer under ORS 731.854 and
36 731.859, or the corporate excise tax imposed upon a foreign or alien insurer under ORS chapter 317,
37 is in lieu of all other state taxes upon premiums, taxes upon income, franchise or other taxes
38 measured by income that might otherwise be imposed upon the foreign or alien insurer except the
39 fire insurance premiums tax imposed under ORS 731.820 and the tax imposed upon wet marine and
40 transportation insurers under ORS 731.824 and 731.828. However, all real and personal property, if
41 any, of the insurer shall be listed, assessed and taxed the same as real and personal property of like
42 character of noninsurers. Nothing in this subsection shall be construed to preclude the imposition
43 of the assessments imposed under ORS 656.612 upon a foreign or alien insurer.

44 (2) Subsection (1) of this section applies to a reciprocal insurer and its attorney in its capacity
45 as such.

1 (3) Subsection (1) of this section applies to foreign or alien title insurers and to foreign or alien
 2 wet marine and transportation insurers issuing policies and subject to taxes referred to in ORS
 3 731.824 and 731.828.

4 (4) The State of Oregon hereby preempts the field of regulating or of imposing excise, privilege,
 5 franchise, income, license, permit, registration, and similar taxes, licenses and fees upon insurers
 6 and their insurance producers and other representatives as such, and:

7 (a) No county, city, district, or other political subdivision or agency in this state shall so regu-
 8 late, or shall levy upon insurers, or upon their insurance producers and representatives as such, any
 9 such tax, license or fee; except that whenever a county, city, district or other political subdivision
 10 levies or imposes generally on a nondiscriminatory basis throughout the jurisdiction of the taxing
 11 authority a payroll, excise or income tax, as otherwise provided by law, such tax may be levied or
 12 imposed upon domestic insurers; and

13 (b) No county, city, district, political subdivision or agency in this state shall require of any
 14 insurer, insurance producer or representative, duly authorized or licensed as such under the Insur-
 15 ance Code, any additional authorization, license, or permit of any kind for conducting therein
 16 transactions otherwise lawful under the authority or license granted under this code.

17 **(5) Every foreign, alien or domestic insurer or health or legal care service contractor not**
 18 **subject to the tax upon its premiums as required by ORS 731.808 to 731.828 or who issues**
 19 **policies the premiums from which are not subject to the gross premiums tax and every for-**
 20 **ign, alien or domestic insurer or health or legal care service contractor subject to the gross**
 21 **premiums tax shall not be subject to the taxes imposed by sections 34 and 43 of this 2007**
 22 **Act with respect to its sales or purchases of insurance. However, this subsection shall not**
 23 **exempt an insurer or health or legal care service contractor from the taxes imposed by**
 24 **section 34 or 43 of this 2007 Act upon its retail sales or purchases of tangible personal**
 25 **property.**

26 **SECTION 135.** ORS 801.040 is amended to read:

27 801.040. This section describes circumstances where special provisions are made concerning the
 28 authority of cities, counties or other political subdivisions in relation to some portion of the vehicle
 29 code. This section is not the only section of the vehicle code that applies to such authority and shall
 30 not be interpreted to affect the vehicle code except as specifically provided in this section. The
 31 following limits are partial or complete as described:

32 (1) No county, municipal or other local body with authority to adopt and administer local police
 33 regulations under the Constitution and laws of this state shall enact or enforce any rule or regu-
 34 lation in conflict with the provisions of the vehicle code described in this subsection except as spe-
 35 cifically authorized in the vehicle code. This subsection applies to the provisions of the vehicle code
 36 relating to abandoned vehicles, vehicle equipment, regulation of vehicle size, weight and load, the
 37 manner of operation of vehicles and use of roads by persons, animals and vehicles.

38 (2) Except as provided in ORS 822.230 and this subsection, no city, county or other political
 39 subdivisions shall regulate or require or issue any registration, licenses, permits or surety bonds or
 40 charge any fee for the regulatory or surety registration of any person required to obtain a certif-
 41 icate from the Department of Transportation under ORS 822.205. This subsection does not:

42 (a) Limit any authority of a city or county to license and collect a general and
 43 nondiscriminatory license fee levied upon all businesses or to levy a tax based upon business con-
 44 ducted by any person within the city or county.

45 (b) Limit the authority of any city or county to impose any requirements or conditions as part

1 of any contract to perform towing or recovering services for the city or county.

2 (c) Limit the authority of any city or county to impose requirements and conditions that govern
 3 the towing of a vehicle by a towing business under ORS 98.812 so long as those requirements and
 4 conditions are consistent with the provisions of ORS 822.230.

5 (3) No city, county or other political subdivision of this state, nor any state agency, may adopt
 6 a regulation or ordinance that imposes a special fee for the use of public lands or waters by
 7 snowmobiles or Class I all-terrain vehicles, or for the use of any access thereto that is owned by
 8 or under the jurisdiction of either the United States, this state or any such city, county or other
 9 political subdivision. The registration fees provided by ORS 821.320 are in lieu of any personal
 10 property [*or excise*] tax imposed on snowmobiles by this state or any political subdivision. No city,
 11 county or other municipality, and no state agency shall impose any other registration or license fee
 12 on any snowmobile in this state. This subsection does not prohibit any city, county or other political
 13 subdivision, or any state agency from regulating the operation of snowmobiles or Class I all-terrain
 14 vehicles on public lands, waters and other properties under its jurisdiction and on streets or high-
 15 ways within its boundaries by adopting regulations or ordinances of its governing body if such reg-
 16 ulations are not inconsistent with ORS 821.150 to 821.292.

17 (4) The provisions of ORS 819.100, 819.120, 819.150, 819.160 and 819.210 to 819.260 relating to
 18 removal of vehicles that are abandoned establish minimum requirements subject to the following:

19 (a) Notwithstanding paragraph (b) of this subsection, a county or incorporated city may super-
 20 sede such provisions by ordinance or charter provision.

21 (b) Any road authority described under ORS 810.010 may adopt rules or procedures that do not
 22 conflict with such provisions to provide for additional protection for the owner or person with an
 23 interest in a vehicle subject to such provisions or that more quickly accomplish the procedures es-
 24 tablished under such provisions.

25 (5) Any incorporated city may by ordinance require that the driver of a vehicle involved in an
 26 accident file with a designated city department a copy of any report required to be filed under ORS
 27 811.725. All such reports shall be for the confidential use of the city department but subject to the
 28 same requirements for release of such reports as provided for the release of such reports by the
 29 department under ORS 802.220 and 802.240.

30 (6) Except as otherwise specifically provided in this section, in accordance with the provisions
 31 of ORS 801.041, the governing body of a county may establish by ordinance registration fees for
 32 vehicles registered at a residence or business address within the county.

33 (7) Except as otherwise specifically provided in this section, in accordance with the provisions
 34 of ORS 801.042, the governing body of a district may establish by ordinance registration fees for
 35 vehicles registered at a residence or business address within the district.

36 **SECTION 136.** ORS 802.110 is amended to read:

37 802.110. Any procedures the Department of Transportation establishes for financial adminis-
 38 tration of those functions of the department dealing with driver and motor vehicle services and for
 39 the disposition and payment of moneys it receives from the provision of driver and motor vehicle
 40 services shall comply with all of the following:

41 (1) The department shall deposit all moneys it receives related to driver and motor vehicle ser-
 42 vices in the Department of Transportation Driver and Motor Vehicle Suspense Account for approved
 43 expenses and disbursements before payment of general administrative expenses of the department related
 44 to the provision of driver and motor vehicle services. Notwithstanding this subsection, the depart-
 45 ment may return a bank check or money order when received in incorrect or incomplete form or

1 when not accompanied by the proper application, **unless the check or money order is presented**
2 **in partial or complete payment of the use tax, as defined in section 31 of this 2007 Act. Any**
3 **bank check or money order received by the department that is in any part presented for**
4 **payment of sales or use tax liability pursuant to section 69, 71 or 82 of this 2007 Act shall**
5 **be retained by the department. A receipt shall be given for the retained check or money or-**
6 **der.**

7 (2) The department shall pay the following approved expenses and disbursements from the Depart-
8 ment of Transportation Driver and Motor Vehicle Suspense Account before payment of the general
9 administrative expenses of the department related to driver and motor vehicle services:

10 (a) Refunds authorized by any statute administered by the department when such refunds are
11 approved by the department.

12 (b) Amounts transferred to the State Treasurer under ORS 319.410 (2) for the purpose of carry-
13 ing out the state aviation laws, amounts transferred to the Boating Safety, Law Enforcement and
14 Facility Account by ORS 319.415, amounts transferred to the State Aviation Account by ORS 319.417
15 and amounts transferred to the Department of Transportation Operating Fund by ORS 184.643.

16 (c) After deduction of expenses of collection, transfer and administration, the department shall
17 pay moneys collected from the Student Driver Training Fund eligibility fee under ORS 807.040,
18 807.150 and 807.370 to the State Treasurer for deposit in the Student Driver Training Fund. The
19 moneys deposited in the Student Driver Training Fund under this paragraph are continuously ap-
20 propriated to the department for the following purposes:

21 (A) To the extent of not more than 10 percent of the amount transferred into the Student Driver
22 Training Fund in any biennium, to pay the expenses of administering ORS 336.795, 336.800, 336.805,
23 336.810 (2) and 336.815.

24 (B) The remaining moneys, for reimbursing school districts as provided under ORS 336.805.

25 (d) After deduction of expenses of collection, transfer and administration, the department shall
26 pay moneys collected for the Motorcycle Safety Subaccount under ORS 807.170 to the State Treas-
27 urer for deposit in the Motorcycle Safety Subaccount of the Transportation Safety Account. Moneys
28 paid to the State Treasurer under this paragraph shall be used for the purpose of ORS 802.320.

29 (e) After deduction of expenses for the administration of the issuance of customized registration
30 plates under ORS 805.240, the department shall place moneys received from the sale of customized
31 registration plates in the Environmental Quality Information Account. The moneys placed in the
32 account are continuously appropriated to the department and shall be used for the payment of ex-
33 penses heretofore and hereafter incurred in administering programs established under ORS 366.157.

34 (f) After deduction of expenses of collection, transfer and administration, the department shall
35 pay moneys from any registration fees established by the governing bodies of counties or a district,
36 as defined in ORS 801.237, under ORS 801.041 or 801.042 to the appropriate counties or districts.
37 The department shall make the payments on at least a monthly basis unless another basis is estab-
38 lished by the intergovernmental agreements required by ORS 801.041 and 801.042 between the de-
39 partment and the governing bodies of a county or a district.

40 (g) After deducting the expenses of the department in collecting and transferring the moneys,
41 the department shall make disbursements and payments of moneys collected for or dedicated to any
42 other purpose or fund except the State Highway Fund, including but not limited to, payments to the
43 Department of Transportation Operating Fund established by ORS 184.642 (1) and (2).

44 (h) **After deducting the expenses of the department in collecting the use tax, as defined**
45 **in section 31 of this 2007 Act, the department shall transfer the use tax moneys collected**

1 **under section 71 of this 2007 Act to the State Highway Fund.**

2 (3) The department shall refund from the Department of Transportation Driver and Motor Ve-
3 hicle Suspense Account any excess or erroneous payment to a person who made the payment or to
4 the person's legal representative when the department determines that money has been received by
5 it in excess of the amount legally due and payable or that it has received money in which it has
6 no legal interest. Refunds payable under this subsection are continuously appropriated for such
7 purposes in the manner for payment of refunds under this section. If the department determines that
8 a refund is due, the department may refund the amount of excess or erroneous payment without a
9 claim being filed. Except as provided in ORS 319.290, 319.375, 319.820 and 319.831, any claim for a
10 refund from the department must be filed within 12 months after the date payment is received by
11 the department.

12 (4) After payment of those expenses and disbursements approved for payment before general admin-
13 istrative expenses related to the provision of driver and motor vehicle services, the department shall
14 pay from the Department of Transportation Driver and Motor Vehicle Services Administrative Ac-
15 count its general administrative expenses incurred in the administration of any law related to driver
16 and motor vehicle services that the department is charged with administering and any other ex-
17 penses the department is permitted by law to pay from moneys held by the department before
18 transfer of the moneys to the State Highway Fund. The following limitations apply to payments of
19 administrative expenses under this subsection:

20 (a) The department shall make payment of the expenses of administering the issuance of winter
21 recreation parking permits under ORS 811.595 from those moneys received from issuing the permits
22 or from moneys received under ORS 153.630 from violation of the requirement to have the permit.

23 (b) The department shall pay its expenses for administering the registration and titling of
24 snowmobiles under ORS 821.060 and 821.100 from the fees collected from administering those
25 sections. The department shall also pay its expenses for the administration of the snowmobile driver
26 permit program under ORS 821.160 from the moneys otherwise described in this paragraph.

27 (c) The department shall pay its expenses for determining the amount of money to be withheld
28 under ORS 802.120 from the fees collected for administering the registration and titling of
29 snowmobiles. The amount used to pay expenses under this paragraph shall be such sum as necessary
30 but shall not exceed \$10,000 during each biennium.

31 (d) The department shall retain not more than \$15,000 in any biennium for the expenses of col-
32 lecting and transferring moneys to the Student Driver Training Fund under this section and for the
33 administration of ORS 336.810 (3).

34 (5) Except as otherwise provided in this subsection, the department shall transfer to the State
35 Highway Fund the moneys not used for payment of the general administrative expenses or for ap-
36 proved expenses and disbursements before payment of general administrative expenses. The following
37 apply to this subsection:

38 (a) If the Director of Transportation certifies the amount of principal or interest of highway
39 bonds due on any particular date, the department may make available for the payment of such in-
40 terest or principal any sums that may be necessary to the extent of moneys on hand available for
41 the State Highway Fund regardless of the dates otherwise specified under this section.

42 (b) Notwithstanding paragraph (a) of this subsection the department shall not make available for
43 purposes described in paragraph (a) of this subsection any moneys described in ORS 367.605 when
44 there are not sufficient amounts of such moneys in the State Highway Fund for purposes of bonds
45 issued under ORS 367.615.

1 (6) Notwithstanding any other provision of this section, the following moneys shall be trans-
2 ferred to the State Highway Fund at the times described:

3 (a) Moneys received under ORS 802.120 and not used for the payment of administrative expenses
4 of the department shall be transferred before July 31 of each year.

5 (b) Moneys received from the registration of snowmobiles that is not to be used for payment of
6 administrative expenses of the department shall be transferred within 30 days after the end of the
7 quarter.

8 (c) Moneys received from the issuance of winter recreation parking permits or under ORS
9 153.630 from violation of the requirement to have a winter recreation parking permit and that is not
10 used for payment of administrative expenses of the department shall be transferred within 30 days
11 after the end of the quarter.

12 (7) The following moneys transferred to the State Highway Fund under this section may be used
13 only for the purposes described as follows:

14 (a) Moneys collected from the issuance of winter recreation parking permits or under ORS
15 153.630 for violation of the requirement to have a winter recreation parking permit, and the interest
16 on such moneys, shall be used to enforce the requirement for winter recreation parking permits and
17 to remove snow from winter recreation parking locations designated under ORS 810.170. Any re-
18 maining moneys shall, upon approval by the Winter Recreation Advisory Committee:

19 (A) Be used to maintain parking locations developed with moneys obtained under ORS 810.170
20 and snowmobile facilities that are parking lots developed with moneys as provided under this sec-
21 tion;

22 (B) Be used to develop additional winter recreation parking locations under ORS 810.170; or

23 (C) Be carried over to be used in subsequent years for the purposes and in the manner described
24 in this paragraph.

25 (b) Moneys received from the registration of snowmobiles or under ORS 802.120 shall be used
26 for the development and maintenance of snowmobile facilities, including the acquisition of land
27 therefor by any means other than the exercise of eminent domain. Moneys received under ORS
28 802.120 may also be used for the enforcement of ORS 811.590, 821.100 to 821.120, 821.140, 821.150,
29 821.190, 821.210 and 821.240 to 821.290.

30 (8) The department shall maintain the Revolving Account for Emergency Cash Advances sepa-
31 rate from other moneys described in this section. From the account, the department may pay for the
32 taking up of dishonored remittances returned by banks or the State Treasurer and for emergency
33 cash advances to be subsequently reimbursed. The account shall be used only as a revolving fund.
34 The department shall at all times be accountable for the amount of the account, either in cash or
35 unreimbursed items and advances. The moneys in the account are continuously appropriated for the
36 purposes of this subsection. The amount of the account under this subsection shall not exceed
37 \$40,000 from moneys received by the department in the performance of its driver and motor vehicle
38 services functions and moneys otherwise appropriated for purposes of this subsection. The account
39 under this subsection shall be kept on deposit with the State Treasurer. The State Treasurer is au-
40 thorized to honor and pay all properly signed and indorsed checks or warrants drawn against the
41 account.

42 **SECTION 137.** ORS 803.585 is amended to read:

43 803.585. (1) Except as otherwise provided in this section or ORS 801.041 or 801.042, the regis-
44 tration fees under the vehicle code are in lieu of all other taxes and licenses, except **taxes imposed**
45 **under the Sales and Use Tax Law** or municipal license fees under regulatory ordinances, to which

1 such vehicles or the owners thereof may be subject. Fixed load vehicles are not exempt from ad
 2 valorem taxation by this section.

3 (2) Travel trailers subject to registration and titling under the vehicle code are not subject to
 4 ad valorem taxation, but may be reclassified as manufactured structures and made subject to taxa-
 5 tion as provided in ORS 308.880.

6
 7 (Short Title)
 8

9 **SECTION 138. Short title.** Sections 10 to 125 of this 2007 Act shall be known and may be
 10 cited as the Sales and Use Tax Law.

11
 12 **APPLICATION; OPERATIVE DATE;**
 13 **CAPTIONS; EFFECTIVE DATE**
 14

15 **SECTION 139. Application.** (1) The sales tax imposed by section 34 of this 2007 Act applies
 16 only to sales occurring on or after the operative date of this section.

17 (2) The sales tax does not apply to sales occurring on or after the operative date of this
 18 section under contracts, leases or rental agreements that were made before the operative
 19 date of this section. However, under a contract, lease or rental agreement that was made
 20 before the operative date of this section, the sales tax does apply to sales made after the date
 21 of any extension or renewal of the contract, lease or rental agreement occurring after the
 22 operative date of this section.

23 (3) The use tax imposed by section 43 of this 2007 Act applies only to tangible personal
 24 property purchased on or after the operative date of this section.

25 (4) The use tax does not apply to storage, consumption or use on or after the operative
 26 date of this section under contracts, leases or rental agreements that were made before the
 27 operative date of this section. However, under a contract, lease or rental agreement entered
 28 into before the operative date of this section, the use tax does apply to storage, consumption
 29 and use made after the date of any extension or renewal of the contract, lease or rental
 30 agreement occurring after the operative date of this section. A lessee, upon extension or
 31 renewal, shall have the right to make the election under section 55 of this 2007 Act.

32 **SECTION 140. Captions.** The unit and section captions used in this 2007 Act are provided
 33 only for the convenience of the reader in locating provisions of this 2007 Act and do not be-
 34 come part of the statutory law of this state or express any legislative intent in the
 35 enactment of this 2007 Act.

36 **SECTION 141. Operative date.** (1) Sections 10 to 125 and 139 of this 2007 Act and the
 37 amendments to statutes by sections 126 to 137 of this 2007 Act become operative on January
 38 1, 2009.

39 (2) Notwithstanding subsection (1) of this section, sections 10 to 125 and 139 of this 2007
 40 Act and the amendments to statutes by sections 126 to 137 of this 2007 Act do not become
 41 operative if this state has not entered into the Streamlined Sales and Use Tax Agreement,
 42 as defined in section 2 of this 2007 Act, by January 1, 2009.

43 **SECTION 142. Effective Date.** This 2007 Act does not take effect unless the amendment
 44 to the Oregon Constitution proposed by House Joint Resolution 40 (2007) is approved by the
 45 people at the next regular general election held throughout this state. This 2007 Act takes

1 **effect on the effective date of that constitutional amendment.**

2
