

D R A F T

SUMMARY

Modifies provisions of corporate activity tax. Expands exemption for grocery sales to include groceries held by consignee store operator. Expands exemption for motor vehicle dealer transactions to include all new vehicle exchanges between franchised motor vehicle dealerships. Expands exception allowing vehicle dealer to collect estimated portion of tax from purchaser to include collection from lessee.

Applies to tax years beginning on or after January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to corporate activity tax; creating new provisions; amending ORS 317A.100 and 317A.116; and prescribing an effective date.

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

SECTION 1. ORS 317A.100, as amended by section 1, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.100. As used in ORS 317A.100 to 317A.158:

(1)(a) “Commercial activity” means:

(A) The total amount realized by a person, arising from transactions and activity in the regular course of the person’s trade or business, without deduction for expenses incurred by the trade or business;

(B) If received by a financial institution:

(i) If the reporting person for a financial institution is a holding company, all items of income reported on the FR Y-9 filed by the holding company;

(ii) If the reporting person for a financial institution is a bank organization, all items of income reported on the call report filed by the bank organization; and

(iii) If the reporting person for a financial institution is a nonbank financial organization, all items of income reported in accordance with generally accepted accounting principles; and

(C)(i) If received by an insurer, as reported on the statement of premiums accompanying the annual statement required under ORS 731.574 to be filed with the Director of the Department of Consumer and Business Services, all gross direct life insurance premiums, gross direct accident and health insurance premiums and gross direct property and casualty insurance premiums; and

(ii) The gross amount of surplus lines premiums received on Oregon home state risks as shown in the report required by ORS 735.465.

(b) "Commercial activity" does not include:

(A) Interest income except:

(i) Interest on credit sales; or

(ii) Interest income, including service charges, received by financial institutions;

(B) Receipts from the sale, exchange or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset;

(C) If received by an insurer, federally reinsured premiums or income from transactions between a reciprocal insurer and its attorney in fact operating under ORS 731.142;

(D) Receipts from hedging transactions, to the extent that the transactions are entered into primarily to protect a financial position, including transactions intended to manage the risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity or investments in foreign operations, risk of exposure to interest rate fluctuations or risk of commodity price fluctuations;

(E) Proceeds received attributable to the repayment, maturity or redemption of the principal of a loan, bond, mutual fund, certificate of deposit or marketable instrument;

1 (F) The principal amount received under a repurchase agreement or on
2 account of any transaction properly characterized as a loan to the person;

3 (G) Contributions received by a trust, plan or other arrangement, any of
4 which is described in section 501(a) of the Internal Revenue Code, or to
5 which title 26, subtitle A, chapter 1, subchapter (D) of the Internal Revenue
6 Code applies;

7 (H) Compensation, whether current or deferred, and whether in cash or
8 in kind, received or to be received by an employee, a former employee or the
9 employee's legal successor for services rendered to or for an employer, in-
10 cluding reimbursements received by or for an individual for medical or edu-
11 cation expenses, health insurance premiums or employee expenses or on
12 account of a dependent care spending account, legal services plan, any cafe-
13 teria plan described in section 125 of the Internal Revenue Code or any
14 similar employee reimbursement;

15 (I) Proceeds received from the issuance of the taxpayer's own stock,
16 options, warrants, puts or calls, or from the sale of the taxpayer's treasury
17 stock;

18 (J) Proceeds received on the account of payments from insurance policies,
19 including crop insurance policies, owned by the taxpayer, except those pro-
20 ceeds received for the loss of commercial activity;

21 (K) Gifts or charitable contributions received, membership dues received
22 by trade, professional, homeowners' or condominium associations, payments
23 received for educational courses, meetings or meals, or similar payments to
24 a trade, professional or other similar association, and fundraising receipts
25 received by any person when any excess receipts are donated or used exclu-
26 sively for charitable purposes;

27 (L) Damages received as the result of litigation in excess of amounts that,
28 if received without litigation, would be treated as commercial activity;

29 (M) Property, money and other amounts received or acquired by an agent
30 on behalf of another in excess of the agent's commission, fee or other
31 remuneration;

(N) Tax refunds from any tax program, other tax benefit recoveries and reimbursements for the tax imposed under ORS 317A.100 to 317A.158 made by entities that are part of the same unitary group as provided under ORS 317A.106, and reimbursements made by entities that are not members of a unitary group that are required to be made for economic parity among multiple owners of an entity whose tax obligation under ORS 317A.100 to 317A.158 is required to be reported and paid entirely by one owner, as provided in ORS 317A.106;

(O) Pension reversions;

(P) Contributions to capital;

(Q) Receipts from the sale, transfer, exchange or other disposition of motor vehicle fuel or any other product used for the propulsion of motor vehicles;

(R) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer or seller, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the Internal Revenue Code or ORS chapter 323;

(S) In the case of receipts from the sale of malt beverages or wine, as defined in ORS 471.001, cider, as defined in ORS 471.023 or distilled liquor, as defined in ORS 471.001, by a person holding a license issued under ORS chapter 471, an amount equal to the federal and state excise taxes paid by any person on or for such malt beverages, wine or distilled liquor under subtitle E of the Internal Revenue Code or ORS chapter 471 or 473, and any amount paid to the Oregon Liquor Control Commission for sales of distilled spirits by an agent appointed under ORS 471.750;

(T) In the case of receipts from the sale of marijuana items, as defined in ORS 475B.015, by a person holding a license issued under ORS 475B.010 to 475B.545, an amount equal to the federal and state excise taxes paid by any person on or for such marijuana items under subtitle E of the Internal Revenue Code or ORS 475B.700 to 475B.760 and any local retail taxes authorized

under ORS 475B.491;

(U) Local taxes collected by a restaurant or other food establishment on sales of meals, prepared food or beverages;

(V) Tips or gratuities collected by a restaurant or other food establishment and passed on to employees;

(W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400 (8)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle **or is an exchange of new vehicles between franchised motor vehicle dealerships**;

(X) Registration fees or taxes collected by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400 (8)(a)(B) at the sale or other transfer of a motor vehicle, as defined in ORS 801.360, that are owed to a third party by the purchaser of the motor vehicle and passed to the third party by the dealer;

(Y) Receipts from a financial institution for services provided to the financial institution in connection with the issuance, processing, servicing and management of loans or credit accounts, if the financial institution and the recipient of the receipts have at least 50 percent of their ownership interests owned or controlled, directly or constructively through related interests, by common owners;

(Z) In the case of amounts retained as commissions by a holder of a license under ORS chapter 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or collected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to be used as purse money;

(AA) Net revenue of residential care facilities as defined in ORS 443.400 or in-home care agencies as defined in ORS 443.305, to the extent that the revenue is derived from or received as compensation for providing services

1 to a medical assistance or Medicare recipient;

2 (BB) Dividends received;

3 (CC) Distributive income received from a pass-through entity;

4 (DD) Receipts from sales to a wholesaler in this state, if the seller re-
5 ceives certification at the time of sale from the wholesaler that the whole-
6 saler will sell the purchased property outside this state;

7 (EE) Receipts from the wholesale or retail sale of groceries, **including**
8 **groceries sold by a consignee store operator**;

9 (FF) Receipts from transactions among members of a unitary group;

10 (GG) Moneys, including public purpose charge moneys collected under
11 ORS 757.612 and costs of funding or implementing cost-effective energy con-
12 servation measures collected under ORS 757.689, that are collected from
13 customers, passed to a utility and approved by the Public Utility Commission
14 and that support energy conservation, renewable resource acquisition and
15 low-income assistance programs;

16 (HH) Moneys collected by a utility from customers for the payment of
17 loans through on-bill financing;

18 (II) Surcharges collected under ORS 757.736;

19 (JJ) Moneys passed to a utility by the Bonneville Power Administration
20 for the purpose of effectuating the Regional Power Act Exchange credits or
21 pursuant to any settlement associated with the exchange credit;

22 (KK) Moneys collected or recovered, by entities listed in ORS 756.310,
23 cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers
24 as defined in 47 U.S.C. 153(51) and providers of information services as de-
25 fined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way
26 fees, franchise fees, privilege taxes, federal taxes and local taxes;

27 (LL) Charges paid to the Residential Service Protection Fund required
28 by chapter 290, Oregon Laws 1987;

29 (MM) Universal service surcharge moneys collected or recovered and paid
30 into the universal service fund established in ORS 759.425;

31 (NN) Moneys collected for public purpose funding as described in ORS

759.430;

(OO) Moneys collected or recovered and paid into the federal universal service fund as determined by the Federal Communications Commission;

(PP) In the case of a seller or provider of telecommunications services, the amount of tax imposed under ORS 403.200 for access to the emergency communications system that is collected from subscribers or consumers;

(QQ) In the case of a transient lodging tax collector, the amount of tax imposed under ORS 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;

(RR) In the case of a seller of bicycles, the amount of tax imposed under ORS 320.415 upon retail sales of bicycles;

(SS) In the case of a qualified heavy equipment provider, the amount of tax imposed under ORS 307.872 upon the rental price of heavy equipment;

(TT) Farmer sales to an agricultural cooperative in this state that is a cooperative organization described in section 1381 of the Internal Revenue Code;

(UU) Revenue received by a business entity that is mandated by contract or subcontract to be distributed to another person or entity if the revenue constitutes sales commissions that are paid to a person who is not an employee of the business entity, including, without limitation, a split-fee real estate commission; and

(VV) Receipts from the sale of fluid milk by dairy farmers that are not members of an agricultural cooperative.

(2) "Cost inputs" means:

(a) The cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code; or

(b) In the case of a taxpayer that is engaged in a farming operation, as defined in section 6, chapter 2, Oregon Laws 2020 (first special session) (Enrolled House Bill 4202), and that does not report cost of goods sold for federal tax purposes, the taxpayer's operating expenses excluding labor costs.

(3) "Doing business" means engaging in any activity, whether legal or il-

legal, that is conducted for, or results in, the receipt of commercial activity at any time during a calendar year.

(4) “Excluded person” means any of the following:

(a) Organizations described in sections 501(c) and 501(j) of the Internal Revenue Code, unless the exemption is denied under section 501(h), (i) or (m) or under section 502, 503 or 505 of the Internal Revenue Code.

(b) Organizations described in section 501(d) of the Internal Revenue Code, unless the exemption is denied under section 502 or 503 of the Internal Revenue Code.

(c) Organizations described in section 501(e) of the Internal Revenue Code.

(d) Organizations described in section 501(f) of the Internal Revenue Code.

(e) Charitable risk pools described in section 501(n) of the Internal Revenue Code.

(f) Organizations described in section 521 of the Internal Revenue Code.

(g) Qualified state tuition programs described in section 529 of the Internal Revenue Code.

(h) Foreign or alien insurance companies, but only with respect to the underwriting profit derived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and 731.828.

(i) Governmental entities.

(j) Any person with commercial activity that does not exceed \$750,000 for the calendar year, other than a person that is part of a unitary group as provided in ORS 317A.106 with commercial activity in excess of \$750,000.

(k) Hospitals subject to assessment under ORS 414.855, long term care facilities subject to assessment under ORS 409.801 or any entity subject to assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws 2017.

(L) Manufactured dwelling park nonprofit cooperatives organized under ORS chapter 62.

(5) “Financial institution” has the meaning given that term in ORS

314.610, except that “financial institution” does not include a credit union.

(6)(a) “FR Y-9” means the consolidated or parent-only financial statements that a holding company is required to file with the Federal Reserve Board pursuant to 12 U.S.C. 1844.

(b) In the case of a holding company required to file both consolidated and parent-only financial statements, “FR Y-9” means the consolidated financial statements that the holding company is required to file.

(7) “Governmental entity” means:

(a) The United States and any of its unincorporated agencies and instrumentalities.

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

(c) The State of Oregon and any of its unincorporated agencies and instrumentalities.

(d) Any county, city, district or other political subdivision of the state.

(e) A special government body as defined in ORS 174.117.

(f) A federally recognized Indian tribe.

(8) “Groceries” means food as defined in 7 U.S.C. 2012(k), but does not include cannabinoid edibles or marijuana seeds.

(9)(a) “Hedging transaction” means a hedging transaction as defined in section 1221 of the Internal Revenue Code or a transaction accorded hedge accounting treatment under Financial Accounting Standards Board Statement No. 133.

(b) “Hedging transaction” does not include a transaction in which an actual transfer of title of real or tangible property to another entity occurs.

(10) “Insurer” has the meaning given that term in ORS 317.010.

(11) “Internal Revenue Code,” except where the Legislative Assembly has provided otherwise, refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect on December 31, 2018.

(12) “Labor costs” means total compensation of all employees, not to in-

clude compensation paid to any single employee in excess of \$500,000.

(13)(a) “Motor vehicle fuel or any other product used for the propulsion of motor vehicles” means:

(A) Motor vehicle fuel as defined in ORS 319.010; and

(B) Fuel the use of which in a motor vehicle is subject to taxation under ORS 319.530.

(b) “Motor vehicle fuel or any other product used for the propulsion of motor vehicles” does not mean:

(A) Electricity; or

(B) Electric batteries or any other mechanical or physical component or accessory of a motor vehicle.

(14) “Person” includes individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, entities organized as for-profit corporations under ORS chapter 60, C corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes and any other entities.

(15) “Retailer” means a person doing business by selling tangible personal property to a purchaser for a purpose other than:

(a) Resale by the purchaser of the property as tangible personal property in the regular course of business;

(b) Incorporation by the purchaser of the property in the course of regular business as an ingredient or component of real or personal property; or

(c) Consumption by the purchaser of the property in the production for sale of a new article of tangible personal property.

(16) “Taxable commercial activity” means commercial activity sourced to this state under ORS 317A.128, less any subtraction pursuant to ORS 317A.119.

(17)(a) “Taxpayer” means any person or unitary group required to regis-

ter, file or pay tax under ORS 317A.100 to 317A.158.

(b) “Taxpayer” does not include excluded persons, except to the extent that a tax-exempt entity has unrelated business income as described in the Internal Revenue Code.

(18)(a) “Unitary business” means a business enterprise in which there exists directly or indirectly between the members or parts of the enterprise a sharing or exchange of value as demonstrated by:

(A) Centralized management or a common executive force;

(B) Centralized administrative services or functions resulting in economies of scale; or

(C) Flow of goods, capital resources or services demonstrating functional integration.

(b) “Unitary business” may include a business enterprise the activities of which:

(A) Are in the same general line of business, such as manufacturing, wholesaling or retailing; or

(B) Constitute steps in a vertically integrated process, such as the steps involved in the production of natural resources, which might include exploration, mining, refining and marketing.

(19) “Unitary group” means a group of persons with more than 50 percent common ownership, either direct or indirect, that is engaged in business activities that constitute a unitary business.

(20) “Wholesaler” means a person primarily doing business by merchant distribution of tangible personal property to retailers or to other wholesalers.

SECTION 2. ORS 317A.116, as amended by section 3, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.116. (1) A corporate activity tax is imposed on each person with taxable commercial activity for the privilege of doing business in this state. The tax is imposed upon persons with substantial nexus with this state. The tax imposed under this section is not a transactional tax and is not subject

to the Interstate Income Act of 1959 (P.L. 86-272). The tax imposed under this section is in addition to any other taxes or fees imposed under the tax laws of this state. The tax imposed under this section is imposed on the person with the commercial activity and is not a tax imposed directly on a purchaser. The tax imposed under this section is an annual privilege tax for the calendar year and shall be remitted quarterly to the Department of Revenue. A taxpayer is subject to the annual corporate activity tax for doing business during any portion of such calendar year.

(2) Returns and allowances, as those terms are applicable to section 448 of the Internal Revenue Code, are allowed as an offset against commercial activity in the calendar year that the returns or allowances are made.

(3) A person has substantial nexus with this state if any of the following applies. The person:

(a) Owns or uses a part or all of its capital in this state.

(b) Holds a certificate of existence or authorization issued by the Secretary of State authorizing the person to do business in this state.

(c) Has bright-line presence in this state.

(d) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under ORS 317A.100 to 317A.158 under the United States Constitution.

(4) A person has bright-line presence in this state for the calendar year if any of the following applies. The person:

(a) Owns at any time during the calendar year property in this state with an aggregate value of at least \$50,000. For purposes of this paragraph, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(b) Has during the calendar year payroll in this state of at least \$50,000. Payroll in this state includes the following:

(A) Any amount subject to withholding by the person under ORS 316.167 and 316.172;

(B) Any other amount the person pays as compensation to an individual

1 under the supervision or control of the person for work done in this state;
2 and

3 (C) Any amount the person pays for services performed in this state on
4 the person's behalf by another.

5 (c) Has during the calendar year commercial activity, sourced to this
6 state under ORS 317A.128, of at least \$750,000.

7 (d) Has at any time during the calendar year within this state at least
8 25 percent of the person's total property, total payroll or total commercial
9 activity.

10 (e) Is a resident of this state or is domiciled in this state for corporate,
11 commercial or other business purposes.

12 (5) Notwithstanding subsection (1) of this section, a vehicle dealer may
13 collect from the purchaser of a motor vehicle the estimated portion of the
14 tax imposed under this section that is attributable to commercial activity
15 from the sale **or lease** of the vehicle.

16 **SECTION 3. The amendments to ORS 317A.100 and 317A.116 by**
17 **sections 1 and 2 of this 2021 Act apply to tax years beginning on or**
18 **after January 1, 2022.**

19 **SECTION 4. This 2021 Act takes effect on the 91st day after the date**
20 **on which the 2021 regular session of the Eighty-first Legislative As-**
21 **sembly adjourns sine die.**