

House Bill 3398

Sponsored by Representative BERGER, Senator KRUSE

SUMMARY

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

Imposes, upon elector approval of Senate Joint Resolution 33 (2009), general retail sales and use tax of _____ percent on sale and use of tangible personal property.

Exempts, among numerous other exemptions, food, utilities, prescription drugs, housing and animal life, feed, seed, plants, fertilizer and pesticides used for commercial, agricultural, horticultural or silvicultural activities.

Prohibits local governmental general retail sales and use taxes.

Provides that proceeds of sales tax be placed in General Fund.

Provides penalties.

Eliminates personal income taxes and corporate excise and income taxes for tax years beginning on or after January 1, 2011.

Takes effect on effective date of constitutional amendment proposed by Senate Joint Resolution 33 (2009).

Becomes operative on January 1, 2011.

A BILL FOR AN ACT

Relating to finance; creating new provisions; amending ORS 305.130, 305.140, 305.265, 305.270, 305.280, 305.565, 305.850, 731.840, 801.040, 802.110 and 803.585; appropriating money; 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:

SECTION 1. Short title. Sections 1 to 127, 131 to 135, 139 and 141 to 152 of this 2009 Act may be cited as the Sales and Use Tax Law.

SECTION 2. Construction. Unless the context requires otherwise, the definitions in sections 3 to 28 of this 2009 Act govern the construction of sections 1 to 127, 131 to 135, 139 and 141 to 152 of this 2009 Act.

DEFINITIONS

SECTION 3. Business. "Business" includes any activity engaged in by any person or caused to be engaged in by a person with the object of gain, benefit or advantage, either direct or indirect.

SECTION 4. Department; director. "Department" means the Department of Revenue, and "director" means the Director of the Department of Revenue.

SECTION 5. Gross receipts. (1) "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold, unless subsection (6) of this section applies.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other

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 **expense.**

2 (c) **The cost of transportation of the property, except as otherwise excluded under this**
 3 **section.**

4 (2) **The total amount of the sale or lease or rental price includes all of the following:**

5 (a) **Any services that are a part of the sale.**

6 (b) **All receipts, cash, credits and property of any kind.**

7 (c) **Any amount for which credit is allowed by the seller to the purchaser.**

8 (3) **“Gross receipts” does not include any of the following:**

9 (a) **Cash discounts allowed and taken on sales.**

10 (b) **Sale price of property returned by a customer, when the full sale price is refunded**
 11 **either in cash or credit, but this exclusion does not apply in any instance when the customer,**
 12 **in order to obtain the refund, is required to purchase other property at a price greater than**
 13 **the amount charged for the property that is returned. For purposes of this paragraph, refund**
 14 **or credit of the entire amount shall be deemed to be given when the purchase price less re-**
 15 **handling and restocking costs are refunded or credited to the customer. The amount with-**
 16 **held for rehandling and restocking costs may be a percentage of the sales price determined**
 17 **by the average costs of rehandling and restocking returned merchandise during the previous**
 18 **accounting cycle.**

19 (c) **The price received for labor or services used in installing or applying the property**
 20 **sold.**

21 (d) **The amount of any tax, not including any manufacturers’ or importers’ excise tax,**
 22 **imposed by the United States upon or with respect to retail sales, whether imposed upon the**
 23 **retailer or the consumer.**

24 (e) **The amount charged for finance charges, carrying charges, service charges, time-**
 25 **price differential or interest on deferred payment sales, if such charges are not used as a**
 26 **means of avoiding imposition of the sales tax upon the actual sale price of the tangible per-**
 27 **sonal property.**

28 (f) **Separately stated charges for transportation from the retailer’s place of business or**
 29 **other point from which shipment is made directly to the purchaser, but the exclusion shall**
 30 **not exceed a reasonable charge for transportation by facilities of the retailer or the cost to**
 31 **the retailer of transportation by other than facilities of the retailer, provided that if the**
 32 **transportation is by facilities of the retailer, or the property is sold for a delivered price, this**
 33 **exclusion shall be applicable solely with respect to transportation that occurs after the sale**
 34 **of the property is made to the purchaser.**

35 (g) **Discounts allowed and taken in consideration of the transfer of a motor vehicle or**
 36 **other tangible personal property by the purchaser to the seller, commonly known as**
 37 **“trade-ins,” but only if the property “traded-in” is of like kind to that acquired by the pur-**
 38 **chaser. “Trade-in” does not include property transferred by barter or exchange, but has its**
 39 **common meaning of property of like kind to that acquired in a retail sale that is applied, in**
 40 **part, toward the selling price.**

41 (4) **For purposes of the sales tax:**

42 (a) **If the retailer establishes to the satisfaction of the Department of Revenue that the**
 43 **sales tax has been added to the total amount of the sale price and has not been absorbed by**
 44 **the retailer, the total amount of the sale price is considered to be the amount received ex-**
 45 **clusive of the tax imposed.**

1 (b) If a sale is made under installment or conditional sales contract, or in the case of
 2 other forms of sale where the payment of the principal sum is extended over a period longer
 3 than 60 days from the date of the sale, upon authorization by and in compliance with rules
 4 of the department, the retailer may account for only that portion of the sale amount as has
 5 actually been received in cash during the reporting period.

6 (5) For purposes of the sales tax, “gross receipts” shall not be construed to include gross
 7 receipts from the sale of bonds or other evidence of indebtedness or stocks, or from the sale,
 8 lease or rental or encumbrance of real property.

9 (6)(a) A retailer may deduct the cost of property sold for purposes of this section if the
 10 retailer has:

11 (A) Purchased property for some other purpose than resale;

12 (B) Reimbursed the vendor for tax that the vendor is required to pay to this state, or
 13 has paid the use tax with respect to the property; and

14 (C) Resold the property prior to making any use of the property other than retention,
 15 demonstration or display while holding the property for sale in the regular course of busi-
 16 ness.

17 (b) If the deduction is taken by the retailer, no refund or credit shall be allowed to the
 18 vendor of the retailer with respect to the sale of the property.

19 **SECTION 6. Gross receipts; consumer cooperatives.** (1) Notwithstanding section 5 of this
 20 2009 Act, “gross receipts” from the sale of tangible personal property by consumer cooper-
 21 atives, as defined in subsection (2) of this section, shall not include the value of initial or
 22 periodic membership fees and the value of labor performed in lieu of, or as part of, monthly
 23 membership fees, provided that the exclusion authorized by this section shall not be inter-
 24 preted to permit consumer cooperatives to exclude from gross receipts the cost of the
 25 property sold.

26 (2) As used in this section, “consumer cooperative” means a cooperation or group of
 27 persons composed of ultimate producers or consumers, or both, organized for the purpose
 28 of conducting any lawful business primarily for the mutual benefit of its shareholders who
 29 may be natural or legal persons, and the earnings, savings or benefits of which are used for
 30 the general welfare of the shareholders or patrons or are distributed in the form of cash,
 31 stock, evidences of indebtedness, goods or services, proportionately and equitably among the
 32 persons for which the consumer cooperative does business upon the basis of the amount of
 33 their transactions or participation in production, or both. However, any such corporation
 34 may pay out of its net surplus earnings, savings or benefits, no more than five percent in-
 35 terest upon its capital stock.

36 **SECTION 7. Factory-built housing.** (1) For the purposes of the Sales and Use Tax Law,
 37 gross receipts from the sale of factory-built housing, and the sales prices of factory-built
 38 housing, sold or stored, used or otherwise consumed in this state shall be 40 percent of the
 39 sales prices of the factory-built housing to the consumer.

40 (2) For purposes of this section, “factory-built housing” includes:

41 (a) A residential building, dwelling unit or an individual dwelling room or combination of
 42 rooms thereof, or building component, assembly or system manufactured in such a manner
 43 that all concealed parts or processes of manufacture cannot be inspected before installation
 44 at the building site without disassembly, damage or destruction of the part, including units
 45 designed for use as part of an institution for resident or patient care, that is either wholly

1 manufactured or is in substantial part manufactured at an off-site location to be wholly or
2 partially assembled on-site.

3 (b) Modular housing, which is a three-dimensional box or cube-shaped structure or
4 structures making up one or more rooms of a residential building.

5 (c) Sectionalized housing, which generally consists of two modules that form a total living
6 unit.

7 (d) Modular, utility or wet cores, which are three-dimensional habitable rooms or mod-
8 ules and which are generally composed of a kitchen or a bathroom or bathrooms.

9 (3) For purposes of this section, "factory-built housing" does not include:

10 (a) A manufactured structure as defined in ORS 801.333, or a floating home as defined in
11 ORS 830.700.

12 (b) Precut housing packages of which more than 50 percent of the package consists of
13 precut lumber only.

14 (c) Panelized construction such as walls or components that may become one or more
15 rooms of a building, unless a complete housing package is provided by the builder or man-
16 ufacturer, such as by providing wall panels, floors and a roof that will form a complete
17 housing structure.

18 (d) Porches or awnings that are not purchased as a part of the original housing package.

19 (4) If a purchaser certifies in writing to a retailer that the factory-built housing pur-
20 chased will be consumed in a manner or for a purpose entitling the retailer to exclude 60
21 percent of the gross receipts or sales price from the measure of tax, and uses the property
22 in some other manner or for some other purpose, the purchaser shall be liable for payment
23 of tax measured by 60 percent of the sales price.

24 SECTION 8. Manufactured structures or floating homes installed as residences subject
25 to property tax. (1) For the purposes of the Sales and Use Tax Law, gross receipts from the
26 sale of a new manufactured structure or a new floating home and the sales price of a new
27 manufactured structure or a new floating home sold, leased or rented or stored, used or
28 otherwise consumed in this state shall be 75 percent of the sales price of the manufactured
29 structure or floating home to the retailer, if such manufactured structure or floating home
30 is sold by the retailer to the purchaser for installation or occupancy as a residence and is
31 thereafter subject to property taxation. The retailer shall be considered to be the consumer
32 for purposes of the Sales and Use Tax Law if the sale by the retailer would otherwise have
33 been subject to sales tax and if the retailer is not also the manufacturer of the manufactured
34 structure or floating home. If the retailer of the manufactured structure or floating home
35 is the manufacturer, tax shall be measured by an amount equal to 75 percent of the sales
36 price at which a similar manufactured structure or floating home ready for installation or
37 occupancy would be sold by the manufacturer to a retailer-consumer in this state.

38 (2) Notwithstanding any other provision of the Sales and Use Tax Law, a retailer may
39 give a resale certificate for the purchase by the retailer of such a manufactured structure
40 or floating home and shall report the gross receipts or sales price from such purchase with
41 the return for the period during which the manufactured structure or floating home is sold
42 to the purchaser for installation or occupancy as a residence.

43 (3) For the purpose of this section:

44 (a) "Manufactured structure" has the meaning given that term in ORS 801.333.

45 (b) "Floating home" has the meaning given that term in ORS 830.700.

1 (4) If a purchaser certifies in writing to a retailer that the manufactured structure or
 2 floating home purchased will be consumed in a manner or for a purpose entitling the retailer
 3 to exclude 25 percent of the gross receipts or sales price to the retailer from the measure
 4 of tax, and uses the property in some other manner or for some other purpose that would
 5 not be subject to any other exclusion or exemption under the Sales and Use Tax Law, the
 6 purchaser shall be liable for payment of tax measured by the amount of the sales price to
 7 the purchaser less an amount equal to 75 percent of the gross receipts or sales price of the
 8 manufactured structure or floating home to the retailer.

9 SECTION 9. In this state. “In this state” or “within this state” means within the exterior
 10 limits of the State of Oregon and includes all territory within these limits owned by or ceded
 11 to the United States of America.

12 SECTION 10. Lease. “Lease” includes rental, hire and license. “Lease” does not include
 13 a use of tangible personal property for a period of less than one day for a charge of less than
 14 \$20 when the privilege to use the property is restricted to use thereof on the premises or at
 15 a business location of the grantor of the privilege.

16 SECTION 11. Motor vehicle or vehicle. (1) “Motor vehicle” means a vehicle as defined in
 17 ORS 801.360.

18 (2) “Vehicle” has the meaning given that term in ORS 801.590.

19 SECTION 12. Nonresident. (1) “Nonresident” means an individual who is not a resident
 20 of this state.

21 (2) “Resident” means:

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

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

29 SECTION 13. Occasional sale. “Occasional sale” includes:

30 (1) A sale of property not held or used by a seller in the course of activities for which
 31 the seller is required to hold a seller’s permit or permits or would be required to hold a
 32 seller’s permit or permits if the activities were conducted in this state, but only if such sale
 33 is not one of a series of sales sufficient in number, scope and character to constitute an
 34 activity for which the seller is required to hold a seller’s permit or would be required to hold
 35 a seller’s permit if the activity were conducted in this state; and

36 (2) Any transfer of 80 percent or more of the tangible personal property, in terms of its
 37 selling price, held or used by a person in the course of an activity requiring the holding of
 38 a seller’s permit if, after such transfer, the real or ultimate ownership of such property is
 39 substantially similar to that which existed before such transfer. For the purposes of this
 40 subsection, stockholders, bondholders, partners or other persons holding an interest in a
 41 corporation or other entity are regarded as having the “real or ultimate ownership” of the
 42 property of such corporation or other entity.

43 SECTION 14. Person. “Person” includes any individual, firm, copartnership, joint ven-
 44 ture, association, social club, society, fraternal organization, corporation, cooperative, es-
 45 tate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in

1 bankruptcy, syndicate, the United States or any instrumentality of the United States, this
 2 state, any county, city, municipal corporation, district or political subdivision of this state
 3 or any other group or combination acting as a unit.

4 **SECTION 15. Place of sale or purchase.** For purposes of the Sales and Use Tax Law, the
 5 place of the sale or purchase of tangible personal property is the place where the property
 6 is physically located at the time the act constituting the sale or purchase, as defined in the
 7 Sales and Use Tax Law, takes place.

8 **SECTION 16. Purchase; continuing purchase.** (1) "Purchase" means:

9 (a) Any transfer of title or possession, exchange or barter, conditional or otherwise, in
 10 any manner or by any means whatsoever, of tangible personal property for a consideration.
 11 "Transfer of possession" includes only transactions found by the Department of Revenue to
 12 be in lieu of a transfer of title, exchange or barter.

13 (b) When performed outside this state or when the customer gives a resale certificate
 14 pursuant to sections 42, 51 (1) and 53 to 58 of this 2009 Act, the producing, fabricating, pro-
 15 cessing, printing or imprinting of tangible personal property for a consideration for con-
 16 sumers who furnish either directly or indirectly the materials used in the producing,
 17 fabricating, processing, printing or imprinting.

18 (c) A transaction whereby the possession of property is transferred but the seller retains
 19 the title as security for the payment of the price.

20 (d) A transfer for a consideration of tangible personal property that has been produced,
 21 fabricated or printed to the special order of the customer, or of any publication.

22 (e) Any lease of tangible personal property in any manner or by any means whatsoever,
 23 for a consideration, except a lease of:

24 (A) Motion pictures, including television, films and tapes.

25 (B) Linen supplies and similar articles when an essential part of the lease agreement is
 26 the furnishing of the recurring service of laundering or cleaning the articles.

27 (C) Household furnishings with a lease of the living quarters in which they are to be used.

28 (D) Tangible personal property leased in substantially the same form as acquired by the
 29 lessor or leased in substantially the same form as acquired by a transferor, as to which the
 30 lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the
 31 purchase price of the property. For purposes of this subparagraph, "transferor" shall mean
 32 the following:

33 (i) A person from whom the lessor acquired the property in a transaction described in
 34 section 13 (2) of this 2009 Act.

35 (ii) A decedent from whom the lessor acquired the property by will or the laws of
 36 intestate succession.

37 (E) A manufactured structure, as defined in ORS 801.333, or a floating home as defined
 38 in ORS 830.700.

39 (2) Subsection (1)(e)(A) and (D) of this section and section 56 of this 2009 Act shall not
 40 apply to rentals or leases of videocassettes, videotapes and videodiscs for private use under
 41 which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit
 42 or reproduce the videocassette, videotape or videodisc.

43 (3) The possession of tangible personal property by lessee, or by another person at the
 44 direction of the lessee, is a continuing purchase for use in this state by the lessee with re-
 45 spect to any period of time the leased property is situated in this state, irrespective of the

1 time or place of delivery of the property to the lessee or such other person.

2 **SECTION 17. Purchase price; sales price.** (1) “Purchase price” or “sales price” means the
 3 total amount for which tangible personal property is sold or leased or rented, as the case
 4 may be, valued in money, whether paid in money or otherwise, without any deduction on
 5 account of any of the following:

6 (a) The cost of the property sold.

7 (b) The cost of materials used, labor or service cost, interest charged, losses or any other
 8 expenses.

9 (c) The cost of transportation of the property, except as otherwise excluded under this
 10 section.

11 (2) The total amount for which the property is sold or leased or rented includes all of the
 12 following:

13 (a) Any services that are a part of the sale.

14 (b) Any amount for which credit is given to the purchaser by the seller.

15 (3) “Sales price” does not include any of the following:

16 (a) Cash discounts allowed and taken on sales.

17 (b) The amount charged for property returned by a customer when that entire amount
 18 is refunded either in cash or credit, but this exclusion does not apply in any instance when
 19 the customer, in order to obtain the refund, is required to purchase other property at a price
 20 greater than the amount charged for the property that is returned. For purposes of this
 21 paragraph, refund or credit of the entire amount shall be deemed to be given when the pur-
 22 chase price less rehandling and restocking costs is refunded or credited to the customer. The
 23 amount withheld for rehandling and restocking costs may be a percentage of the sales price
 24 determined by the average cost of rehandling and restocking returned merchandise during
 25 the previous accounting cycle.

26 (c) The amount charged for labor or services rendered in installing or applying the
 27 property sold.

28 (d) The amount of any tax, not including any manufacturers’ or importers’ excise tax,
 29 imposed by the United States upon or with respect to retail sales, whether imposed upon the
 30 retailer or the consumer.

31 (e) The amount charged for finance charges, carrying charges, service charges, time-
 32 price differential or interest on deferred payment sales, if such charges are not used as a
 33 means of avoiding imposition of the use tax upon the actual purchase price of the tangible
 34 personal property.

35 (f) Separately stated charges for transportation from the retailer’s place of business or
 36 other point from which shipment is made directly to the purchaser, but the exclusion shall
 37 not exceed a reasonable charge for transportation by facilities of the retailer or the cost to
 38 the retailer of transportation by other than facilities of the retailer, provided that if the
 39 transportation is by facilities of the retailer, or the property is sold for a delivered price, this
 40 exclusion shall be applicable solely with respect to transportation that occurs after the pur-
 41 chase of the property is made.

42 (g) Discounts allowed and taken in consideration of the transfer of a motor vehicle or
 43 other tangible personal property by the purchaser to the seller, commonly known as
 44 “trade-ins,” but only if the property “traded-in” is of like kind to that acquired by the pur-
 45 chaser. “Trade-in” does not include property transferred by barter or exchange, but has its

1 common meaning of property of like kind to that acquired in a retail sale that is applied, in
2 part, toward the selling price.

3 (4) For purposes of the use tax, "purchase price" shall not be construed to include re-
4 cepts from the sale of bonds or other evidence of indebtedness, or stocks, or from the sale,
5 lease or rental or encumbrance of real property.

6 **SECTION 18. Purchase price or sales price; consumer cooperatives.** (1) Notwithstanding
7 section 17 of this 2009 Act, "purchase price" or "sales price" from the sale of tangible per-
8 sonal property by consumer cooperatives, as defined in subsection (2) of this section, shall
9 not include the value of initial or periodic membership fees and the value of labor performed
10 in lieu of, or as part of, monthly membership fees, provided that the exclusion authorized
11 by this section shall not be interpreted to permit consumer cooperatives to exclude from
12 "purchase price" or "sales price" the cost of the property sold.

13 (2) As used in this section, "consumer cooperative" means a corporation or group of
14 persons composed of ultimate producers or consumers, or both, organized for the purpose
15 of conducting any lawful business primarily for the mutual benefit of its shareholders who
16 may be natural or legal persons, and the earnings, savings or benefits of which are used for
17 the general welfare of the shareholders or patrons or are distributed in the form of cash,
18 stock, evidences of indebtedness, goods or services, proportionately and equitably among the
19 persons for which it does business upon the basis of the amount of their transactions or
20 participation in production, or both. However, any such corporation may pay out of its net
21 surplus earnings, savings or benefits no more than five percent interest upon its capital
22 stock.

23 **SECTION 19. Retail sale; sales to United States contractors and other contractors.** (1)
24 A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the
25 regular course of business in the form of tangible personal property.

26 (2) The delivery in this state of tangible personal property by an owner or former owner
27 thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to
28 a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a
29 retailer not engaged in business in this state, is a retail sale in this state by the person
30 making the delivery. The person shall include the retail selling price of the property in the
31 gross receipts of the person.

32 **SECTION 20. Retailer; sales at auction; flags.** (1) "Retailer" includes:

33 (a) Every seller who makes any retail sale or sales of tangible personal property, and
34 every person engaged in the business of making retail sales at auction of tangible personal
35 property owned by the person or others.

36 (b) Every person engaged in the business of making sales for storage, use or other con-
37 sumption or in the business of making sales at auction of tangible personal property owned
38 by the person or others for storage, use or other consumption.

39 (c) Any person conducting a race meet under ORS chapter 462, with respect to horses
40 that are claimed during such meet.

41 (d) Every individual, firm, copartnership, joint venture, trust, business trust, syndicate,
42 association or corporation making more than two retail sales of tangible personal property
43 during any 12-month period, including sales made in the capacity of assignee for the benefit
44 of creditors, or receiver or trustee in bankruptcy, in the person's individual, firm,
45 copartnership, joint venture, trust, business trust, syndicate, associate or corporate capac-

1 ity.

2 (2) If the Department of Revenue determines that it is necessary for the efficient ad-
 3 ministration of the Sales and Use Tax Law to regard any salesmen, representatives, peddlers
 4 or canvassers as the agents of the dealers, distributors, supervisors or employers under
 5 whom they operate or from whom they obtain the tangible personal property sold by them,
 6 irrespective of whether they are making sales on their own behalf or on behalf of such
 7 dealers, distributors, supervisors or employers, the department may so regard them and may
 8 regard the dealers, distributors, supervisors or employers as retailers for purposes of the
 9 Sales and Use Tax Law.

10 (3) Any nonprofit veterans' organization is a consumer of, and shall not be considered a
 11 retailer within the Sales and Use Tax Law with respect to, flags of the United States of
 12 America that it sells, where the profits are used solely and exclusively in furtherance of the
 13 purposes of the nonprofit organization.

14 **SECTION 21. Sale.** (1) "Sale" means:

15 (a) Any transfer of title or possession, exchange or barter, conditional or otherwise, in
 16 any manner or by any means whatsoever, of tangible personal property for a valuable con-
 17 sideration. "Transfer of possession" includes only transactions found by the Department of
 18 Revenue to be in lieu of transfer of title, exchange or barter.

19 (b) The producing, fabricating, processing, printing or imprinting of tangible personal
 20 property for a consideration for consumers who furnish either directly or indirectly the
 21 materials used in the producing, fabricating, processing, printing or imprinting.

22 (c) The furnishing and distributing of tangible personal property for a consideration by
 23 social clubs and fraternal organizations to their members or others.

24 (d) The furnishing, preparing or serving for a consideration of food, meals or drinks.

25 (e) A transaction whereby the possession of property is transferred but the seller retains
 26 the title as security for the payment of the price.

27 (f) A transfer for a consideration of the title or possession of tangible personal property
 28 that has been produced, fabricated or printed to the special order of the customer, or of any
 29 publication.

30 (g) Any lease of tangible personal property in any manner or by any means whatsoever,
 31 for a consideration, except a lease of:

32 (A) Motion pictures, including television, films and tapes.

33 (B) Linen supplies and similar articles when an essential part of the lease agreement is
 34 the furnishing of the recurring service of laundering or cleaning the articles.

35 (C) Household furnishings with a lease of the living quarters in which they are to be used.

36 (D) Tangible personal property leased in substantially the same form as acquired by the
 37 lessor or leased in substantially the same form as acquired by a transferor, as to which the
 38 lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the
 39 purchase price of the property. For purposes of this subparagraph, transferor shall mean the
 40 following:

41 (i) A person from whom the lessor acquired the property in a transaction described in
 42 section 13 (2) of this 2009 Act.

43 (ii) A decedent from whom the lessor acquired the property by will or the laws of
 44 intestate succession.

45 (E) A manufactured structure as defined in ORS 801.333, or a floating home as defined

1 in ORS 830.700.

2 (h) Any sale at an auction in respect to tangible personal property that is sold to a suc-
3 cessful bidder at the auction upon an agreement or understanding at the time of the sale
4 that the property involved either will not be delivered to the successful bidder or that any
5 amount that the successful bidder may pay for the property pursuant to the sale will be re-
6 turned to the successful bidder. The tax in such case shall be computed upon the amount
7 of the successful bid.

8 (2) Subsection (1)(g)(A) and (D) of this section and section 56 of this 2009 Act shall not
9 apply to rentals or leases of videocassettes, videotapes and videodiscs for private use under
10 which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit
11 or reproduce the videocassette, videotape or videodisc.

12 (3) The granting of possession of tangible personal property by a lessor to a lessee, or to
13 another person at the direction of the lessee, is a continuing sale in this state by the lessor
14 or grantor for the duration of the lease with respect to any period of time the leased prop-
15 erty is situated in this state, irrespective of the time or place of delivery of the property to
16 the lessee or such other person.

17 SECTION 22. Sale and purchase; custom computer programs. (1) "Sale" and "purchase,"
18 for the purposes of the Sales and Use Tax Law, do not include the design, development,
19 writing, translation, fabrication, lease or transfer for a consideration of title or possession,
20 of a custom computer program, other than a basic operational program, either in the form
21 of written procedures or in the form of storage media on which, or in which, the program
22 is recorded, or any required documentation or manuals designed to facilitate the use of the
23 custom computer program so transferred.

24 (2) As used in this section:

25 (a) "Basic operational program" means a computer program that is fundamental and
26 necessary to the functioning of a computer. A basic operational program is that part of an
27 operating system including supervisors, monitors, executives and control or master pro-
28 grams that consist of the control program elements of that system. For purposes of this
29 section, "control program" and "basic operational program" are interchangeable. A control
30 program, as opposed to a processing program, controls the operation of a computer by
31 managing the allocation of all system resources, including the central processing unit, main
32 storage, input/output devices and processing programs. A processing program is used to de-
33 velop and implement the specific applications that the computer is to perform. Its operation
34 is possible only through the facilities provided by the control program; however, it is not in
35 itself fundamental and necessary to the functioning of a computer. Excluded from the term
36 "basic operational program" are processing programs that consist of language translators,
37 including but not limited to, assemblers and compilers; service programs, including but not
38 limited to, data set utilities, sort/merge utilities, and emulators; data management systems,
39 also known as generalized file-processing software; and application programs, including but
40 not limited to payroll, inventory control and production control. Also excluded from "basic
41 operational program" are programs or parts of programs developed for or by a user if they
42 were developed solely for the solution of an individual operational problem of the user. A
43 control program, as used in this section, includes such functions as: Selection, assignment
44 and control of input and output devices; loading of programs, including selection of programs
45 from a system resident library; handling the steps necessary to accomplish job-to-job tran-

1 sition; controlling the allocation of memory; controlling concurrent operation of multiple
 2 programs or computers; and protecting data from being inadvertently destroyed as a result
 3 of operator program error.

4 (b) "Computer" does not include tape-controlled automatic drilling, milling or other
 5 manufacturing machinery or equipment.

6 (c) "Computer program" means the complete plan for the solution of a problem, such as
 7 the complete sequence of automatic data-processing equipment instructions necessary to
 8 solve a problem and includes both systems and application programs and subdivisions, such
 9 as assemblers, compilers, routines, generators and utility programs.

10 (d) "Custom computer program" means a computer program prepared to the special or-
 11 der of the customer and includes those services represented by separately stated charges for
 12 modifications to an existing prewritten program that are prepared to the special order of the
 13 customer. "Custom computer program" does not include a canned or prewritten computer
 14 program that is held or existing for general or repeated sale or lease, even if the prewritten
 15 or canned program was initially developed on a custom basis or for in-house use. Modifica-
 16 tion to an existing prewritten program to meet the customer's needs is custom computer
 17 programming only to the extent of the modification.

18 (e) "Storage media" includes punched cards, tapes, discs, diskettes or drums on which
 19 computer programs may be embodied or stored.

20 SECTION 23. Sales tax. "Sales tax" means the tax imposed by sections 29 to 42 of this
 21 2009 Act.

22 SECTION 24. Seller. "Seller" includes every person engaged in the business of selling
 23 tangible personal property of a kind the gross receipts from the retail sale of which are re-
 24 quired to be included in the measure of the sales tax. For the purposes of this section, the
 25 phrase "tangible personal property of a kind the gross receipts from the retail sale of which
 26 are required to be included in the measure of the sales tax" includes all tangible personal
 27 property of a kind the gross receipts from the retail sale of which is, or would be, required
 28 to be included in the measure of the sales tax if sold at retail, whether or not the tangible
 29 personal property is ever sold at retail or is suitable for sale at retail.

30 SECTION 25. Storage and use. (1) "Storage" includes any keeping or retention in this
 31 state for any purpose except sale in the regular course of business or subsequent use solely
 32 outside this state of tangible personal property purchased from a retailer.

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

37 (3) "Storage" and "use" do not include the keeping, retaining or exercising of any right
 38 or power over tangible personal property for the purpose of subsequently transporting it
 39 outside this state for use thereafter solely outside this state, or for the purpose of being
 40 processed, fabricated or manufactured into, attached to or incorporated into, other tangible
 41 personal property to be transported outside this state and thereafter used solely outside this
 42 state.

43 SECTION 26. Tangible personal property. "Tangible personal property" means personal
 44 property that may be seen, weighed, measured, felt or touched, or that is in any other
 45 manner perceptible to the senses. "Tangible personal property" includes any leased fixtures

1 if the lessor has a right to remove the property upon breach or termination of the lease,
2 unless the lessor is also the lessor of the realty.

3 **SECTION 27. Use tax.** “Use tax” means the tax imposed by sections 43 to 52 of this 2009
4 Act.

5 **SECTION 28. Used manufactured structure or floating home.** “Used manufactured
6 structure” or “used floating home” means a manufactured structure as defined in ORS
7 801.333 or floating home as defined in ORS 830.700 that was previously sold, leased or rented
8 to a consumer within or without this state.

10 **SALES TAX**

11
12 **SECTION 29. Imposition of tax; rate.** In addition to all other taxes of every kind, for the
13 privilege of selling tangible personal property at retail, a tax is imposed upon all retailers at
14 the rate of _____ percent of the gross receipts of any retailer from the sale of all tangible
15 personal property sold at retail in this state.

16 **SECTION 30. Reimbursement.** (1) The sales tax imposed by section 29 of this 2009 Act is
17 a tax upon the gross receipts of retailers. Whether a retailer may add sales tax reimburse-
18 ment to the sales price of the tangible personal property sold at retail to a purchaser depends
19 solely upon the terms of the agreement of sale. It shall be presumed that the parties agreed
20 to the addition of sales tax reimbursement to the sales price of tangible personal property
21 sold at retail to a purchaser if:

- 22 (a) The agreement of sale expressly provides for such addition of sales tax reimburse-
- 23 ment;
- 24 (b) Sales tax reimbursement is shown on the sales check or other proof of sale; or
- 25 (c) The retailer posts in the retailer’s premises in a location visible to purchasers, or
- 26 includes on a price tag or in an advertisement or other printed material directed to pur-
- 27 chasers, a notice to the effect that reimbursement for sales tax will be added to the sales
- 28 price of all items or certain items, whichever is applicable.

29 (2) It shall be presumed that the property, the gross receipts from the sale of which are
30 subject to the sales tax, is sold at a price that includes tax reimbursement if the retailer
31 posts in the premises or includes on a price tag or in an advertisement, whichever is appli-
32 cable, one of the following notices:

- 33 (a) “All prices of taxable items include sales tax reimbursement computed to the nearest
- 34 mill.”
- 35 (b) “The price of this item includes sales tax reimbursement computed to the nearest
- 36 mill.”

37 **SECTION 31. Collection schedule.** (1) The Department of Revenue shall prepare a sales
38 tax collection schedule showing the total amount that shall be collected by the retailer from
39 a consumer in reimbursement of the sales tax, computed on each sales price, from one cent
40 to and including \$100, at the rate of _____ percent. The schedule shall be identical with the
41 following table up to the amounts specified:

Price	Tax
\$.01 to .10.....	\$.00

1	.11	to	.29.....	_____
2	.30	to	.49.....	_____
3	.50	to	.69.....	_____
4	.70	to	.89.....	_____
5	.90	to	1.09.....	_____

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

(3) The sales tax collection schedule shall be made available for inspection and reproduction.

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

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

(b) If authorized under rules adopted by the department, include in the sales price of each item an amount of reimbursement computed to the nearest 10th of a cent at the applicable tax rate and post a notice in the retailer's premises stating that each posted or advertised price includes reimbursement so computed. When both taxable and nontaxable items are included in the same transaction, the requirement of paragraph (a) of this subsection regarding computation of tax reimbursement upon the sum of the aggregate sales prices applies only if the purchaser requests at the time of the sale that the computation be made in this way.

(5) Each retailer may retain from the taxes otherwise due under the Sales and Use Tax Law, out of the remittances by the retailer under sections 116 to 118 of this 2009 Act, an amount equal to two percent of the tax owed by such retailer for each reporting period. Such amounts may be retained only if the remittances were paid when due as required by sections 116 to 118 of this 2009 Act.

SECTION 32. Vending machines. (1)(a) The Department of Revenue may authorize a seller to pay the sales tax upon sales made through vending machines and similar devices, or under conditions of business such as to render impracticable the collection of the tax as a separate item, and waive collection of the tax from the purchaser.

(b) If sales are made by receipt of a coin or coins dropped into a receptacle that results in delivery of the merchandise in single purchases of smaller value than the minimum sale upon which a one cent tax may be collected from the purchaser, according to the schedule prescribed under section 31 of this 2009 Act, and if the design of the device is such that multiple sales of items are not possible or cannot be detected so as practicably to assess a tax, then no tax shall be assessed or collected on the gross receipts from such sales if adequate and complete records are kept by the vending machine operator, readily available for inspection by the department. If such records are not maintained, the gross receipts for the purposes of the sales tax are 50 percent of the gross receipts of the vending machine through

1 which such sales are made, determined by the department according to the best of its in-
 2 formation and belief, using such records as are available.

3 (c) As used in this section, “adequate and complete records” means that the vending
 4 machine operator regularly maintains records that would enable a department auditor ac-
 5 curately to ascertain liability for sales taxes under section 29 of this 2009 Act, showing the
 6 location or locations of each machine operated by the vending machine operator during each
 7 reporting period, the serial number thereof, purchases and inventories of merchandise
 8 bought for sale through all such machines and the gross receipts derived from the operation
 9 at each location during each reporting period.

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

18 **SECTION 33. Excess collection.** (1) When an amount represented by a person to a pur-
 19 chaser as constituting reimbursement for taxes due under section 29 of this 2009 Act is
 20 computed upon an amount that is not taxable or is in excess of the taxable amount and is
 21 actually paid by the purchaser to the person, the amount so paid shall be returned by the
 22 person to the purchaser upon notification by the Department of Revenue or by the purchaser
 23 that such excess has been ascertained. In the event of the person’s failure or refusal to do
 24 so, the amount paid, if knowingly or mistakenly computed by the person upon an amount
 25 that is not taxable or is in excess of the taxable amount, shall be remitted by that person
 26 to this state. However, those amounts remitted to the state shall be credited by the depart-
 27 ment on any amounts due and payable under section 29 of this 2009 Act on the same trans-
 28 action from the person by whom it was paid to this state and the balance, if any, shall
 29 constitute an obligation due from the person to this state.

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

33 **SECTION 34. Worthless accounts.** A person is relieved from liability for sales tax insofar
 34 as the measure of the tax is represented by accounts that have been found to be worthless
 35 and charged off for income tax purposes or if the person is not required to file income tax
 36 returns, charged off in accordance with generally accepted accounting principles. If the per-
 37 son has previously paid the tax, the person may take as a deduction the amount found
 38 worthless and charged off. If any such accounts are thereafter in whole or in part collected
 39 by the person, the amount so collected shall be included in the first return filed after such
 40 collection and the tax shall be paid with the return.

41
 42 **SELLER PERMIT**
 43

44 **SECTION 35. Application for permit.** (1) Every person desiring to engage in or conduct
 45 business as a seller within this state shall file with the Department of Revenue an application

1 for a permit for each place of business.

2 (2) Every application for a permit shall be made upon a form prescribed by the depart-
 3 ment and must set forth:

- 4 (a) The name under which the applicant transacts or intends to transact business;
- 5 (b) The location of the place or places of business; and
- 6 (c) Any other information that the department requires.

7 (3) The application must be signed:

- 8 (a) By the owner, if a natural person;
- 9 (b) In the case of an association or partnership, by a member or partner; or

10 (c) In the case of a corporation, by an executive officer or some person specifically au-
 11 thorized by the corporation to sign the application. The person signing the application shall
 12 certify that the applicant will actively engage in or conduct a business as a seller of tangible
 13 personal property.

14 (4) No person shall engage in business as a seller in this state without a permit or after
 15 the person's permit has been suspended or revoked.

16 (5) Each officer of a corporation that engages in business in violation of subsection (4)
 17 of this section is guilty of violating that subsection.

18 **SECTION 36. Notice to applicant.** At the time the Department of Revenue provides the
 19 applicant with an application form, the applicant shall be provided with a written notice in
 20 a form prescribed by the department outlining the pertinent provisions of sections 37 to 40
 21 of this 2009 Act and the penalties that will accrue to the applicant should the permit be used
 22 in a manner that is prohibited by those sections.

23 **SECTION 37. Issuance and display of permit.** After compliance with sections 35 and 135
 24 of this 2009 Act by the applicant, and after the notice required under section 36 of this 2009
 25 Act is given, the Department of Revenue shall issue to each applicant a separate permit for
 26 each place of business within this state. A permit is not assignable and is valid only for the
 27 person in whose name it is issued and for the transaction of business at the place designated
 28 therein. At all times it must be conspicuously displayed at the place for which it is issued.

29 **SECTION 38. Change of address.** Upon such notification of a change of address as may
 30 be required by the Department of Revenue, a permit may be reissued for the new address
 31 of a business place of a permit holder without the filing of a new application.

32 **SECTION 39. Inactive status.** (1) A permit shall be held only by persons actively engaging
 33 in or conducting a business as a seller of tangible personal property. Any person not so en-
 34 gaged shall forthwith surrender any permit held by the person to the Department of Revenue
 35 for cancellation. The department may revoke the permit of a person found to be not actively
 36 engaged in or conducting a business as a seller of tangible personal property.

37 (2) Any person who knowingly issues a resale certificate while the person is not actively
 38 engaged in business as a seller, for personal gain or to evade the payment of taxes, shall be
 39 liable for the taxes that would otherwise have been due on the transaction, plus a penalty
 40 as provided in section 122 (3) of this 2009 Act and interest as provided in section 122 (4) of
 41 this 2009 Act from the last day of the month following the reporting period for which the
 42 amount or any portion thereof should have been returned until the date of the payment.

43 **SECTION 40. Revocation of permit; appeal.** (1) If any person fails to comply with any
 44 provision of the Sales and Use Tax Law relating to the sales tax or any rule of the Depart-
 45 ment of Revenue relating to the sales tax adopted under the Sales and Use Tax Law, the

1 department may suspend or revoke the permit or permits held by the person. The depart-
 2 ment shall not issue a new permit after the revocation of a permit unless it is satisfied that
 3 the former holder of the permit will comply with the provisions of the Sales and Use Tax Law
 4 relating the sales tax and the rules of the department.

5 (2) If the department proposes to refuse to issue a permit, or proposes to suspend or
 6 revoke a permit, the department shall give notice of the proposed refusal, suspension or re-
 7 vocation at least 30 days before the refusal, suspension or revocation will be final. Appeal
 8 following the notice of the determination may be taken to the Oregon Tax Court in the
 9 manner provided in ORS 305.275 within the time provided in ORS 305.280 (1).

10 **SECTION 41. Swap meet or flea market.** (1) When the Department of Revenue deter-
 11 mines it is necessary for the efficient administration of the Sales and Use Tax Law, the de-
 12 partment may require the operator of a swap meet or flea market, as a prerequisite to
 13 renting or leasing space on the premises owned or controlled by such operator to a person
 14 desiring to engage in or conduct business as a seller, to obtain evidence that the seller is the
 15 holder of a valid seller’s permit issued pursuant to section 37 of this 2009 Act, or a written
 16 statement from the seller that the seller is not offering for sale any item that is taxable
 17 under the Sales and Use Tax Law.

18 (2) “Swap meet or flea market,” as used in this section, means an activity involving a
 19 series of sales sufficient in number, scope and character to constitute a regular course of
 20 business.

21 **SECTION 42. Presumption of taxability; resale certificate.** For the purpose of the proper
 22 administration of the Sales and Use Tax Law and to prevent evasion of the sales tax, it is
 23 presumed that all gross receipts are subject to the tax until the contrary is established. The
 24 burden of proving that a sale of tangible personal property is not a sale at retail is upon the
 25 person who makes the sale unless the person takes from the purchaser a resale certificate
 26 to the effect that the property is purchased for resale.

27
 28 **USE TAX**
 29

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

34 **SECTION 44. Liability for tax.** Every person storing, using or otherwise consuming in
 35 this state tangible personal property purchased from a retailer is liable for the use tax. The
 36 person’s liability is not extinguished until the tax has been paid to this state, except that a
 37 receipt from a retailer engaged in business in this state or from a retailer who is authorized
 38 by the Department of Revenue, under such rules as it may adopt, to collect the tax and who,
 39 for the purposes of the use tax, is regarded as a retailer engaged in business in this state,
 40 given to the purchaser pursuant to section 45 of this 2009 Act, is sufficient to relieve the
 41 purchaser from further liability for the tax to which the receipt refers.

42 **SECTION 45. Collection by retailer; tax as debt; itemization of tax.** (1) Except as provided
 43 in section 70 of this 2009 Act, every retailer engaged in business in this state or to whom
 44 authorization to collect tax has been granted, who makes sales of tangible personal property
 45 for storage, use or other consumption in this state, not exempt for purposes of the Sales and

1 Use Tax Law, at the time of making the sales or if the storage, use or other consumption
 2 of the tangible personal property is not then taxable, at the time the storage, use or other
 3 consumption becomes taxable, shall collect the tax from the purchaser and shall give to the
 4 purchaser a receipt therefor in the manner and form prescribed by the Department of Re-
 5 venue.

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

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

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

16 **SECTION 46. Retailer engaged in business in this state.** As used for purposes of the use
 17 tax, “retailer engaged in business in this state” means:

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

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

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

27 **SECTION 47. Registration of retailers.** Every retailer selling tangible personal property
 28 for storage, use or consumption in this state shall register with the Department of Revenue
 29 and give:

30 (1) The name and address of all agents operating in this state;

31 (2) The location of all distribution or sales houses or offices or other places of business
 32 in this state; and

33 (3) Such other information as the department requires.

34 **SECTION 48. Collection of tax by retailer maintaining or not maintaining place of busi-**
 35 **ness in state.** The Director of the Department of Revenue may in the director’s discretion,
 36 upon application of the retailer, authorize the collection of the use tax imposed by section
 37 43 of this 2009 Act by any retailer who maintains or who does not maintain a place of busi-
 38 ness within this state and who furnishes adequate security to ensure collection and payment
 39 of the tax. The retailer shall be issued, without charge, a permit to collect the tax in the
 40 manner and subject to the rules and agreements as the director shall prescribe or require.
 41 When so authorized it shall be the duty of the retailer to collect the tax upon all tangible
 42 personal property sold by the retailer for use, storage or other consumption within this
 43 state, in the same manner and subject to the same requirements as any other retailer. The
 44 permit may be canceled if, at any time, the director considers the security inadequate or that
 45 the tax can more effectively be collected from the person using the property in this state.

1 **SECTION 49. Excessive collections.** When an amount represented by a person to a pur-
2 chaser as constituting reimbursement for taxes due under section 43 of this 2009 Act is
3 computed upon an amount that is not taxable or is in excess of the taxable amount and is
4 actually paid by the purchaser to the person, the amount so paid shall be returned by the
5 person to the purchaser upon notification by the Department of Revenue or by the purchaser
6 that such excess has been ascertained. In the event of the person's failure or refusal to do
7 so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount
8 that is not taxable or is in excess of the taxable amount, shall be remitted by that person
9 to this state. However, those amounts remitted to the state shall be credited by the depart-
10 ment on any amounts due and payable under section 43 of this 2009 Act on the same trans-
11 action from the person by whom it was paid to this state and the balance, if any, shall
12 constitute an obligation due from the person to this state.

13 **SECTION 50. Worthless accounts.** A person is relieved from liability to collect use tax
14 insofar as the measure of the tax is represented by accounts that have been found to be
15 worthless and charged off for income tax purposes or if the person is not required to file
16 income tax returns, charged off in accordance with generally accepted accounting principles.
17 If the person has previously paid the tax, under rules prescribed by the Department of Re-
18 venue, the person may take as a deduction the amount found worthless and charged off. If
19 any such accounts are thereafter in whole or in part collected by the person, the amount so
20 collected shall be included in the first return filed after such collection and the tax shall be
21 paid with the return.

22 **SECTION 51. Presumptions.** For the purpose of the proper administration of the Sales
23 and Use Tax Law and to prevent evasion of the use tax and the duty to collect the use tax,
24 the following presumptions are established:

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

30 (2) Tangible personal property shipped or brought to this state by the purchaser was
31 purchased from a retailer on or after the operative date specified in section 162 of this 2009
32 Act for storage, use or other consumption in this state.

33 (3) Tangible personal property delivered outside this state to a purchaser known by the
34 retailer to be a resident of this state was purchased from a retailer for storage, use or other
35 consumption in this state and stored, used or otherwise consumed in this state. This
36 presumption may be controverted by a statement in writing, signed by the purchaser or the
37 authorized representative, and retained by the vendor, that the property was purchased for
38 use at a designated point or points outside this state. This presumption may also be
39 controverted by other evidence satisfactory to the Department of Revenue that the property
40 was not purchased for storage, use or other consumption in this state.

41 (4) A motor vehicle purchased outside of this state that is brought into this state on or
42 before the 90th day after its purchase, was acquired for storage, use or other consumption
43 in this state. However, a member of the Armed Forces of the United States on active duty
44 who purchases a motor vehicle prior to the effective date of discharge of the member is not
45 subject to this presumption. The member is not considered to have purchased the motor

1 vehicle for storage, use or other consumption in this state unless at the time of purchase
 2 the member intended to use it in this state, such intent resulting from the member's own
 3 determination rather than from official orders received as a member of the Armed Forces
 4 transferring the member to this state.

5 **SECTION 52. Credit for tax paid to another jurisdiction.** (1) A credit shall be allowed
 6 against, but shall not exceed, the taxes imposed on any person by the Sales and Use Tax Law
 7 by reason of the storage, use or other consumption of tangible personal property in this state
 8 to the extent that the person has paid a general retail sales or use tax, or reimbursement
 9 therefor, imposed with respect to that property by any other state or political subdivision
 10 thereof prior to the storage, use or other consumption of that property in this state.

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

16
 17 **RESALE CERTIFICATES**
 18

19 **SECTION 53. Effect of certificate.** The resale certificate referred to in sections 42 and
 20 51 (1) of this 2009 Act relieves the person selling the property from liability for sales tax or
 21 the duty to collect use tax only if it is taken from a person who is engaged in the business
 22 of selling tangible personal property and who holds the permit provided for in sections 35 to
 23 40 or section 48 of this 2009 Act.

24 **SECTION 54. Form of certificate.** The resale certificate must be signed by and bear the
 25 name and address of the purchaser, indicate the number of the permit issued to the pur-
 26 chaser and indicate the general character of the tangible personal property sold by the pur-
 27 chaser in the regular course of business. The resale certificate shall be substantially in such
 28 form as the Department of Revenue prescribes.

29 **SECTION 55. Retention, demonstration or display; liability of purchaser.** (1) If a pur-
 30 chaser who gives a resale certificate or purchases property for the purpose of reselling it
 31 makes any storage or use of the property other than retention, demonstration or display
 32 while holding it for sale in the regular course of business, the storage or use is taxable to
 33 the purchaser under section 43 of this 2009 Act as of the time the property is first so stored
 34 or used by the purchaser and, except as provided in subsections (2) and (3) of this section,
 35 the sales price of the property to the purchaser is the measure of the tax.

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

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

44 **SECTION 56. Leases; election to pay use tax.** If a purchaser acquires property in a
 45 transaction described in section 13 (1) of this 2009 Act and leases such property, the pur-

1 chaser may elect at the time the property is first leased, after the effective date of this
 2 section, to pay use tax measured by the purchase price of the property. For purposes of this
 3 section:

4 (1) "Purchaser" shall include a transferee who acquires property in a transaction that
 5 qualifies under the provisions of section 13 (2) of this 2009 Act; and

6 (2) The purchase price of the transferee shall be the same as that paid by the original
 7 purchaser.

8 **SECTION 57. Resale certificate; fungible goods.** If a purchaser gives a resale certificate
 9 with respect to the purchase of fungible goods and thereafter commingles these goods with
 10 other fungible goods not so purchased but of such similarity that the identity of the con-
 11 stituent goods in the commingled mass cannot be determined, sales from the mass of
 12 commingled goods shall be deemed to be sales of the goods so purchased until a quantity of
 13 commingled goods equal to the quantity of purchased goods so commingled has been sold.

14 **SECTION 58. Improper use of certificate.** No person shall give, for the purpose of evading
 15 payment to the seller or other person selling the property of the amount of the tax applicable
 16 to the transaction, a resale certificate for property that the person knows, at the time of
 17 purchase, is not to be resold by the person in the regular course of business.

18
 19 **DIRECT PAYMENT PERMITS**
 20

21 **SECTION 59. Direct payment permits.** (1) The Department of Revenue may authorize a
 22 purchaser of substantial amounts of tangible personal property to pay the tax directly to the
 23 department and to waive the collection of the tax by the vendor. Purchasers to whom such
 24 authorization may be granted include but are not limited to the following:

25 (a) A manufacturer, mine operator or public service corporation that is a user, con-
 26 sumer, distributor or lessee to which sales, distributions, leases or storage of tangible per-
 27 sonal property are made under circumstances that normally make it impossible at the time
 28 of such sales, distribution, leases or storage to determine the manner in which the property
 29 will be used by the person; or

30 (b) Any person who stores tangible personal property in this state for use both within
 31 and outside this state.

32 (2) No such authority shall be granted or exercised except upon application to the de-
 33 partment and the issuance by the department, in its discretion, of a direct payment permit.
 34 If a direct payment permit is granted, its use is subject to conditions specified by the de-
 35 partment, and the payment of tax on all acquisitions pursuant to the permit shall be made
 36 directly to the department by the permit holder within the time prescribed in the permit.
 37 Direct payment permittees must notify each vendor from whom purchases are made of their
 38 direct payment permit and that the taxes are being paid directly to the department and must
 39 maintain records that adequately and properly reflect their liability for tax under the Sales
 40 and Use Tax Law.

41 (3) The department shall revoke a direct payment permit and the authority granted to a
 42 purchaser thereunder for failure to comply with the conditions under which such authority
 43 was granted, or for other reasons constituting misuse of such authority. Thereupon the
 44 purchaser shall give each supplier with whom it has transacted business under the authority
 45 a written notice of the revocation and shall supply the department with evidence that such

1 notice has been given. Notwithstanding section 145 of this 2009 Act, if the purchaser fails to
2 notify any supplier of the revocation, the department may give such notice.

3
4 **ABSORPTION OF TAX BY RETAILER**

5
6 **SECTION 60. Unlawful advertising.** Except as otherwise provided by law or rule of the
7 Department of Revenue, no retailer shall advertise, hold out or state to the public or to any
8 customer, directly or indirectly, that the sales tax on tangible personal property or the use
9 tax on tangible personal property or any part thereof:

- 10 (1) Will be assumed or absorbed by the retailer;
11 (2) Will not be added to the selling price of the property sold; or
12 (3) If added, it or any part thereof will be refunded.

13
14 **VEHICLES, VESSELS AND AIRCRAFT**

15
16 **SECTION 61. Definitions.** (1) As used in sections 61 to 72 of this 2009 Act, unless the
17 context requires otherwise:

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

20 (b) "Vessel" means any boat, ship, barge, craft or floating thing designed for navigation
21 in the water except:

22 (A) A seaplane;

23 (B) A watercraft specifically designed to operate on a permanently fixed course, the
24 movement of which is restricted to or guided on such permanently fixed course by means
25 of a mechanical device on a fixed track or arm to which the watercraft is attached or by
26 which the watercraft is controlled, or by means of a mechanical device attached to the
27 watercraft itself;

28 (C) A watercraft of a type designed to be propelled solely by oars or paddles;

29 (D) A watercraft of eight feet or less in length of a type designed to be propelled by sail;

30 (E) A floating home, as defined in ORS 830.700; or

31 (F) A boathouse, as defined in ORS 830.700.

32 (c) "Vehicle" means a vehicle or motor vehicle, as defined in section 11 of this 2009 Act,
33 for which registration or a certificate of title is required under ORS 803.025 or 803.300, or
34 would be required if the vehicle were not exempted from registration or certification re-
35 quirements under ORS 801.026, 803.030 or 803.305. "Vehicle" does not include any of the fol-
36 lowing:

37 (A) A manufactured structure, as defined in ORS 801.333.

38 (B) A snowmobile, as defined in ORS 801.490.

39 (C) A school bus, as defined in ORS 801.460.

40 (D) An ambulance, as defined in ORS 801.115, an emergency vehicle, as defined in ORS
41 801.260, or other fire wagon or fire engine.

42 (E) A bicycle, as defined in ORS 801.150.

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

45 (G) Fixed load vehicles, as defined in ORS 801.285, that are subject to ad valorem property

1 **taxation.**

2 (H) Golf carts, as defined in ORS 801.295, and similar vehicles described in ORS 803.030
3 (14).

4 (I) Road rollers.

5 (J) A trolley.

6 (K) Well drilling machinery.

7 (L) Wheelchairs.

8 (M) Baby buggies.

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

11 **SECTION 62. All persons are retailers of vehicles, vessels or aircraft.** Every person
12 making a retail sale of a vehicle, vessel or aircraft is a retailer of the vehicle, vessel or air-
13 craft for purposes of the Sales and Use Tax Law, regardless of whether the person is a
14 retailer by reason of other provisions of the Sales and Use Tax Law unless another person
15 is the retailer, as provided in section 63 of this 2009 Act.

16 **SECTION 63. Sales through certified dealers or wreckers.** Every person holding a cer-
17 tificate as a dealer or a wrecker under ORS chapter 822 is the retailer of a vehicle when a
18 retail sale of the vehicle is made through the person and the person provides to the De-
19 partment of Transportation a notice of transfer with respect to the vehicle. That person
20 shall hold a seller's permit and remit tax to the Department of Revenue with respect to those
21 sales in the same manner as a dealer or wrecker making sales on the dealer's or wrecker's
22 own account. For purposes of this section, sale does not include a lease.

23 **SECTION 64. Sales tax; exemption if seller other than dealer or wrecker.** There are ex-
24 empted from the computation of the amount of the sales tax the gross receipts from sales
25 of vehicles required to be registered or titled by the Department of Transportation when the
26 retailer is other than a person certified as a dealer or a wrecker under ORS chapter 822.
27 However, this exemption does not extend to the rentals payable under a lease of tangible
28 personal property.

29 **SECTION 65. Boat trailers.** Notwithstanding section 64 of this 2009 Act, the gross re-
30 cepts from the sale of boat trailers by persons in the business of selling boats or boat
31 trailers are not exempt from the computation of the amount of sales tax.

32 **SECTION 66. Vessels and aircraft; sellers.** There are exempted from the computation of
33 the amount of the sales tax the gross receipts from the sale of a vessel or aircraft when the
34 retailer is other than a person required to hold a seller's permit issued under the Sales and
35 Use Tax Law by reason of the number, scope and character of the sales by the person of
36 vessels or aircraft, as the case may be.

37 **SECTION 67. Seller's permit requirements.** If a person is engaged in the business of
38 selling vehicles, vessels or aircraft, the person is not excused from the requirements of the
39 Sales and Use Tax Law relating to seller's permits, collection and payment of sales tax or
40 any other provision of the Sales and Use Tax Law by reason of the exemptions provided in
41 sections 64 and 66 of this 2009 Act.

42 **SECTION 68. Family sales.** There are exempted from the taxes imposed by the Sales and
43 Use Tax Law the gross receipts from the sale of, and the storage, use or other consumption
44 in this state of, a vehicle, vessel or aircraft, when the person selling the property is either
45 by blood or adoption the parent, grandparent, child or spouse of the purchaser and the per-

1 son selling is not engaged in the business of selling the type of property for which the ex-
 2 emption is claimed.

3 **SECTION 69. Substantially same ownership after transfer.** There are exempted from the
 4 taxes imposed by the Sales and Use Tax Law the gross receipts from the sale of, and the
 5 storage, use or other consumption in this state of, a vehicle, vessel or aircraft, when such
 6 property is included in any transfer of 80 percent or more the of tangible personal property,
 7 in terms of its selling price, held or used in the course of a business activity of the person
 8 selling the property, and when after such transfer the real or ultimate ownership of such
 9 property is substantially similar to that which existed before such transfer. For the purposes
 10 of this section, stockholders, bondholders, partners or other persons holding an interest in
 11 a corporation or other entity are regarded as having the “real or ultimate ownership” of the
 12 property of such corporation or other entity.

13 **SECTION 70. Use tax; payment; interest and penalties.** (1) Notwithstanding section 116
 14 or 118 of this 2009 Act, except when the sale is by lease, the use taxes imposed with respect
 15 to the storage, use or other consumption in this state of vehicles, vessels and aircraft are
 16 due and payable by the purchaser at the time the storage, use or other consumption of the
 17 property first become taxable to the Department of Revenue or to the following, whichever
 18 is applicable:

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

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

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

29 (2) If the purchaser of a vehicle, boat or aircraft mentioned in subsection (1) of this
 30 section does not make application for registration or certification to the Department of
 31 Transportation, the Oregon Department of Aviation or the State Marine Board, whichever
 32 is applicable, within 30 days after the date of purchase of the vehicle, boat or aircraft, the
 33 purchaser then becomes liable also for penalty as specified in section 125 (1) of this 2009 Act,
 34 but no interest shall accrue. However, if the purchaser does not make application for cer-
 35 tification or registration or does not pay the amount of use tax due within 90 days after the
 36 date of purchase, or files a return with the Department of Revenue that is not timely, the
 37 purchaser shall become fully liable for the penalties and interest as provided in section 122
 38 of this 2009 Act, which shall be collectible by the Department of Revenue or the Department
 39 of Transportation in the same manner and subject to the same procedures as for other de-
 40 linquent sales and use taxes. The Department of Transportation shall collect delinquent use
 41 tax, penalties and interest provided in this section with respect to any delinquent application
 42 for certification of title or registration of a vehicle.

43 (3) Application to the Department of Transportation for certification of title or registra-
 44 tion of a vehicle accompanied by payment of the use tax by the purchaser relieves the pur-
 45 chaser of the obligation to file a separate return with the Department of Revenue under

1 section 117 of this 2009 Act.

2 **SECTION 71. Presumption on sale to lessee.** There shall be a presumption that a transfer
 3 of a vehicle to a lessee by a lessor was a sale for resale if the lessee transfers title and reg-
 4 istration to a third party within 10 days from the date the lessee acquired title from the
 5 lessor at the expiration or termination of a lease. The presumption may be rebutted by evi-
 6 dence that the sale was not for resale prior to use.

7 **SECTION 72. Use tax; collection by Department of Transportation; disposition of pro-**
 8 **ceeds.** (1) Except when the sale is by lease, in the collection of the use tax on motor vehicles
 9 for which a certificate of title or registration is required, the Department of Transportation
 10 shall act as collecting agent. The Department of Transportation shall collect the use tax, and
 11 any penalty or interest that may be due, at the time an applicant applies for the registration
 12 of, or certification or transfer of title to, the motor vehicle, unless:

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

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

16 (c) The applicant presents a certificate provided by the Department of Revenue or a
 17 retailer under section 115 of this 2009 Act; or

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

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

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

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

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

40
 41 **EXEMPTIONS**

42
 43 (General Exemptions)

44
 45 **SECTION 73. Exemptions must be specific.** Notwithstanding any other provision of law,

1 no exemption may be made from the sales tax or use tax unless such exemption is provided
 2 in the Sales and Use Tax Law.

3 **SECTION 74. Exempted from the taxes imposed by the Sales and Use Tax Law.** “Ex-
 4 empted from the taxes imposed by the Sales and Use Tax Law,” as used in sections 68, 69
 5 and 75 to 115 of this 2009 Act, means, in case of the sales tax, exempted from the computa-
 6 tion of the amount of tax imposed.

7 **SECTION 75. Constitutional exemptions; Indians.** (1) There are exempted from the taxes
 8 imposed by the Sales and Use Tax Law those transactions that this state is prohibited from
 9 taxing under the Constitution or laws of the United States or under the Oregon Constitution.

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

13 **SECTION 76. Water.** There are exempted from the taxes imposed by the Sales and Use
 14 Tax Law the gross receipts from the sales, furnishing or service of and the storage, use or
 15 other consumption in this state of water. As used in this section, “water” does not include
 16 ice (water frozen solid).

17 **SECTION 77. Food products.** (1) There are exempted from the taxes imposed by the Sales
 18 and Use Tax Law the gross receipts from the sale of and the storage, use or other con-
 19 sumption in this state of food products for human consumption.

20 (2) As used in this section:

21 (a) “Food products” includes cereals and cereal products, oleomargarine, meat and meat
 22 products, fish and fish products, eggs and egg products, vegetables and vegetable products,
 23 fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substi-
 24 tutes, tea, cocoa and cocoa products and nonmedicated chewing gum.

25 (b) “Food products” includes milk and milk products, milkshakes, malted milks and any
 26 other similar type beverages that are composed at least in part of milk or a milk product
 27 and that require the use of milk or a milk product in their preparation.

28 (c) “Food products” includes noncarbonated and noneffervescent bottled water and all
 29 fruit juices, vegetable juices and other beverages, whether liquid or frozen, but does not in-
 30 clude spirituous, malt or vinous liquors or carbonated beverages, ice (water frozen solid),
 31 mineral water or soda water.

32 (d) “Food products” does not include medicines, tonics and preparations in liquid, pow-
 33 dered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or ad-
 34 juncts.

35 (e) “Food products” includes food stamps.

36 (3) None of the exemptions provided for in this section apply if:

37 (a) The food products are served as meals on or off the premises of the retailer;

38 (b) The food products are furnished, prepared or served for consumption at tables, chairs
 39 or counters or from trays, glasses, dishes or other tableware whether provided by the
 40 retailer or by a person with whom the retailer contracts to furnish, prepare or serve food
 41 products to others;

42 (c) The food products ordinarily are sold for immediate consumption on or near a lo-
 43 cation at which parking facilities are provided primarily for the use of patrons in consuming
 44 the products purchased at the location, even though such products are sold on a “takeout”
 45 or “to go” order and are actually packaged or wrapped and taken from the premises of the

1 retailer;

2 (d) The food products are sold for consumption within a place, the entrance to which is
 3 subject to an admission charge, except for national and state parks and monuments;

4 (e) The food products are sold through a vending machine and for a value in excess of
 5 the minimum sale upon which a one-cent tax may be collected from the purchaser, according
 6 to the schedule prescribed under section 31 of this 2009 Act; or

7 (f) The food products are sold as hot prepared food products. As used in this paragraph,
 8 “hot prepared food products” means those products, items or components that have been
 9 prepared for sale in a heated condition and that are sold at any temperature that is higher
 10 than the air temperature of the room or place where they are sold. “Hot prepared food pro-
 11 ducts” includes a combination of hot and cold food items or components where a single price
 12 has been established for the combination and the food products are sold in such combination,
 13 such as a hot meal, a hot specialty dish or serving, a hot sandwich or a hot pizza, including
 14 any cold components or side items. “Hot prepared food products” does not include, if sold for
 15 a separate price, bakery goods or beverages (other than bouillon, consommé or soup).

16 **SECTION 78. Alcoholic liquor taxable.** Notwithstanding ORS 471.725, 471.730 or 471.745 or
 17 any other provision of law to the contrary, the taxes imposed by sections 29 and 43 of this
 18 2009 Act shall apply to the gross receipts from the sale of, or the storage, use or other
 19 consumption of alcoholic liquor as defined in ORS 471.001.

20 **SECTION 79. Meals in certain places.** (1) There are exempted from the taxes imposed by
 21 the Sales and Use Tax Law the gross receipts from the sale, service or furnishing of and the
 22 storage, use or other consumption in this state of meals and food products for human con-
 23 sumption furnished or served to the students of a school by:

24 (a) Public or private schools, school districts, student organizations or parent-teacher
 25 associations.

26 (b) The exemption provided by this subsection shall not apply when the meals or food
 27 products are sold for consumption within a place, the entrance to which is subject to an
 28 admission charge, except national and state parks and monuments.

29 (2) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 30 receipts from the sale, service or furnishing of, or the storage, use or other consumption in
 31 this state of, meals and food products for human consumption furnished or served by any
 32 charitable or religious organization at a social or other gathering conducted by it or under
 33 its auspices, if the purpose in furnishing or serving the meals and food products is to obtain
 34 revenue for the functions and activities of the organization and the revenue obtained from
 35 furnishing or serving the meals and food products is actually used in carrying on such
 36 functions and activities. As used in this subsection, “charitable or religious organization”
 37 means a charitable institution or a religious organization that owns property that is exempt
 38 or if the organization owned property, the property would be exempt, from ad valorem
 39 property tax under ORS 307.130 or 307.140.

40 (3) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 41 receipts from the sale, service or furnishing of, or the storage, use or other consumption of,
 42 meals furnished or served by an establishment that furnishes board and room for a flat
 43 monthly rate if the establishment serves as a principal residence exclusively for persons 62
 44 years of age or older, for persons with disabilities or for students, or any combination
 45 thereof.

1 (4) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 2 receipts from the sale, service or furnishing of, or the storage, use or other consumption of,
 3 meals furnished or served by a nonprofit organization or governmental agency if the meals
 4 are furnished or served exclusively for lower income or needy persons.

5 (5) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 6 receipts from the sale, service or furnishing of, or the storage, use or other consumption of,
 7 meals furnished or served to and consumed by residents and patients of a health care facil-
 8 ity, as defined in ORS 442.015.

9 (6) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 10 receipts from the sale of, and storage, use or other consumption in this state of, hot pre-
 11 pared food products sold by caterers or other vendors to air carriers engaged in interstate
 12 or foreign commerce for consumption by passengers on such air carriers and the gross re-
 13 cepts from the sale of and the storage, use or other consumption of hot prepared food pro-
 14 ducts sold or served to passengers by air carriers engaged in interstate or foreign commerce
 15 for consumption by passengers on such air carriers.

16 (7) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 17 receipts from the sale of and the storage, use or other consumption in this state of meals
 18 and food products for human consumption furnished to and consumed by persons residing in
 19 a nonprofit home for the elderly, as described in ORS 307.375, or persons 62 years of age or
 20 older residing in a condominium and who own equal share in a common kitchen facility.
 21 However, to qualify for an exemption under this section, the meals and food products must
 22 be served to such persons on a regular basis.

23 (8) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 24 receipts from the sale of and the storage, use or other consumption in this state of meals
 25 and food products for human consumption furnished to, delivered to and consumed by elderly
 26 persons or persons with disabilities residing in their homes if the meals and food products
 27 are delivered on a regular basis by the same agency, organization or other establishment.

28 **SECTION 80. Sales by charitable organizations.** (1) There are exempted from the taxes
 29 imposed by the Sales and Use Tax Law the gross receipts from the sale of and the storage,
 30 use or other consumption in this state of tangible personal property made, prepared, as-
 31 sembled or manufactured by institutions and organizations formed and operated for chari-
 32 table purposes qualifying for the exemption provided by ORS 307.130 or 307.140, which are
 33 engaged in the relief of poverty and distress, and make the sales as a matter of assistance
 34 to the purchasers.

35 (2) There are exempt from the taxes imposed under section 29 or 43 of this 2009 Act, the
 36 gross receipts from the sale of and the storage, use or other consumption of tangible per-
 37 sonal property if sold by an organization or institution the real property of which, if other-
 38 wise qualified, is entitled to an exemption from ad valorem property tax under ORS 307.130
 39 or 307.140, or the real property of which would be exempt from ad valorem property tax un-
 40 der ORS 307.130 or 307.140 if the institution or organization owned real property located
 41 within this state. However, no exemption shall be allowed under this subsection if the tan-
 42 gible personal property is sold from a retail store or outlet. As used in this section, "retail
 43 store or outlet" does not mean a device or apparatus through which sales are activated by
 44 coin deposits but the phrase shall include automats or business establishments retailing di-
 45 versified goods primarily through the use of such devices or apparatus.

1 **SECTION 81. Prescription medicines.** (1) There are exempted from the taxes imposed by
 2 the Sales and Use Tax Law the gross receipts from the sale of or the storage, use or other
 3 consumption in this state of medicines:

4 (a) Prescribed for the treatment of a human being by a person authorized by law to
 5 prescribe the medicines, and lawfully dispensed on prescription by a pharmacist registered
 6 or licensed as provided by law.

7 (b) Furnished by a physician or osteopath licensed under ORS chapter 677, a physician
 8 assistant authorized to furnish the medicine under ORS chapter 677, a nurse practitioner
 9 authorized to prescribe the medicine under ORS chapter 678, a dentist licensed under ORS
 10 chapter 679 or a podiatrist licensed under ORS chapter 677, to the patient of the physician,
 11 osteopath, physician’s assistant, nurse practitioner, dentist or podiatrist for treatment of the
 12 patient.

13 (c) Furnished by a health care facility for treatment of any person pursuant to the order
 14 of a practitioner authorized to prescribe or dispense medicine described in paragraph (b) of
 15 this subsection.

16 (d) Sold to a practitioner authorized to prescribe or furnish medicine described in para-
 17 graph (b) of this subsection or a health care facility for the treatment of a human being.

18 (e) Sold to this state or any municipal corporation or political subdivision of this state,
 19 for use in the treatment of a human being, or furnished for the treatment of a human being
 20 by a medical facility or clinic maintained by this state or any municipal corporation or poli-
 21 tical subdivision of this state.

22 (2) As used in this section, unless the context requires otherwise:

23 (a) “Health care facility” means a health care facility as defined under ORS 442.015.

24 (b) “Medicine” means any substance or preparation intended for use by external or
 25 internal application to the human body in the diagnosis, cure, mitigation, treatment or pre-
 26 vention of disease and that commonly is recognized as a substance or preparation intended
 27 for such use, and includes but is not limited to sutures, whether or not permanently im-
 28 planted; bone screws, bone pins, pacemakers and other articles permanently implanted in the
 29 human body to assist the functioning of any natural organ, artery, vein or limb and that
 30 remain or dissolve in the body; artificial limbs and eyes for human beings or their replace-
 31 ment parts; any auditory, prosthetic, ophthalmic, dental or ocular device or appliance; arti-
 32 cles that are in the nature of splints, bandages, pads, compresses, supports, dressings,
 33 instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic,
 34 optical or physical equipment or article or the component parts and accessories thereof; and
 35 programmable drug infusion devices to be worn or implanted in the human body. However,
 36 “medicine” does not include:

37 (A) Any articles that are in the nature of instruments, apparatus, contrivances, appli-
 38 ances, devices or other mechanical, electronic, optical or physical equipment or articles or
 39 the component parts and accessories thereof used for the diagnosis of human ailments.

40 (B) Any alcoholic beverage the manufacture, sale, purchase, possession or transportation
 41 of which is licensed and regulated by ORS chapters 471, 472 and 473.

42 (3) Insulin and insulin syringes furnished by a pharmacist registered or licensed as pro-
 43 vided by law to a person for treatment of diabetes, as directed by a physician or other person
 44 authorized to prescribe or dispense medicine, are considered to be dispensed on prescription
 45 within the meaning of this section.

1 (4) Orthotic and prosthetic devices, and replacement parts for such devices, furnished
 2 pursuant to the written order of a practitioner described in subsection (1)(b) of this section
 3 or by a chiropractor licensed under ORS chapter 684, shall be deemed to be dispensed on
 4 prescription within the meaning of subsection (1)(a) of this section, whether or not the de-
 5 vices are furnished by a registered pharmacist.

6 (5) Mammary prostheses, and any appliances and related supplies necessary as the result
 7 of any surgical procedure by which an artificial opening is created in the human body for the
 8 elimination of natural waste, shall be deemed to be dispensed on prescription within the
 9 meaning of this section.

10 (6) Wheelchairs, crutches, canes, quad canes and walkers and replacement parts for such
 11 devices, when sold to an individual for the personal use of that individual as directed by a
 12 practitioner authorized to prescribe or dispense medicine shall be considered to be medicine
 13 dispensed on prescription within the meaning of this section.

14 (7) There shall be exempt from the taxes imposed by the Sales and Use Tax Law the gross
 15 receipts from the sale, service or furnishing, or the storage, use or other consumption in this
 16 state of:

17 (a) Dentures, as defined in ORS 680.500.

18 (b) Hearing aids, as defined in ORS 694.015.

19 (c) Eyeglasses, contact or other lenses, or other ophthalmic materials, if sold or fur-
 20 nished by an optometrist registered or licensed to practice optometry in this or another state
 21 or by a physician, surgeon or a dispensing optician.

22 (d) Hemodialysis products, supplied to a patient on order of a practitioner described in
 23 subsection (1)(b) of this section.

24 (8) Producers of X-ray films or photographs for the purpose of diagnosing medical or
 25 dental conditions of human beings, excluding use of those products for purely cosmetic pur-
 26 poses, are the consumers of materials and supplies used in the production of the X-ray films
 27 or photographs.

28 (9) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 29 receipts from the sale, and the storage, use or other consumption, in this state of any med-
 30 ical oxygen delivery system, including but not limited to liquid oxygen containers, high-
 31 pressure cylinders and regulators, when sold, leased or rented to an individual for the
 32 personal use of that individual as directed by a physician.

33 **SECTION 82. Vehicles for persons with physical disabilities.** There are exempted from
 34 the taxes imposed by the Sales and Use Tax Law the gross receipts from the sale, and the
 35 storage, use or other consumption, in this state of items and materials when used to modify
 36 a vehicle for persons with physical disabilities.

37 **SECTION 83. Educational institutions; property loaned to.** (1) The loan by any retailer
 38 of any tangible personal property to any school district for an educational program con-
 39 ducted by the district is exempt from the use tax.

40 (2) The loan by any retailer of any motor vehicle, as defined in section 11 of this 2009
 41 Act, to any college or university, or to any community college, for the exclusive use in an
 42 approved driver education teacher preparation certification program conducted by the col-
 43 lege, university or community college is exempt from the use tax.

44 (3) The loan by any retailer of a motor vehicle to be used exclusively for driver training
 45 in an accredited private or parochial secondary school in a driver education and training

1 program that is a regularly conducted course of study is exempt from the use tax.

2 (4) If a retailer makes any other use of property except retention, demonstration or dis-
 3 play while holding it for sale in the regular course of business, the use is taxable to the
 4 retailer under section 43 of this 2009 Act as of the time the property is first so used, and the
 5 sales price of the property to the retailer is the measure of the tax.

6 **SECTION 84. Ingredient rule; property used in industrial processing.** There are exempted
 7 from the taxes imposed by the Sales and Use Tax Law the gross receipts from the sale, lease
 8 or rental of and the storage, use or other consumption in this state of tangible personal
 9 property that will enter into and become an ingredient or component part of tangible per-
 10 sonal property manufactured, processed or fabricated for ultimate sale at retail within or
 11 without this state. The exemption provided in this section does not include:

12 (1) Unless the property becomes an ingredient or component part of other tangible per-
 13 sonal property, tangible personal property used or consumed in or during any phase of such
 14 actual manufacturing, processing or fabricating operation, even if the use or consumption
 15 of such tangible personal property is necessary or essential to the performance of such op-
 16 eration. Chemicals, catalysts and other materials that are used during such operation and
 17 that are used for the purpose of producing or inducing a chemical or physical change during
 18 such operation or for removing impurities or otherwise placing a product in a more
 19 marketable condition are also not exempt, nor are other articles of tangible personal prop-
 20 erty used in such a manner as to be necessary or essential in the actual manufacturing,
 21 processing or fabricating operation;

22 (2) Machinery, equipment and replacement parts and accessories therefor;

23 (3) Machinery, equipment, materials and supplies used in a manner that is merely inci-
 24 dental to the manufacturing, processing or fabricating operation, including but not limited
 25 to intraplant transportation equipment, and maintenance and janitorial equipment and sup-
 26 plies;

27 (4) Hand tools, including but not limited to hammers, wrenches and saws; and

28 (5) Tangible personal property used by a manufacturer, processor or fabricator in any
 29 activities other than the actual manufacturing, processing or fabricating operation, including
 30 but not limited to office equipment and supplies, equipment and supplies used in selling or
 31 distributing activities, in research and development of new products, or in transportation
 32 activities.

33 **SECTION 85. Animal life; feed; seed; fertilizer; farm machinery sold to nonresidents for**
 34 **use outside state.** (1) There are exempted from the taxes imposed by the Sales and Use Tax
 35 Law the gross receipts from sales of and the storage, use or other consumption of animal
 36 life, feed, seed, plants, fertilizer and pesticides that, or the products of which, are ordinarily
 37 used or for use in commercial, agricultural, horticultural or silvicultural activities.

38 (2) Machinery and implements for use in conducting a farming activity, if the machinery
 39 or implements are transported immediately outside this state. The Department of Revenue
 40 may require whatever evidence it considers necessary to substantiate a claim for exemption
 41 under this subsection.

42 **SECTION 86. Cigarettes.** There are exempted from the taxes imposed by the Sales and
 43 Use Tax Law the gross receipts from the sale of, and the storage, use or other consumption
 44 in this state of, cigarettes that have been subjected to tax pursuant to the provisions of ORS
 45 chapter 323.

1 **SECTION 87. Containers.** There are exempted from the taxes imposed by the Sales and
 2 Use Tax Law the gross receipts from sales of, and the storage, use or other consumption in
 3 this state of:

4 (1) Nonreturnable containers when sold without the contents to persons who place the
 5 contents in the container and sell the contents together with the container.

6 (2) Containers when sold with the contents if the sales price of the contents is not re-
 7 quired to be included in the measure of the taxes imposed by the Sales and Use Tax Law.

8 (3) Returnable containers when sold with the contents in connection with a retail sale
 9 of the contents or when resold for filling. For purposes of this section, “returnable contain-
 10 ers” means containers of a kind customarily returned by the buyer for reuse. All other
 11 containers are “nonreturnable containers.”

12 **SECTION 88. Warranty obligations.** There are exempted from the taxes imposed by the
 13 Sales and Use Tax Law the gross receipts from furnishing goods to the purchaser or a suc-
 14 cessor in interest of tangible personal property to fulfill a warranty obligation to the extent
 15 that such goods are not charged to the purchaser or a successor in interest.

16 **SECTION 89. Newspapers and periodicals.** (1) There are exempted from the taxes imposed
 17 by the Sales and Use Tax Law the gross receipts from the sale of, and the storage, use or
 18 other consumption in this state of, tangible personal property that becomes an ingredient
 19 or component part of any newspaper or periodical regularly issued at average intervals not
 20 exceeding three months and any such newspaper or periodical.

21 (2) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 22 receipts from the sale of, and the storage, use or other consumption in this state of, a pho-
 23 tograph, whether or not produced to special order, when the possession, but not the title,
 24 of the photograph is transferred for the purpose of being reproduced one time only, in a
 25 newspaper regularly issued at the intervals set forth in subsection (1) of this section.

26 **SECTION 90. Motor vehicle and aircraft fuel.** (1) There are exempted from the taxes
 27 imposed by the Sales and Use Tax Law the gross receipts from the sale or distribution of and
 28 the storage, use or other consumption in this state of motor vehicle fuel, or fuel, the sale,
 29 use or other consumption of which in this state is:

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

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

33 (2) The Department of Transportation shall collect the sales tax upon sales of motor ve-
 34 hicle fuel, fuel and aircraft fuel that are subject to tax and refund under ORS chapter 319.
 35 Collection may be accomplished by way of deduction from refunds otherwise allowable under
 36 ORS chapter 319. For the purpose of establishing gross receipts upon which the sales tax is
 37 computed, the Department of Transportation shall use estimated average fuel sales prices.
 38 At the request of a refund claimant, the Department of Transportation may adjust the sales
 39 tax so computed upon presentation by the claimant of information showing the exact amount
 40 paid for the fuel upon which refund is claimed. The Department of Transportation shall
 41 transfer the amount of the sales tax deductions from the appropriate General Fund account
 42 from which refunds are made under ORS chapter 319. The moneys transferred by the De-
 43 partment of Transportation under this subsection shall be deposited promptly in the sus-
 44 pense account created under ORS 802.100 (1). So much as is necessary of the moneys so
 45 collected is continuously appropriated to the Department of Transportation to pay the ad-

1 **ministrative expenses and refunds of the Department of Transportation in collecting the**
 2 **sales tax under this subsection. All moneys in excess of these administrative expenses and**
 3 **refunds shall be transferred monthly to the General Fund. At least once each month the**
 4 **Department of Transportation shall account to the Department of Revenue for all sales tax**
 5 **moneys collected under this subsection.**

6 **(3) In accordance with joint rules, applicable after June 30, 2010, of the Department of**
 7 **Revenue, the Public Utility Commission and the Department of Transportation:**

8 **(a) Sales taxes collected on fuel exempt from the tax imposed under ORS 319.510 to**
 9 **319.880 by ORS 825.484 (2) may be offset against taxes imposed under ORS chapter 825 in**
 10 **returns made under that chapter. On the 15th day of each month, the Public Utility Com-**
 11 **mission shall certify to the Department of Revenue and the State Treasurer the amount so**
 12 **offset and the State Treasurer shall cause that amount to be transferred from the General**
 13 **Fund to the Motor Carrier Account in the General Fund.**

14 **(b) Sales tax collected on fuel subject to tax under ORS 319.010 to 319.430 or 319.510 to**
 15 **319.880, and not subject to refund, may be offset against taxes imposed under ORS 319.010**
 16 **to 319.430 or 319.510 to 319.880 in returns made under those statutes. On the 15th day of each**
 17 **month the Department of Transportation shall certify to the Department of Revenue and the**
 18 **State Treasurer the amount so offset and the State Treasurer shall cause that amount to**
 19 **be transferred from the General Fund to the State Highway Fund.**

20 **SECTION 91. Fuel oil and natural gas, electricity, firewood, coal, nuclear fuel and other**
 21 **fuel products and waste by-products. (1) There are exempted from the taxes imposed by the**
 22 **Sales and Use Tax Law the gross receipts from the sales, furnishing or service of and the**
 23 **storage, use or other consumption of:**

24 **(a) Fuel oil, natural gas, liquefied petroleum gas, electricity or geothermal resources**
 25 **when delivered to consumers through mains, lines, pipes or by tank truck or for purposes**
 26 **of residential heating and of exhaust steam, waste steam, heat or resultant energy, produced**
 27 **in connection with cogeneration technology.**

28 **(b) Coal.**

29 **(c) Firewood.**

30 **(d) Organic products grown expressly for fuel purposes.**

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

34 **(f) Nuclear fuel. For purposes of this paragraph, “nuclear fuel” means special nuclear**
 35 **material and source material used for fueling or refueling nuclear reactors.**

36 **(2) As used in this section, “cogeneration” means the sequential use of energy for the**
 37 **production of electrical and useful thermal energy. The sequence can be thermal use followed**
 38 **by power production or the reverse, subject to the following standards:**

39 **(a) At least five percent of the cogeneration project’s total annual energy output shall**
 40 **be in the form of useful thermal energy.**

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

44 **SECTION 92. Aircraft sold in interstate or foreign commerce. (1) There are exempted**
 45 **from the taxes imposed by the Sales and Use Tax Law the gross receipts from the sale of**

1 and the storage, use or other consumption of aircraft sold or leased or sold to persons for
 2 the purpose of leasing to:

- 3 (a) Persons using such aircraft as common carriers of persons or property under au-
 4 thority of the laws of this state, of the United States or any foreign government;
- 5 (b) Any foreign government for use by such government outside this state; or
- 6 (c) Persons who are not residents of this state and who will not use such aircraft in this
 7 state otherwise than in the removal of such aircraft from this state.

8 (2) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 9 receipts from the sale of and the storage, use or other consumption in this state of tangible
 10 personal property sold to an aircraft manufacturer and incorporated into aircraft to be
 11 leased by the manufacturer under conditions set forth in subsection (1) of this section.

12 **SECTION 93. Watercraft.** (1) There are exempted from the taxes imposed by the Sales
 13 and Use Tax Law the gross receipts from the sale of and the storage, use, lease, sale to
 14 persons for the purpose of leasing, or other consumption in this state of watercraft for use
 15 in interstate or foreign commerce involving the transportation of property or persons for
 16 hire or for use in commercial deep sea fishing operations outside the territorial waters of
 17 this state, by persons who are regularly engaged in commercial deep sea fishing and any
 18 sales of tangible personal property becoming a component part of such watercraft in the
 19 course of constructing, repairing, cleaning, altering or improving the same and charges made
 20 for labor and services rendered in respect to such constructing, repairing, cleaning, altering
 21 or improving.

22 (2) For purposes of this section, a person is not regularly engaged in commercial deep
 23 sea fishing if the person has gross receipts from commercial fishing operations of less than
 24 \$5,000 for the taxable year, for income tax purposes, prior to the year of sale, storage, use
 25 or consumption.

26 **SECTION 94. Motor vehicle or vessel sold to nonresident.** (1) There are exempted from
 27 the taxes imposed by the Sales and Use Tax Law the gross receipts from the sale of and the
 28 storage, use or other consumption in this state of any motor vehicle that is sold to a non-
 29 resident of this state for use outside of this state, even though delivery is made within this
 30 state, if the motor vehicle:

- 31 (a) Is to be taken from the point of delivery in this state directly to a point outside this
 32 state under authority of a permit issued under the authority of the Department of Trans-
 33 portation; or
- 34 (b) Will be registered and licensed immediately under the laws of the state of the pur-
 35 chaser's residence, will not be used in this state more than three months and will not be
 36 required to be registered or licensed under the laws of this state.

37 (2) There are exempted from the taxes imposed by the Sales and Use Tax Law the gross
 38 receipts from the sale of, and the storage, use or other consumption in this state of any
 39 vessel that is sold to a nonresident of this state for use outside this state, even though de-
 40 livery is made within this state, if:

- 41 (a) The vessel will not be used within this state for more than 45 days; and
- 42 (b) An appropriate exemption certificate supported by identification ascertaining resi-
 43 dence as provided by the Department of Revenue and signed by the purchaser or the pur-
 44 chaser's agent establishing the fact that the purchaser is a nonresident and that the vessel
 45 is for use outside of this state is filed with the Department of Revenue in accordance with

1 any rules of the Department of Revenue.

2 **SECTION 95. New vehicles purchased from out-of-state dealer.** (1) There are exempted
3 from the taxes imposed by the Sales and Use Tax Law the gross receipts from the sale of
4 and the storage, use or other consumption in this state of a new truck, new truck tractor,
5 new semitrailer or new trailer, any of which has an unladen weight of 6,000 pounds or more,
6 or a new trailer coach or new auxiliary dolly, if such vehicle:

7 (a) Is purchased from a dealer located outside this state for use outside this state; and

8 (b) Is delivered by the manufacturer to the purchaser within this state, and such pur-
9 chaser drives or moves such vehicle from the manufacturer's place of business in this state
10 to any point outside this state not later than the 30th day after delivery.

11 (2) In order to qualify for exemption under subsection (1) of this section, the purchaser
12 must furnish to the manufacturer:

13 (a) Written evidence of an out-of-state registration for the vehicle;

14 (b) The purchaser's affidavit attesting that the purchaser is not a resident of this state
15 and that the purchaser purchased the vehicle from a dealer at a specified location outside
16 this state for use outside this state; and

17 (c) The purchaser's affidavit that the vehicle has been moved or driven to a point outside
18 this state not later than the 30th day after delivery of the vehicle to the purchaser.

19 **SECTION 96. Used manufactured structure and floating homes.** There are exempted
20 from the taxes imposed by the Sales and Use Tax Law, gross receipts from the sale, lease
21 or rental of, and the storage, use or other consumption in this state of, any used manufac-
22 tured structure or any used floating home. As used in this section, "manufactured
23 structure" and "floating home" have the meanings given those terms in section 8 of this 2009
24 Act.

25 **SECTION 97. Rail freight cars.** There are exempted from the taxes imposed by the Sales
26 and Use Tax Law the gross receipts from the sale of and the storage, use or other con-
27 sumption in this state of rail freight cars for use in interstate or foreign commerce, and any
28 sales of tangible personal property becoming a component part of such rail freight cars in
29 the course of constructing, repairing, cleaning, altering or improving the same, and charges
30 made for labor and services rendered in respect to such constructing, repairing, cleaning,
31 altering or improving.

32 **SECTION 98. Preexisting construction contracts.** There are exempted from the taxes
33 imposed by the Sales and Use Tax Law the gross receipts from the sale of and the storage,
34 use or other consumption in this state of materials, supplies and services to contractors for
35 use in erecting structures for others, or building on or otherwise improving, altering or re-
36 pairing real property of others, if such structure, building, improvement, alteration or repair
37 is the subject of a written bid or contract duly tendered or entered into by such contractor
38 before the effective date of this 2009 Act.

39
40 (Exemptions from Sales Tax)

41
42 **SECTION 99. United States Government and instrumentalities.** (1) There are exempted
43 from the computation of the amount of the sales tax imposed under section 29 of this 2009
44 Act the gross receipts from the sale of any tangible personal property to:

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

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

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

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

6 **SECTION 100. United States contractors.** A sale of tangible personal property to a con-
 7 tractor purchasing such property either as the agent of the United States or for the con-
 8 tractor's own account and subsequent resale to the United States for use in the performance
 9 of a contract with the United States for the construction of improvements on or to real
 10 property in this state is a retail sale. The gross receipts from the sale or the sales price of
 11 the property so sold shall be included in the measure of the taxes imposed under the Sales
 12 and Use Tax Law.

13 **SECTION 101. Sales to common carriers.** (1) There are exempted from the computation
 14 of the amount of the sales tax imposed under section 29 of this 2009 Act the gross receipts
 15 from sales of tangible personal property to a common carrier, shipped by the seller via the
 16 purchasing carrier under a bill of lading, whether the freight is paid in advance or the ship-
 17 ment is made freight charges collect, to a point outside this state and the property is actu-
 18 ally transported to the out-of-state destination for use by the carrier in the conduct of its
 19 business as a common carrier.

20 (2) As used in this section with respect to water transportation, "common carrier"
 21 means any person who engages in the business of transporting persons or property for hire
 22 or compensation and who offers their services indiscriminately to the public or some portion
 23 of the public and includes any vessel engaged for compensation in transporting persons or
 24 property in interstate or foreign commerce.

25 (3)(a) There are exempted from the computation of the amount of the sales tax the gross
 26 receipts from sales of tangible personal property, other than aircraft fuel and petroleum
 27 products, purchased by a foreign air carrier and transported by the foreign air carrier to a
 28 foreign destination for use by the air carrier in the conduct of its business as a common
 29 carrier by air of persons or property.

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

37 (4) Pursuant to subsection (3) of this section, any use of the property by the purchasing
 38 foreign air carrier, other than that incident to delivery of the property to the foreign air
 39 carrier and the transportation of the property by the carrier to a foreign destination and
 40 subsequent use in the conduct of its business as a common carrier, or a failure of the foreign
 41 air carrier to document its transporting the property to a foreign destination, shall subject
 42 the carrier to liability for payment of sales tax as if it were a retailer making a retail sale
 43 of the property at the time of such use or failure, and the cost of the property to it shall
 44 be deemed to be the gross receipts from such retail sale.

45 (5) "Foreign air carrier," as used in this section, means a foreign air carrier as defined

1 in 49 U.S.C. 40102, as amended and in effect on December 31, 1996.

2 (6) Nothing in section 5 or 17 of this 2009 Act shall affect the exemption afforded under
 3 this section to sales of tangible personal property to a common carrier under the circum-
 4 stances set forth in this section.

5 **SECTION 102. Sales to water, air or rail carriers.** There are exempted from the taxes
 6 imposed by section 29 of this 2009 Act the gross receipts from sales of tangible personal
 7 property, other than tangible personal property described in sections 75 to 115 of this 2009
 8 Act, for use by the purchaser in connection with the business of operating as a private or
 9 common carrier by water, air or rail in interstate or foreign commerce. However:

10 (1) Any actual use of such property or services in this state shall be subject to the tax
 11 imposed by section 43 of this 2009 Act at the time of such actual use; and

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

15 **SECTION 103. Cargo containers for use in interstate or foreign commerce.** (1) If a cargo
 16 container, as defined in this section, is purchased for use outside of this state and is deliv-
 17 ered by an in-state manufacturer to the purchaser within this state, and the purchaser
 18 moves the cargo container to any point outside this state within 30 days from and after the
 19 date of delivery, there are exempted from the taxes imposed by the Sales and Use Tax Law
 20 the gross receipts from the sale of and the storage, use or other consumption of the cargo
 21 container within this state provided that the purchaser furnishes all of the following to the
 22 manufacturer:

23 (a) The purchaser's affidavit attesting that the purchaser purchased such cargo con-
 24 tainer at a specified location for use exclusively outside this state, or exclusively in inter-
 25 state commerce.

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

28 (2) As used in this section, "cargo container" means a receptacle that has all of the fol-
 29 lowing characteristics:

30 (a) Is of a permanent character and accordingly strong enough to be suitable for repeated
 31 use.

32 (b) Is specially designed to facilitate the carriage of goods, by one or more modes of
 33 transport, one of which shall be by vessels, without intermediate reloading.

34 (c) Is fitted with devices permitting its ready handling, particularly its transfer from one
 35 mode of transport to another.

36 (d) Is designed to be easy to fill and empty.

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

38 **SECTION 104. Occasional sales.** (1) There are exempted from the computation of the
 39 amount of the sales tax imposed under section 29 of this 2009 Act the gross receipts from
 40 occasional sales of tangible personal property as described under section 13 (1) of this 2009
 41 Act. This exemption does not apply to the gross receipts from the sale of, or the storage,
 42 use or other consumption in this state of, a vehicle, vessel or aircraft as defined in section
 43 61 of this 2009 Act.

44 (2) This section shall not preclude the exemptions granted under section 69 of this 2009
 45 Act.

1 SECTION 105. Export packers. There are exempted from the computation of the amount
2 of the sales tax imposed under section 29 of this 2009 Act the gross receipts from sales of
3 tangible personal property purchased for use outside the continental limits of the United
4 States and delivered to a forwarding agent, export packer or other person engaged in the
5 business of preparing goods for export or arranging for their exportation, and actually de-
6 livered to a port outside the continental limits of the United States prior to making any use
7 thereof.

8 SECTION 106. Out-of-state contractors. There are exempted from the computation of the
9 amount of the sales tax imposed under section 29 of this 2009 Act the gross receipts from
10 the sale in this state of tangible personal property to a holder of a valid seller’s permit issued
11 under section 37 of this 2009 Act if the property is used by the purchaser outside of this state
12 in the performance of a contract to improve real property and, as a result of such use, is
13 incorporated into and becomes a part of real property located outside this state. This ex-
14 emption applies only if the purchaser certifies in writing to the seller, in such form as the
15 Department of Revenue may prescribe, that the property will be used in a manner and for
16 a purpose specified in this section.

17 SECTION 107. Rentals included in use tax or outside this state. There are exempted from
18 the computation of the amount of the sales tax imposed under section 29 of this 2009 Act the
19 rentals payable under a lease of tangible personal property when such rentals are required
20 to be included in the measure of the use tax imposed under section 43 of this 2009 Act or
21 when such property is situated outside this state.

22 SECTION 108. Interstate shipments. (1) There are exempted from the computation of the
23 amount of the sales tax imposed under section 29 of this 2009 Act the gross receipts from
24 the sale of tangible personal property that, pursuant to the contract of sale, is required to
25 be shipped and is shipped to a point outside this state by the retailer by means of:

- 26 (a) Facilities operated by the retailer; or
- 27 (b) Delivery by the retailer to a carrier, customs broker or forwarding agent, whether
28 hired by the purchaser or not, for shipment to such out-of-state point.

29 (2) For purposes of this section:

30 (a) “Carrier” means a person or firm engaged in the business of transporting for com-
31 pensation tangible personal property owned by other persons, and includes both common and
32 contract carriers.

33 (b) “Forwarding agent” means a person or firm engaged in the business of preparing
34 property for shipment or arranging for its shipment.

35
36 (Exemptions from Use Tax)
37

38 SECTION 109. Items on which sales tax imposed. (1) Subject to subsection (2) of this
39 section, the storage, use or other consumption in this state of property, the gross receipts
40 from the sale of which are required to be included in the measure of the sales tax imposed
41 under section 29 of this 2009 Act, is exempted from the use tax imposed under section 43 of
42 this 2009 Act. However, this exemption does not extend to the possession of, or the exercise
43 of, any right or power over tangible personal property by a lessee under a lease.

44 (2) No credit or refund of any amount of use tax paid may be allowed on the ground that
45 the storage, use or other consumption of the property was exempted under subsection (1)

1 of this section, unless the person who paid the amount reimburses the vendor for the
 2 amount of the sales tax imposed upon the vendor with respect to the sale of the property
 3 and paid by the vendor to this state.

4 **SECTION 110. Occasional sales.** (1) The storage, use or other consumption in this state
 5 of tangible personal property, the transfer of which by the seller is an occasional sale, is
 6 exempted from the use tax imposed under section 43 of this 2009 Act if:

7 (a) The sales price of the particular item of tangible personal property involved in an
 8 occasional sale under section 13 (1) of this 2009 Act does not exceed \$500 and the purchase
 9 is for personal use or consumption and not for use or consumption in carrying on a trade,
 10 occupation, business or profession; or

11 (b) The transfer is an occasional sale under section 13 (2) of this 2009 Act.

12 (2) This exemption does not apply to the gross receipts from the sale of, or the storage,
 13 use or other consumption in this state of, a vehicle, vessel or aircraft as defined in section
 14 61 of this 2009 Act.

15 **SECTION 111. Property of nonresident temporarily in state.** (1) The storage, use or other
 16 consumption in this state of tangible personal property brought into this state by a nonres-
 17 ident thereof for the nonresident's use or enjoyment while temporarily within this state is
 18 exempted from the use tax imposed under section 43 of this 2009 Act unless such tangible
 19 personal property is used in conducting a nontransitory business activity within this state.

20 (2) The use in this state by a nonresident of this state of a motor vehicle that is regis-
 21 tered or licensed under the laws of the state of the nonresident's residence, and that is not
 22 required to be registered or titled under the laws of this state, is exempted from the use tax.

23 **SECTION 112. New resident's purchases while nonresident.** The storage, use or other
 24 consumption in this state of tangible personal property by a bona fide resident of this state
 25 is exempted from the use tax imposed under section 43 of this 2009 Act if such tangible
 26 personal property was acquired by such a person in another state while a bona fide resident
 27 thereof and primarily for use outside this state and if such use was actual and substantial.
 28 If such tangible personal property was acquired by such person less than three months prior
 29 to the time the person entered this state, it is presumed that the tangible personal property
 30 was acquired for use in this state and that its use outside this state was not actual and
 31 substantial.

32 **SECTION 113. Contractors and subcontractors.** If a contractor, subcontractor or builder
 33 uses tangible personal property in the performance of the contract or to fulfill contract or
 34 subcontract obligations entered into on or after the operative date specified in section 162
 35 of this 2009 Act, whether the title to such property is in the name of the contractor, sub-
 36 contractor, contractee, subcontractee, or any other person, or whether the titleholder of
 37 such property would be subject to pay the taxes imposed by the Sales and Use Tax Law, such
 38 contractor or subcontractor shall pay the use tax imposed under section 43 of this 2009 Act,
 39 measured by the purchase price or fair market value for such property, whichever is greater,
 40 unless the property has been previously subjected to a sales or use tax in this state and the
 41 tax due thereon has been paid.

42
 43 (Exemption Certificates)
 44

45 **SECTION 114. Liability of purchaser.** If a purchaser certifies in writing to a seller that

1 the property purchased will be used in a manner or for a purpose entitling the seller to re-
 2 gard the gross receipts from the sale as exempted under the Sales and Use Tax Law from
 3 the computation of the amount of the sales tax, and uses the property in some other manner
 4 or for some other purpose, the purchaser is liable for payment of sales tax as if the pur-
 5 chaser were a retailer making a retail sale of the property at the time of such use, and the
 6 cost of the property to the purchaser is considered to be the gross receipts from the retail
 7 sale. For purposes of this section, "use" has the meaning given that term in section 25 (2)
 8 of this 2009 Act without the exclusion provided in section 25 (3) of this 2009 Act.

9 **SECTION 115. Vehicles; exemption certificates.** The Department of Revenue may provide
 10 for exemption certificates and other tax clearance certificates to be issued by it or by
 11 retailers selling vehicles as defined in section 61 of this 2009 Act. Such certificates shall be
 12 used to allow a completion of registration of a vehicle by the Department of Transportation.
 13 The certificates may indicate that the Department of Revenue finds that no use tax is due
 14 under section 43 of this 2009 Act or is likely to become due with respect to the storage, use
 15 or other consumption of the vehicle, or that the tax has been paid or is to be paid in a
 16 manner not requiring the withholding of a registration or transfer of registration. The cer-
 17 tificates shall be in such form as the Department of Revenue may prescribe and shall be
 18 executed, issued and accepted for clearance of registration on such conditions as the De-
 19 partment of Revenue may prescribe. No person shall issue, alter, forge or use any such
 20 certificate in a manner contrary to the requirements of the Department of Revenue.

21
 22 **RETURNS AND PAYMENTS**
 23

24 **SECTION 116. Due date.** The taxes imposed by the Sales and Use Tax Law are due and
 25 payable to the Department of Revenue as follows:

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

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

32 (3) Except as provided in section 118 of this 2009 Act, if the taxes may reasonably be ex-
 33 pected to exceed \$5,000 for the entire calendar year, the taxes are due and payable quarterly
 34 not later than the 15th day of the calendar month next following the calendar quarter.

35 **SECTION 117. Filing return.** Not later than the last day of the calendar month next fol-
 36 lowing the taxable period for a retailer described section 116 (1) or (2) of this 2009 Act, or the
 37 15th day of the calendar month next following the taxable quarter for a retailer described in
 38 section 116 (3) of this 2009 Act, a return for the preceding taxable period shall be filed with
 39 the Department of Revenue in such form as the department may prescribe. For purposes of
 40 the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return
 41 shall be filed by every retailer engaged in business in this state, by every person to whom a
 42 permit is issued under section 48 of this 2009 Act and by every person purchasing tangible
 43 personal property, the storage, use or other consumption of which is subject to the use tax,
 44 who has not paid the use tax due to a retailer required to collect the tax. Returns must be
 45 signed by the person required to file the return or by a duly authorized agent.

1 **SECTION 118. Estimated tax.** (1) Any person subject to section 116 (3) of this 2009 Act
2 in accordance with rules adopted by the Department of Revenue, shall remit to the depart-
3 ment for the first and second month of the calendar quarter an estimate of the tax to be due
4 for that month on or before the seventh day of the calendar month next succeeding the end
5 of the month for which the tax accrued. The remaining tax due and payable for the calendar
6 quarter shall be due and payable to the department as provided in section 116 (3) of this 2009
7 Act. The amount remitted for each of the first two calendar months of the calendar quarter
8 shall be at least 90 percent of the tax actually collected or owing during the month less
9 credits allowed under section 52 of this 2009 Act and the discount allowed under section 31
10 (5) of this 2009 Act.

11 (2) The department may adopt rules that enable the retailer or the department to credit
12 against the estimated sales or use tax liability the amount the retailer or the department
13 determines to be an overpayment of estimated tax for any period.

14 (3) Payment of the estimated tax under this section shall be considered payment on ac-
15 count of the sales or use tax imposed by section 29 or 43 of this 2009 Act.

16 (4) If a retailer makes an underpayment of estimated tax imposed under this section,
17 interest shall accrue on the amount underpaid at the rate established under ORS 305.220, for
18 the period that the estimated tax remains unpaid. The penalty provisions contained in sec-
19 tion 122 of this 2009 Act for underpayment of tax shall not apply to underpayments of esti-
20 mated tax imposed under this section.

21 **SECTION 119. Contents of return.** (1) For purposes of the sales tax on tangible personal
22 property, the return shall show the gross receipts of the seller during the reporting period.

23 (2) For purposes of the use tax, the return shall show the total sales price of the property
24 sold or purchased, the storage, use or consumption of which became subject to the use tax
25 during the reporting period.

26 (3) The return also shall show the amount of the taxes for the period covered by the re-
27 turn and such other information as the Department of Revenue considers necessary for the
28 proper administration of the Sales and Use Tax Law.

29 **SECTION 120. Lessor and lessee.** Section 119 of this 2009 Act shall not be applicable with
30 respect to a lease of tangible personal property. However, the lessor shall report the rentals
31 paid by the lessee during the preceding reporting period and the lessee shall report the
32 rentals payable in the preceding reporting period upon which tax has not been paid to the
33 lessor required to collect the tax. The return shall also show the amount of the taxes for the
34 period covered by the return and such other information as the Department of Revenue
35 deems necessary for the proper administration of the Sales and Use Tax Law.

36 **SECTION 121. Extension of time.** The Department of Revenue for good cause may extend
37 for no more than one month the time for making any return under the Sales and Use Tax
38 Law. The extension may be granted at any time if a written request therefor is filed with the
39 department within or prior to the period for which the extension may be granted. When the
40 time for filing a return is extended at the request of a taxpayer, interest on the unpaid tax
41 at the rate established under ORS 305.220, for each month or fraction of a month from the
42 time the return was originally required to be filed to the time of payment, shall be added and
43 paid.

44 **SECTION 122. Delinquencies; penalties.** (1) If there is a failure to file a return required
45 under the Sales and Use Tax Law at the time prescribed therefor, or a failure to pay a tax

1 at the time the tax becomes due, and no extension is granted under section 121 of this 2009
 2 Act, or if the time granted as an extension has expired and there is a failure to file a return
 3 or pay a tax, there shall be added to the amount of tax required to be shown on the return
 4 a delinquency penalty of five percent of the amount of the tax.

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

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

9 (b) Thereafter, the Department of Revenue may send a notice and demand to the person
 10 to file a return within 30 days of the mailing of the notice. If, after such notice and demand,
 11 no return is filed within 30 days, the department may determine the tax according to the best
 12 of its information and belief, assess the tax with appropriate penalty and interest, plus an
 13 additional penalty of 25 percent of the tax deficiency determined by the department, and give
 14 written notice of the determination and assessment to the person required to make the fil-
 15 ing.

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

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

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

20 (4) Interest shall be collected on the unpaid tax at the rate established under ORS
 21 305.220, for each month or fraction of a month, computed from the time the tax became due,
 22 during which the tax remains unpaid.

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

26 SECTION 123. Proceeding to compel return. (1) If a person fails to file a report or return
 27 within 60 days of the time prescribed by any tax law administered by the Department of
 28 Revenue, the department may petition the Oregon Tax Court for an order requiring the
 29 person to show cause why the person is not required to file the report or return.

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

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

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

37 (c) File with the court an answer to the petition showing cause why such report or re-
 38 turn is not required to be filed.

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

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

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

1 **SECTION 124. Penalty; discount; temporary provisions.** Notwithstanding the provisions
 2 of sections 31 (5) and 122 of this 2009 Act, no penalty for late filing of return or late payment
 3 of tax due shall be assessed and the right of a retailer to retain a percentage of sales tax due
 4 shall not be denied during the six-month period beginning on the operative date specified in
 5 section 162 of this 2009 Act.

6 **SECTION 125. Duty to file proper returns.** (1) No retailer or other person shall:

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

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

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

12 (2) No person who is required to make, render, sign or verify any return under the Sales
 13 and Use Tax Law shall make a false or fraudulent return or fail to furnish a return with
 14 intent to defeat or evade the determination of an amount due required by law.

15
 16 **DETERMINATIONS**

17
 18 **SECTION 126. Audits; deficiencies; assessments; refunds; appeals.** The provisions of ORS
 19 chapters 305 and 314 as to the audit and examination of returns, periods of limitations, de-
 20 termination of deficiencies, assessment, liens, delinquencies, claims for refund, conferences
 21 and appeals to the Oregon Tax Court, and the procedures relating thereto, shall apply to the
 22 determinations of taxes, penalties and interest under the Sales and Use Tax Law, except
 23 where the context requires otherwise.

24
 25 **(Deficiencies)**

26
 27 **SECTION 127. Deficiency determination.** If, under the Sales and Use Tax Law, the De-
 28 partment of Revenue is not satisfied with the return of the tax or the amount of tax required
 29 to be paid to this state by any person, it may compute and determine the amount required
 30 to be paid upon the basis of the facts contained in the return or upon the basis of any in-
 31 formation within its possession or that may come into its possession. One or more deficiency
 32 determinations may be made of the amount due for one or for more than one period. Notices
 33 of deficiency shall be given within the time for giving notices of deficiencies under the vari-
 34 ous circumstances described under ORS 314.410. Notices of deficiency shall be given and in-
 35 terest on deficiencies shall be computed as provided in ORS 305.265. Subject to ORS 314.421
 36 and 314.423, liens for taxes or deficiencies shall arise at the time of assessment, shall con-
 37 tinue until the taxes, interest and penalties are fully satisfied and may be recorded and col-
 38 lected in the manner provided for the collection of delinquent income taxes.

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

40 305.265. (1) Except as provided in ORS 305.305, the provisions of this section apply to all reports
 41 or returns of tax or tax liability including claims under ORS 310.630 to 310.706 **and the Sales and**
 42 **Use Tax Law**, filed with the Department of Revenue under the revenue and tax laws administered
 43 by it, except those filed under ORS 320.005 to 320.150.

44 (2) As soon as practicable after a report or return is filed, the department shall examine or audit
 45 it, if required by law or the department deems such examination or audit practicable. If the de-

1 partment discovers from an examination or an audit of a report or return or otherwise that a defi-
2 ciency exists, it shall compute the tax and give notice to the person filing the return of the
3 deficiency and of the department's intention to assess the deficiency, plus interest and any appro-
4 priate penalty. Except as provided in subsection (3) of this section, the notice shall:

5 (a) State the reason for each adjustment;

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

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

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

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

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

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

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

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

22 (5)(a) The notice of deficiency shall be accompanied by a statement explaining the person's right
23 to make written objections, the person's right to request a conference and the procedure for re-
24 questing a conference. The statement, and an accompanying form, shall also explain that conference
25 determinations are routinely transmitted via regular mail and that a person desiring to have con-
26 ference determinations transmitted by certified mail may do so by indicating on the form the per-
27 son's preference for certified mail and by returning the form with the person's written objections
28 as described in paragraph (b) of this subsection.

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

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

44 (7) If neither payment nor written objection to the deficiency is received by the department
45 within 30 days after the notice of deficiency has been mailed, the department shall assess the defi-

1 deficiency, plus interest and penalties, if any, and shall send the person a notice of assessment, stating
2 the amount so assessed, and interest and penalties. The notice of assessment shall be mailed within
3 one year from the date of the notice of deficiency unless an extension of time is agreed upon as
4 described in subsection (8) of this section. The notice shall advise the person of the rights of appeal.

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

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

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

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

28 (c) The department may reject a report or return:

29 (A) That is not verified as required by ORS 305.810;

30 (B) That the department determines is not true and correct as to every material matter as re-
31 quired by ORS 305.815; or

32 (C) If the department may impose a penalty under ORS 316.992 (1) with respect to the report
33 or return.

34 (d) If the department rejects a report or return of a person assessed a tax under paragraph (a)
35 of this subsection, the department shall issue a notice of rejection to the person. The person may
36 appeal the rejection to the magistrate division of the Oregon Tax Court only if:

37 (A) The report or return was filed within 90 days of the date the department's assessment under
38 paragraph (a) of this subsection was issued; and

39 (B) The appeal is filed within 90 days of the date shown on the notice of rejection.

40 (e) If the person assessed under paragraph (a) of this subsection submits a report or return to
41 the department and appeals the assessment to the tax court, the department may request a stay of
42 action from the court pending review of the report or return. If the department:

43 (A) Accepts the filing of the report or return, the appeal shall be dismissed as moot.

44 (B) Rejects the report or return, the stay of action on the appeal shall be lifted.

45 (f) If the department accepts the filing of a report or return, the department may reduce the

1 assessment issued under paragraph (a) of this subsection. A report or return filed under this sub-
2 section that is accepted by the department, whether or not the assessment has been reduced, shall
3 be considered a report or return described in subsection (1) of this section and shall be subject to
4 the provisions of this section, including but not limited to examination and adjustment pursuant to
5 subsection (2) of this section.

6 (g) The department may refund payments made with respect to a report or return filed and ac-
7 cepted pursuant to this subsection. If the report or return is filed within three years of the due date
8 for filing the report or return, excluding extensions, the refund shall be made as provided by ORS
9 305.270 and 314.415. If the report or return is not filed within three years of the due date for filing
10 the report or return, excluding extensions, the refund shall be limited to payments received within
11 the two-year period ending on the date the report or return is received by the department and
12 payments received after the date the report or return is received by the department. Interest shall
13 be paid at the rate established under ORS 305.220 for each month or fraction of a month from the
14 date the report or return is received by the department to the time the refund is made.

15 (11) Mailing of notice to the person at the person's last-known address shall constitute the giv-
16 ing of notice as prescribed in this section.

17 (12) If a return is filed with the department accompanied by payment of less than the amount
18 of tax shown on or from the information on the return as due, the difference between the tax and
19 the amount submitted is considered as assessed on the due date of the report or return (determined
20 with regard to any extension of time granted for the filing of the return) or the date the report or
21 return is filed, whichever is later. For purposes of this subsection, the amount of tax shown on or
22 from the information on the return as due shall be reduced by the amount of any part of the tax that
23 is paid on or before the due date prescribed for payment of the tax, and by any credits against the
24 tax that are claimed on the return. If the amount required to be shown as tax on a return is less
25 than the amount shown as tax on the return, this subsection shall be applied by substituting the
26 lesser amount.

27 (13) Every deficiency shall bear interest at the rate established under ORS 305.220 for each
28 month or fraction of a month computed from the due date of the return to date of payment. If the
29 return was falsely prepared and filed with intent to evade the tax, a penalty equal to 100 percent
30 of the deficiency shall be assessed and collected. All payments received shall be credited first to
31 penalty, then to interest accrued, and then to tax due.

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

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

42 **SECTION 129.** ORS 305.280 is amended to read:

43 305.280. (1) Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2)
44 shall be filed within 90 days after the act, omission, order or determination becomes actually known
45 to the person, but in no event later than one year after the act or omission has occurred, or the

1 order or determination has been made. An appeal under ORS 308.505 to 308.665 shall be filed within
 2 90 days after the date the order is issued under ORS 308.584 (3). An appeal from a supervisory order
 3 or other order or determination of the Department of Revenue shall be filed within 90 days after the
 4 date a copy of the order or determination or notice of the order or determination has been served
 5 upon the appealing party by mail as provided in ORS 306.805.

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

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

15 (4) Except as provided in subsection (2) of this section or as specifically provided in ORS chapter
 16 321, an appeal to the tax court under ORS chapter 321 or from an order of a county board of
 17 property tax appeals shall be filed within 30 days after the date of the notice of the determination
 18 made by the department or date of mailing of the order, date of publication of notice of the order
 19 or date of mailing of the notice of the order to the taxpayer, whichever is applicable.

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

24
 25 **(Refunds)**

26
 27 **SECTION 130.** ORS 305.270 is amended to read:

28 305.270. (1) If the amount of the tax shown as due on a report or return originally filed with the
 29 Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314,
 30 316, 317, 318 or 321 **or the Sales and Use Tax Law**, or collected pursuant to ORS 305.620, or as
 31 corrected by the department, is less than the amount theretofore paid, or if a person files a claim
 32 for refund of any tax paid to the department under such laws within the period specified in sub-
 33 section (2) of this section, any excess tax paid shall be refunded by the department with interest as
 34 provided in this section and ORS 314.415.

35 (2) The claim shall be made on a form prescribed by the department, except that an amended
 36 report or return showing a refund due and filed within the time allowed by this subsection for the
 37 filing of a claim for refund, shall constitute a claim for refund. The claim shall be filed within the
 38 period specified in ORS 314.415 (2) for taxes imposed under ORS chapters 310, 314, 316, 317 and 318
 39 **and the Sales and Use Tax Law**, or collected pursuant to ORS 305.620 (except where any appli-
 40 cable ordinance specifies another period), within the period specified in ORS 118.100 (2) for taxes
 41 imposed under ORS chapter 118 and within two years of the payment of any tax under ORS chapter
 42 308, 308A or 321.

43 (3) Upon receipt of a claim for refund, or original report or return claiming a refund, the de-
 44 partment shall either refund the amount requested or send to the claimant a notice of any proposed
 45 adjustment to the refund claim, stating the basis upon which the adjustment is made. A proposed

1 adjustment may either increase or decrease the amount of the refund claim or result in the finding
2 of a deficiency. If the proposed adjustment results in a determination by the department that some
3 amount is refundable, the department may send the claimant the adjusted amount with the notice.

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

11 (b) The claimant may, within 30 days of the date of the notice of proposed adjustment, advise
12 the department in writing of objections to the refund adjustment and may request a conference with
13 the department, which shall be held within one year of the date of the notice. The department shall
14 notify the claimant of a time and place for the conference, and appoint a conference officer to meet
15 with the claimant for an informal discussion of the claim. After the conference, the conference offi-
16 cer shall send a determination of the matter to the claimant. The determination letter shall be sent
17 by regular mail, or by certified mail if the claimant has indicated a preference for transmission of
18 the determination by certified mail. The department shall issue either a notice of refund denial or
19 payment of any amount found to be refundable, together with any applicable interest provided by
20 this section. If the conference officer determines that a deficiency exists, the department shall issue
21 a notice of assessment.

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

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

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

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

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

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

44 (9) The failure to hold a requested conference within the one-year period prescribed in sub-
45 section (4) of this section shall not invalidate any assessment of deficiency made within the one-year

1 period pursuant to subsection (8) of this section or within any extension of time made pursuant to
 2 subsection (7) of this section, but shall invalidate any assessment of interest or penalties attributable
 3 to the deficiency. After an assessment has been made, the department and the person assessed may
 4 still hold a conference within 90 days from the date of assessment. If a conference is held, the 90-day
 5 period under ORS 305.280 (2) shall run from the date of the conference officer's written determi-
 6 nation of the issues.

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

11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45

COLLECTION OF TAX

SECTION 131. Tax as debt. All taxes, interest and penalties due and unpaid under the
 Sales and Use Tax Law shall become, from the time liability is incurred, a personal debt, due
 the State of Oregon, from the person or persons liable for the taxes, interest and penalties.

SECTION 132. Jeopardy determination. If the Department of Revenue believes that any
 determination or collection of any sales or use tax or any amount of sales or use tax required
 to be collected and paid to the state will be jeopardized by delay, it shall make a determi-
 nation of the tax or amount of tax required to be collected, noting that fact upon the de-
 termination. The amount determined is immediately due and payable, and the department
 shall assess the taxes, notify the person and proceed to collect the tax in the same manner
 and using the same procedures as for the collection of income taxes under ORS 314.440.

SECTION 133. Warrant for collection. (1) If any tax imposed under the Sales and Use Tax
 Law or any portion of the tax is not paid within the time provided by law and no provision
 is made to secure the payment of the tax by bond, deposit or otherwise, pursuant to rules
 adopted by the Department of Revenue, the department may issue a warrant under its offi-
 cial seal directed to the sheriff of any county of this state commanding the sheriff to levy
 upon and sell the real and personal property of the taxpayer found within the county, for the
 payment of the amount of the tax, with the added penalties, interest and the sheriff's cost
 of executing the warrant, and to return the warrant to the department and pay to it the
 money collected from the sale, within 60 days after the date of receipt of the warrant.

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

(3) In the discretion of the department, a warrant of like terms, force and effect may be
 issued and directed to any agent authorized to collect the taxes imposed by the Sales and

1 Use Tax Law. In the execution of the warrant, the agent shall have all the powers conferred
2 by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses
3 paid in the performance of such duty.

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

7 **SECTION 134. Indian reservations; refund agreements.** (1) The Director of the Depart-
8 ment of Revenue is authorized to enter into a sales and use tax refund agreement with the
9 governing body of any Indian reservation in Oregon. The agreement may provide for a mu-
10 tually agreed upon amount as a refund to the governing body of any sales or use tax collected
11 under the Sales and Use Tax Law in connection with the sale, use, storage or consumption
12 of tangible personal property on the Indian reservation. This provision is in addition to other
13 laws allowing tax refunds.

14 (2) There is annually appropriated to the director from the suspense account established
15 under ORS 293.445 and section 149 of this 2009 Act, the amounts necessary to make the re-
16 funds provided by subsection (1) of this section.

17 **SECTION 135. Security.** (1) If the Department of Revenue considers such action neces-
18 sary to ensure compliance with the Sales and Use Tax Law, it may require any person sub-
19 ject to the Sales and Use Tax Law to place with the department such security as the
20 department may determine.

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

25 (3) In the case of a person who, pursuant to section 40 of this 2009 Act, has been given
26 notice of proposed revocation or suspension of permit, the amount of the security may not
27 be greater than twice the tax liability of the person for the reporting period under the Sales
28 and Use Tax Law, determined in such manner as the department considers proper, or \$10,000,
29 whichever is greater.

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

33 **SECTION 136.** ORS 305.130 is amended to read:

34 305.130. (1) The Department of Revenue may be made a party in any action in any court of this
35 state or of the United States having jurisdiction of the subject matter to quiet title to, to remove
36 a cloud from the title to, or for the foreclosure of a mortgage or other lien upon, any real property
37 or personal property, or both, upon which the State of Oregon has or claims to have a lien under
38 ORS 311.673, 311.679, 311.771, 314.430 or 321.570 or ORS chapter 323 **or the Sales and Use Tax**
39 **Law**, and the judgment in such action shall be conclusive and binding upon the State of Oregon and
40 such department.

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

SECTION 137. 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 the Sales and Use Tax Law;**
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;

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

(d) If there is paid to the department in partial satisfaction of the amount of the warrant provided for in ORS 314.430, 321.570 or 323.610 or the amount of any lien under ORS 311.673, 311.679, 311.689, 311.711 or 311.771, an amount not less than the value, as determined by the department, of the lien of the State of Oregon upon the part of the property so to be released. In determining such value the department shall give consideration to the fair market value of the part of the property so to be released and to such liens thereon as have priority to the lien of the State of Oregon.

SECTION 138. ORS 305.850 is amended to read:

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

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

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

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

SECTION 139. State's remedies cumulative. The remedies of the state provided for in the

1 **Sales and Use Tax Law are cumulative, and no action taken by the Department of Revenue**
 2 **or Attorney General constitutes an election by the state to pursue any remedy to the ex-**
 3 **clusion of any other remedy for which provision is made in the Sales and Use Tax Law.**

4
 5 **COURT APPEALS**
 6

7 **SECTION 140.** ORS 305.565 is amended to read:

8 305.565. (1) Except as provided in subsection (2) of this section, proceedings for the collection
 9 of any taxes, interest or penalties resulting from an assessment of additional taxes imposed by ORS
 10 chapter 118, 310, 314, 316, 317, 318[,] or 321, **the Sales and Use Tax Law** or this chapter shall be
 11 stayed by the taking or pendency of any appeal to the tax court.

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

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

19 (b) A taxpayer's position in an appeal is frivolous if that position is of the kind described in ORS
 20 316.992 (5).

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

26 (4) The tax court may, as a condition of a stay, require the posting of a bond sufficient to
 27 guarantee payment of the tax. Payment of taxes while appeal is pending shall not operate as a
 28 waiver of the appeal or of a right to refund of taxes found to be excessively charged or assessed.

29
 30 **ADMINISTRATION**
 31

32 **SECTION 141.** **Department to administer and enforce Sales and Use Tax Law; rules.** The
 33 Department of Revenue shall administer and enforce the provisions of the Sales and Use Tax
 34 Law. The department shall adopt and enforce rules relating to the administration and
 35 enforcement of the Sales and Use Tax Law.

36 **SECTION 142.** **Records required.** Every seller, every retailer, every person described un-
 37 der sections 35 and 37 of this 2009 Act and every person storing, using or otherwise con-
 38 suming in this state tangible personal property purchased from a retailer shall keep such
 39 records, receipts, invoices and other pertinent papers in such form as the Department of
 40 Revenue may require.

41 **SECTION 143.** **Examination of records.** (1) The Department of Revenue or any person
 42 authorized in writing by the department may examine, during reasonable business hours, the
 43 books, papers, records and equipment of any person selling tangible personal property and
 44 any person liable for the use tax and may investigate the character of the business of the
 45 person in order to verify the accuracy of any return made, or, if no return is made by the

1 person, to ascertain and determine the amount required to be paid. The department may
2 require the attendance of any such person and any other person having knowledge in the
3 premises, and may take testimony and require proof material for the information, with
4 power to administer oaths to such persons. The department may, by order or subpoena, to
5 be served with the same force and effect and in the same manner that a subpoena is served
6 in a civil action in the circuit court, require the production, at any time and place it may
7 designate, of any books, papers, accounts or other information necessary to carry out the
8 Sales and Use Tax Law.

9 (2) If any person fails to comply with any subpoena or order of the department or to
10 produce or permit the examination or inspection of any books, papers, records or equipment
11 pertinent to any investigation or inquiry under this section, or to testify to any matter re-
12 garding which the person may be lawfully interrogated, the department may apply to the
13 Oregon Tax Court, or to the circuit court for the county in which the person resides, for an
14 order to the person to attend and testify or otherwise comply with the demand or request
15 of the department. The application to the court shall be by ex parte motion, upon which the
16 court shall make an order requiring the person against whom it is directed to comply with
17 the request or demand of the department within 10 days after service of the order (or such
18 further time as the court may grant) or to justify the failure within that time. The order
19 shall be served upon the person to whom it is directed in the manner required by this state
20 for service of process, which service shall be required to confer jurisdiction upon the court.
21 Failure to obey any order issued by the court under this section is contempt of court. The
22 remedy provided by this section is in addition to other remedies, civil or criminal, existing
23 under the tax laws or other laws of this state.

24 SECTION 144. Reports required. (1) In administration of the use tax, the Department of
25 Revenue may require the filing of reports by any person or class of persons having in their
26 possession or custody information relating to sales of tangible personal property, the stor-
27 age, use or other consumption of which may be subject to the tax imposed under section 43
28 of this 2009 Act.

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

- 30 (a) The names and addresses of purchasers of the tangible personal property;
31 (b) The sales price of the property;
32 (c) The date of sale; and
33 (d) Such other information as the department requires.

34 SECTION 145. Divulging particulars of returns prohibited. Except as otherwise specif-
35 ically provided by law, it shall be unlawful for the Department of Revenue or any officer or
36 employee of the department or other person having administrative duty under the Sales and
37 Use Tax Law to divulge or make known in any manner the amount of gross receipts or
38 purchase price or any particulars set forth or disclosed in any report, return, claim or other
39 document required in the administration of the Sales and Use Tax Law. It shall be unlawful
40 for any person or entity to whom information is disclosed or given by the department pur-
41 suant to section 146 (2) of this 2009 Act or any other provision of state law to divulge or use
42 such information for any purpose other than that specified in the provisions of law author-
43 izing the use or disclosure. No subpoena or judicial order shall be issued compelling the De-
44 partment of Revenue, the Department of Transportation, the State Marine Board or any of
45 their officers or employees, or any person who has acquired information pursuant to section

1 146 (2) of this 2009 Act or any other provision of state law to divulge or make known the
 2 amount of gross receipts or purchase price or any particulars set forth or disclosed in any
 3 report, return or claim except where the taxpayer's liability for sales or use tax is to be
 4 adjudicated by the court from which such process issues. As used in this section, "officer,"
 5 "employee" or "person" includes an authorized representative of the officer, employee or
 6 person, or any former officer, employee or person, or an authorized representative of such
 7 former officer, employee or person.

8 **SECTION 146. Persons to whom information may be furnished.** (1) The Department of
 9 Revenue, the Department of Transportation and the State Marine Board may:

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

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

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

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

19 (2) The Department of Revenue, the Department of Transportation and the State Marine
 20 Board also may disclose and give access to information described in section 145 of this 2009
 21 Act to:

22 (a) The Governor of the State of Oregon or the authorized representative of the Gover-
 23 nor:

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

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

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

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

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

38 (B) For use by an officer or employee of the Oregon Department of Administrative Ser-
 39 vices duly authorized or employed to prepare revenue estimates, or a person contracting
 40 with the Oregon Department of Administrative Services to prepare revenue estimates, in the
 41 preparation of revenue estimates required for the Governor's budget under ORS 291.202, or
 42 required for submission to the Emergency Board, or if the Legislative Assembly is in session,
 43 to the Joint Committee on Ways on Means, and to the Legislative Revenue Officer under
 44 ORS 291.342 and 291.348. Any officer, employee or person furnished or granted access to in-
 45 formation under this subparagraph shall not remove the information from the premises of

1 the Department of Revenue, Department of Transportation or State Marine Board.

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

4 (c) The proper officer of any state or the District of Columbia, or their authorized rep-
5 resentatives, for tax purposes only, if such state or district has a provision of law that meets
6 the requirements of section 145 of this 2009 Act and this section as to confidentiality.

7 (d) The Multistate Tax Commission or its authorized representatives, for tax purposes
8 only. However, the Multistate Tax Commission may make such information available to the
9 United States Commissioner of Internal Revenue or the proper officer of any state or the
10 District of Columbia, or their authorized representatives, for tax purposes only, if the state
11 or district has a provision of law which meets the requirements of section 145 of this 2009
12 Act and this section as to confidentiality.

13 (e) The Attorney General, assistants and employees in the Department of Justice or
14 other legal representative of the State of Oregon, to the extent the Department of Revenue,
15 Department of Transportation or State Marine Board deems disclosure or access necessary
16 for the performance of the duties of advising or representing the Department of Revenue,
17 Department of Transportation or State Marine Board pursuant to ORS 180.010 to 180.240 and
18 the tax laws of this state.

19 (f) Employees of the State of Oregon, to the extent the Department of Revenue, Depart-
20 ment of Transportation or State Marine Board deems disclosure or access necessary for such
21 employees to perform their duties under contracts or agreements between the Department
22 of Revenue, Department of Transportation or State Marine Board and any other department,
23 division, agency or subdivision of the State of Oregon, in the administration of the tax laws.

24 (g) Other persons, partnerships, corporations and other legal entities, and their employ-
25 ees, to the extent the Department of Revenue, Department of Transportation or State Ma-
26 rine Board deems disclosure or access necessary for the performance of such others' duties
27 under contracts or agreements between the Department of Revenue, Department of Trans-
28 portation or State Marine Board and such legal entities, in the administration of the tax
29 laws.

30 (h) The Legislative Revenue Officer or authorized representatives upon compliance with
31 ORS 173.850. Such officer or representative shall not remove from the premises of the De-
32 partment of Revenue, Department of Transportation or State Marine Board any materials
33 that would reveal the identity of any taxpayer or any other person.

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

36 (3) Each officer or employee of the Department of Revenue, Department of Transporta-
37 tion or State Marine Board and each person described or referred to in subsection (2)(a) or
38 (e) to (i) of this section to whom disclosure or access to the tax information is given under
39 subsection (2) of this section or any other provision of state law, prior to beginning employ-
40 ment or the performance of duties involving such disclosure or access, shall be advised in
41 writing of the provisions of sections 145 and 150 of this 2009 Act, relating to penalties for the
42 violation of section 145 of this 2009 Act, and shall as a condition of employment or perform-
43 ance of duties execute a certificate, in a form prescribed by the Department of Revenue,
44 stating in substance that the person has read these provisions of law, that the person has
45 had them explained and that the person is aware of the penalties for the violation of section

1 145 of this 2009 Act.

2 **SECTION 147. Publication of statistics.** The Department of Revenue shall prepare and
 3 publish statistics, reasonably available, with respect to the operation of the Sales and Use
 4 Tax Law, including amounts collected, classification of taxpayers and other facts considered
 5 by the department to be pertinent and valuable.

6
 7 **DISPOSITION OF PROCEEDS**

8
 9 **SECTION 148. Payments to Department of Revenue.** All fees, taxes, interest and penal-
 10 ties imposed and all amounts of tax required to be paid to this state under the Sales and Use
 11 Tax Law, except those collected by the Department of Transportation, shall be paid to the
 12 Department of Revenue, and upon receipt by the Department of Revenue shall be turned over
 13 to the State Treasurer, to be disposed of as provided in section 149 of this 2009 Act.

14 **SECTION 149. Suspense account; General Fund.** All moneys received by the Department
 15 of Revenue under the Sales and Use Tax Law shall be deposited in the State Treasury and
 16 credited to a suspense account established under ORS 293.445. Refunds, including refunds of
 17 erroneous overpayments or refunds of other moneys received under the Sales and Use Tax
 18 Law in which the department has no legal interest, shall be paid out of the suspense account.
 19 After payments of refunds, the balance shall be deposited in the General Fund as miscella-
 20 neous receipts available generally to meet any expense or obligation of the State of Oregon
 21 lawfully incurred.

22
 23 **PENALTIES**

24
 25 **SECTION 150. Penalties; failure to file proper returns.** (1) If a person or an officer or
 26 employee of a corporation or a member or employee of a partnership violates section 125
 27 (1)(a) or (b) of this 2009 Act, the Department of Revenue shall assess against the person a
 28 civil penalty of not more than \$1,000. The penalty shall be recovered as provided in subsection
 29 (5) of this section.

30 (2) A person or an officer or employee of a corporation or a member or employee of a
 31 partnership who violates section 125 (1)(c) or (2) of this 2009 Act is liable to a penalty of not
 32 more than \$1,000, to be recovered in the manner provided in subsection (5) of this section,
 33 and is also guilty of a Class C felony.

34 (3) Violation of section 145 of this 2009 Act is a Class C felony. If the offender is an officer
 35 or employee of this state, the offender shall be dismissed from office and shall be incapable
 36 of holding any public office in this state for a period of five years thereafter.

37 (4) If any person violates any provision of the Sales and Use Tax Law other than sections
 38 125 and 145 of this 2009 Act, the department shall assess against the person a civil penalty
 39 of not more than \$1,000, to be recovered as provided in subsection (5) of this section.

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

45 **SECTION 151. Penalties additional to all other penalties.** The penalties provided in section

1 **150 of this 2009 Act are additional to all other penalties provided under the Sales and Use**
 2 **Tax Law.**

3
 4 **MISCELLANEOUS PROVISIONS**

5
 6 **SECTION 152. Sales and use tax in addition to other taxes; local sales tax prohibited. (1)**
 7 **Unless otherwise specifically provided by law, the taxes imposed under the Sales and Use Tax**
 8 **Law are in addition to and not in lieu of any other taxes or excises imposed by the State of**
 9 **Oregon or any county, city, district or other municipal corporation or political subdivision**
 10 **of the State of Oregon.**

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

14 **SECTION 153.** ORS 803.585 is amended to read:

15 803.585. (1) Except as otherwise provided in this section or ORS 801.041 or 801.042, the regis-
 16 tration fees under the vehicle code are in lieu of all other taxes and licenses, except **taxes imposed**
 17 **under the Sales and Use Tax Law or** municipal license fees under regulatory ordinances, to which
 18 such vehicles or the owners thereof may be subject. Fixed load vehicles are not exempt from ad
 19 valorem taxation by this section.

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

23 **SECTION 154.** ORS 802.110 is amended to read:

24 802.110. Any procedures the Department of Transportation establishes for financial adminis-
 25 tration of those functions of the department dealing with driver and motor vehicle services and for
 26 the disposition and payment of moneys it receives from the provision of driver and motor vehicle
 27 services shall comply with all of the following:

28 (1) The department shall deposit all moneys it receives related to driver and motor vehicle ser-
 29 vices in the Department of Transportation Driver and Motor Vehicle Suspense Account for approved
 30 expenses and disbursements before payment of general administrative expenses of the department related
 31 to the provision of driver and motor vehicle services. Notwithstanding this subsection, the depart-
 32 ment may return a bank check or money order when received in incorrect or incomplete form or
 33 when not accompanied by the proper application, **unless the check or money order is presented**
 34 **in partial or complete payment of use tax, as defined in section 27 of this 2009 Act. Any bank**
 35 **check or money order received by the department that is in any part presented for payment**
 36 **of sales or use tax liability pursuant to section 70, 72 or 90 of this 2009 Act shall be retained**
 37 **by the department. A receipt shall be given for the retained check or money order.**

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

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

43 (b) Amounts transferred to the State Treasurer under ORS 319.410 (2) for the purpose of carry-
 44 ing out the state aviation laws, amounts transferred to the Boating Safety, Law Enforcement and
 45 Facility Account by ORS 319.415, amounts transferred to the State Aviation Account by ORS 319.417

1 and amounts transferred to the Department of Transportation Operating Fund by ORS 184.643.

2 (c) After deduction of expenses of collection, transfer and administration, the department shall
 3 pay moneys collected from the Student Driver Training Fund eligibility fee under ORS 807.040,
 4 807.150 and 807.370 to the State Treasurer for deposit in the Student Driver Training Fund. The
 5 moneys deposited in the Student Driver Training Fund under this paragraph are continuously ap-
 6 propriated to the department for the following purposes:

7 (A) To the extent of not more than 10 percent of the amount transferred into the Student Driver
 8 Training Fund in any biennium, to pay the expenses of administering ORS 336.795, 336.800, 336.805,
 9 336.810 (2) and 336.815.

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

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

15 (e) After deduction of expenses for the administration of the issuance of customized registration
 16 plates under ORS 805.240, the department shall place moneys received from the sale of customized
 17 registration plates in the Passenger Rail Transportation Account. The moneys placed in the account
 18 are continuously appropriated to the department and shall be used for the payment of expenses in-
 19 curred in administering passenger rail programs.

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

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

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

40 (4) After payment of those expenses and disbursements approved for payment before general admin-
 41 istrative expenses related to the provision of driver and motor vehicle services, the department shall
 42 pay from the Department of Transportation Driver and Motor Vehicle Services Administrative Ac-
 43 count its general administrative expenses incurred in the administration of any law related to driver
 44 and motor vehicle services that the department is charged with administering and any other ex-
 45 penses the department is permitted by law to pay from moneys held by the department before

1 transfer of the moneys to the State Highway Fund. The following limitations apply to payments of
2 administrative expenses under this subsection:

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

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

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

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

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

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

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

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

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

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

36 (c) Moneys received from the issuance of winter recreation parking permits or under ORS
37 153.630 from violation of the requirement to have a winter recreation parking permit and that is not
38 used for payment of administrative expenses of the department shall be transferred within 30 days
39 after the end of the quarter.

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

42 (a) Moneys collected from the issuance of winter recreation parking permits or under ORS
43 153.630 for violation of the requirement to have a winter recreation parking permit, and the interest
44 on such moneys, shall be used to enforce the requirement for winter recreation parking permits and
45 to remove snow from winter recreation parking locations designated under ORS 810.170. Any re-

1 maintaining moneys shall, upon approval by the Winter Recreation Advisory Committee:

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

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

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

8 (b) Moneys received from the registration of snowmobiles or under ORS 802.120 shall be used
 9 for the development and maintenance of snowmobile facilities, including the acquisition of land
 10 therefor by any means other than the exercise of eminent domain. Moneys received under ORS
 11 802.120 may also be used for the enforcement of ORS 811.590, 821.100 to 821.120, 821.140, 821.150,
 12 821.190, 821.210 and 821.240 to 821.290.

13 (8) The department shall maintain the Revolving Account for Emergency Cash Advances sepa-
 14 rate from other moneys described in this section. From the account, the department may pay for the
 15 taking up of dishonored remittances returned by banks or the State Treasurer and for emergency
 16 cash advances to be subsequently reimbursed. The account shall be used only as a revolving fund.
 17 The department shall at all times be accountable for the amount of the account, either in cash or
 18 unreimbursed items and advances. The moneys in the account are continuously appropriated for the
 19 purposes of this subsection. The amount of the account under this subsection shall not exceed
 20 \$40,000 from moneys received by the department in the performance of its driver and motor vehicle
 21 services functions and moneys otherwise appropriated for purposes of this subsection. The account
 22 under this subsection shall be kept on deposit with the State Treasurer. The State Treasurer is au-
 23 thorized to honor and pay all properly signed and indorsed checks or warrants drawn against the
 24 account.

25 **SECTION 155.** ORS 801.040 is amended to read:

26 801.040. This section describes circumstances where special provisions are made concerning the
 27 authority of cities, counties or other political subdivisions in relation to some portion of the vehicle
 28 code. This section is not the only section of the vehicle code that applies to such authority and shall
 29 not be interpreted to affect the vehicle code except as specifically provided in this section. The
 30 following limits are partial or complete as described:

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

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

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

44 (b) Limit the authority of any city or county to impose any requirements or conditions as part
 45 of any contract to perform towing or recovering services for the city or county.

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

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

16 (4) The provisions of ORS 819.100, 819.120, 819.150, 819.160, 819.210 to 819.260 and 819.480 re-
 17 lating to removal of vehicles that are abandoned establish minimum requirements subject to the
 18 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 156.** ORS 731.840 is amended to read:

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

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

3 (3) Subsection (1) of this section applies to foreign or alien title insurers and to foreign or alien
 4 wet marine and transportation insurers issuing policies and subject to taxes referred to in ORS
 5 731.824 and 731.828.

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

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

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

19 **(5) Every foreign, alien or domestic insurer or health or legal care service contractor not**
 20 **subject to the tax upon its premiums as required by ORS 731.808 to 731.828 or who issues**
 21 **policies the premiums from which are not subject to the gross premiums tax and every for-**
 22 **ign, alien or domestic insurer or health or legal care service contractor subject to the gross**
 23 **premiums tax shall not be subject to the taxes imposed by sections 29 and 43 of this 2009**
 24 **Act with respect to its sales or purchases of insurance. However, this subsection shall not**
 25 **exempt an insurer or health or legal care service contractor from the taxes imposed by**
 26 **section 29 or 43 of this 2009 Act upon its retail sales or purchases of tangible personal**
 27 **property.**

28
 29 **PERSONAL INCOME TAX ELIMINATION**

30
 31 **SECTION 157. A personal income tax may not be imposed or collected under ORS chapter**
 32 **316 in a tax year beginning on or after January 1, 2011.**

33
 34 **CORPORATE EXCISE AND INCOME TAX**
 35 **ELIMINATION**

36
 37 **SECTION 158. An excise tax measured by income may not be imposed on or collected**
 38 **from a corporation under ORS chapter 317 in a tax year beginning on or after January 1,**
 39 **2011.**

40 **SECTION 159. A corporate income tax may not be imposed or collected under ORS**
 41 **chapter 318 in a tax year beginning on or after January 1, 2011.**

42
 43 **APPLICATION; OPERATIVE DATE; CAPTIONS**

44
 45 **SECTION 160. Application. (1) The sales tax imposed by section 29 of this 2009 Act applies**

1 only to sales on or after the operative date specified in section 162 of this 2009 Act.

2 (2) The sales tax does not apply to sales on or after the operative date specified in section
 3 162 of this 2009 Act under contracts, leases or rental agreements that were made before the
 4 operative date specified in section 162 of this 2009 Act. However, under a contract, lease or
 5 rental agreement that was made before the operative date specified in section 162 of this 2009
 6 Act, the sales tax does apply to sales made after the date of any extension or renewal of the
 7 contract, lease or rental agreement occurring after the operative date specified in section
 8 162 of this 2009 Act.

9 (3) The use tax imposed by section 43 of this 2009 Act applies only to tangible personal
 10 property purchased on or after the operative date specified in section 162 of this 2009 Act.

11 (4) The use tax does not apply to storage, consumption or use on or after the operative
 12 date specified in section 162 of this 2009 Act under contracts, leases or rental agreements
 13 that were made before the operative date specified in section 162 of this 2009 Act. However,
 14 under a contract, lease or rental agreement entered into before the operative date specified
 15 in section 162 of this 2009 Act, the use tax does apply to storage, consumption and use made
 16 after the date of any extension or renewal of the contract, lease or rental agreement oc-
 17 ccurring after the operative date specified in section 162 of this 2009 Act. A lessee, upon ex-
 18 tension or renewal, shall have the right to make the election under section 56 of this 2009
 19 Act.

20 SECTION 161. Captions. The unit and section captions used in this 2009 Act are provided
 21 only for the convenience of the reader and do not become part of the statutory law of this
 22 state or express any legislative intent in the enactment of this 2009 Act.

23 SECTION 162. Operative date. Sections 1 to 127, 131 to 135, 139 and 141 to 152 of this 2009
 24 Act become operative on January 1, 2011.

25 SECTION 163. This 2009 Act does not become effective unless the amendment to the
 26 Oregon Constitution proposed by Senate Joint Resolution 33 (2009) is approved by the people
 27 at the primary election held throughout this state on May 18, 2010. This 2009 Act takes effect
 28 on the effective date of that constitutional amendment.

29 _____