

Requested by HOUSE COMMITTEE ON REVENUE

**PROPOSED AMENDMENTS TO
HOUSE BILL 4026**

1 On page 1 of the printed bill, line 2, after “amending” delete the rest of
2 the line and lines 3 through 7 and insert “ORS 314.665; and prescribing an
3 effective date.”.

4 Delete lines 9 through 25 and delete pages 2 through 32 and insert:

5 **“SECTION 1. Section 2 of this 2016 Act is added to and made a part**
6 **of ORS 314.605 to 314.675.**

7 **“SECTION 2. (1) A taxpayer’s market for sales is in this state:**

8 **“(a) In the case of the sale, rental, lease or license of real property,**
9 **if and to the extent the property is located in this state.**

10 **“(b) In the case of the rental, lease or license of tangible personal**
11 **property, if and to the extent the property is located in this state.**

12 **“(c) In the case of the sale of a service, if and to the extent the**
13 **service is delivered to a location in this state.**

14 **“(2) A taxpayer’s market for sales is in this state in the case of in-**
15 **tangible property that is rented, leased or licensed, if and to the extent**
16 **the property is used in this state. Intangible property utilized in mar-**
17 **keting a good or service to a consumer is deemed to be used in this**
18 **state if that good or service is purchased by a consumer that is in this**
19 **state.**

20 **“(3) A taxpayer’s market for sales is in this state in the case of in-**
21 **tangible property that is sold, if and to the extent the property is used**

1 in this state. Under this subsection:

2 “(a) A contract right, government license or similar intangible
3 property that authorizes the holder to conduct a business activity in
4 a specific geographic area is deemed to be used in this state if the
5 geographic area includes all or part of this state.

6 “(b) Receipts from intangible property sales that are contingent on
7 the productivity, use or disposition of the intangible property shall be
8 treated as receipts from the rental, lease or licensing of such intangi-
9 ble property under subsection (2) of this section.

10 “(4) All other receipts from a sale of intangible property shall be
11 excluded from the numerator and denominator of the sales factor.

12 “(5) If the state or states of assignment under subsections (1) to (4)
13 of this section cannot be determined, the state or states of assignment
14 shall be reasonably approximated.

15 “(6) If the taxpayer is not taxable in a state to which a receipt is
16 assigned under subsections (1) to (5) of this section, or if the state of
17 assignment cannot be determined under subsections (1) to (4) of this
18 section or reasonably approximated under subsection (5) of this sec-
19 tion, the receipt shall be excluded from the denominator of the sales
20 factor.

21 **“SECTION 3.** ORS 314.665 is amended to read:

22 “314.665. (1) As used in ORS 314.650, the sales factor is a fraction, the
23 numerator of which is the total sales of the taxpayer in this state during the
24 tax period, and the denominator of which is the total sales of the taxpayer
25 everywhere during the tax period.

26 “(2) Sales of tangible personal property are in this state if:

27 “(a) The property is delivered or shipped to a purchaser, other than the
28 United States Government, within this state regardless of the f.o.b. point or
29 other conditions of the sale; or

30 “(b) The property is shipped from an office, store, warehouse, factory, or

1 other place of storage in this state and the purchaser is the United States
2 Government or the taxpayer is not taxable in the state of the purchaser. For
3 purposes of this paragraph:

4 “(A) The sale of goods shipped from a public warehouse is not considered
5 to take place in this state if:

6 “(i) The taxpayer’s only activity in Oregon is the storage of the goods in
7 the public warehouse prior to shipment; or

8 “(ii) The taxpayer’s only activities in Oregon are the storage of the goods
9 in the public warehouse prior to shipment and the presence of employees
10 within this state solely for purposes of soliciting sales of the taxpayer’s
11 products; and

12 “(B) ‘Taxpayer’ means a taxpayer as defined in section 7701 of the Inter-
13 nal Revenue Code, an affiliate of the person storing goods in a public ware-
14 house or a person that is related under section 267 of the Internal Revenue
15 Code to the person storing goods in a public warehouse.

16 “(3) Subsection (2)(b) of this section shall not apply to sales of tangible
17 personal property if:

18 “(a) The sales are included in the numerator of a formula used to appor-
19 tion business income to another state of the United States, a foreign country
20 or the District of Columbia; and

21 “(b) The other state, a foreign country or the District of Columbia has
22 imposed a tax on or measured by the apportioned business income.

23 “(4) Sales, other than sales of tangible personal property, are in this state
24 if *[(a) the income-producing activity is performed in this state; or (b) the*
25 *income-producing activity is performed both in and outside this state and a*
26 *greater proportion of the income-producing activity is performed in this state*
27 *than in any other state, based on costs of performance.] **the taxpayer’s***
28 **market for the sales is in this state, as determined under section 2 of**
29 **this 2016 Act.**

30 “(5) Where the sales apportionment factor is determined by administrative

1 rule pursuant to ORS 314.682, 314.684, 317.660 or other law, the Department
2 of Revenue shall adopt rules that are consistent with the determination of
3 the sales factor under this section **and section 2 of this 2016 Act.**

4 “(6) For purposes of this section, ‘sales’:

5 “(a) Excludes gross receipts arising from the sale, exchange, redemption
6 or holding of intangible assets, including but not limited to securities, unless
7 those receipts are derived from the taxpayer’s primary business activity.

8 “(b) Includes net gain from the sale, exchange or redemption of intangible
9 assets not derived from the primary business activity of the taxpayer but
10 included in the taxpayer’s business income.

11 “(c) Excludes gross receipts arising from an incidental or occasional sale
12 of a fixed asset or assets used in the regular course of the taxpayer’s trade
13 or business if a substantial amount of the gross receipts of the taxpayer arise
14 from an incidental or occasional sale or sales of fixed assets used in the
15 regular course of the taxpayer’s trade or business. Insubstantial amounts of
16 gross receipts arising from incidental or occasional transactions or activities
17 may be excluded from the sales factor unless the exclusion would materially
18 affect the amount of income apportioned to this state.

19 “(7) The department may determine that a warehouse that meets the de-
20 finition of ‘public warehouse’ under this section may not be treated as a
21 public warehouse if the warehouse is being used primarily for tax avoidance
22 purposes or if transactions related to the use of the warehouse are primarily
23 for tax avoidance purposes.

24 “(8) As used in this section, ‘public warehouse’:

25 “(a) Means a warehouse owned or operated by a person that does not own
26 the goods stored in the warehouse; and

27 “(b) Does not include a warehouse that is owned by a person that is re-
28 lated to the person that owns goods that are stored in the warehouse, as
29 determined under section 267 of the Internal Revenue Code, or an affiliate
30 of the person that owns goods that are stored in the warehouse.

1 **“SECTION 4. Section 2 of this 2016 Act and the amendments to ORS**
2 **314.665 by section 3 of this 2016 Act apply to tax years beginning on**
3 **or after January 1, 2017.**

4 **“SECTION 5. This 2016 Act takes effect on the 91st day after the**
5 **date on which the 2016 regular session of the Seventy-eighth Legisla-**
6 **tive Assembly adjourns sine die.”.**

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