

House Bill 3445

Sponsored by Representatives SMITH G, BOSHART DAVIS, CLEM, SMITH DB; Representatives BARKER, BARRETO, BOLES, BONHAM, DRAZAN, EVANS, FINDLEY, GOMBERG, HAYDEN, HELM, LEIF, LEWIS, LIVELY, MCLANE, NEARMAN, NOBLE, POST, RESCHKE, SPRENGER, STARK, WALLAN, WILSON, WITT, ZIKA, Senators BAERTSCHIGER JR, BENTZ, BEYER, BOQUIST, GIROD, HANSELL, HEARD, JOHNSON, KNOPP, LINTHICUM, MANNING JR, PROZANSKI, THATCHER, THOMSEN

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**.

Exempts receipts from sales of certain agricultural products from commercial activity subject to corporate activity tax.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the exemption of certain receipts from the corporate activity tax; amending section 58,
3 chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427); and prescribing an effective date.

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

5 **SECTION 1.** Section 58, chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427), is amended
6 to read:

7 **Sec. 58.** As used in sections 58 to 76, **chapter 122, Oregon Laws 2019 (Enrolled House Bill**
8 **3427)** [*of this 2019 Act*]:

9 (1)(a) "Commercial activity" means the total amount realized by a person, arising from trans-
10 actions and activity in the regular course of the person's trade or business, without deduction for
11 expenses incurred by the trade or business.

12 (b) "Commercial activity" does not include:

13 (A) Interest income except interest on credit sales;

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

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

18 (D) The principal amount received under a repurchase agreement or on account of any trans-
19 action properly characterized as a loan to the person;

20 (E) Contributions received by a trust, plan or other arrangement, any of which is described in
21 section 501(a) of the Internal Revenue Code, or to which title 26, subtitle A, chapter 1, subchapter
22 (D) of the Internal Revenue Code applies;

23 (F) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts or
24 calls, or from the sale of the taxpayer's treasury stock;

25 (G) Proceeds received on the account of payments from insurance policies, except those proceeds
26 received for the loss of business revenue;

27 (H) Gifts or charitable contributions received, membership dues received by trade, professional,
28 homeowners' or condominium associations, payments received for educational courses, meetings or

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 meals, or similar payments to a trade, professional or other similar association, and fundraising re-
2 cepts received by any person when any excess receipts are donated or used exclusively for chari-
3 table purposes;

4 (I) Damages received as the result of litigation in excess of amounts that, if received without
5 litigation, would be treated as commercial activity;

6 (J) Property, money and other amounts received or acquired by an agent on behalf of another
7 in excess of the agent's commission, fee or other remuneration;

8 (K) Tax refunds, other tax benefit recoveries and reimbursements for the tax imposed under
9 sections 58 to 76, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)**, [of this 2019 Act]
10 made by entities that are part of the same unitary group as provided under section 60, **chapter 122,**
11 **Oregon Laws 2019 (Enrolled House Bill 3427)** [of this 2019 Act], and reimbursements made by en-
12 tities that are not members of a unitary group that are required to be made for economic parity
13 among multiple owners of an entity whose tax obligation under sections 58 to 76, **chapter 122,**
14 **Oregon Laws 2019 (Enrolled House Bill 3427)**, [of this 2019 Act] is required to be reported and
15 paid entirely by one owner, as provided in section 60, **chapter 122, Oregon Laws 2019 (Enrolled**
16 **House Bill 3427)** [of this 2019 Act];

17 (L) Pension reversions;

18 (M) Contributions to capital;

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

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

25 (P) In the case of receipts from the sale of malt beverages, wine or alcoholic liquor, all as de-
26 fined in ORS 471.001, or cider, as defined in ORS 471.023, by a person holding a license issued under
27 ORS chapter 471, an amount equal to the federal and state excise taxes paid by any person on or
28 for such malt beverages, wine or alcoholic liquor under subtitle E of the Internal Revenue Code or
29 ORS chapter 471, and any net amount paid to the Oregon Liquor Control Commission by a person
30 licensed to sell alcoholic liquor under ORS chapter 471 in excess of the purchase price paid by the
31 licensee;

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

36 (R) Receipts realized by a vehicle dealer certified under ORS 822.020 from the sale or other
37 transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of
38 resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the
39 transferee's need to meet a specific customer's preference for a motor vehicle;

40 (S) Registration fees or taxes collected by a vehicle dealer certified under ORS 822.020 at the
41 sale or other transfer of a motor vehicle, as defined in ORS 801.360, that are owed to a third party
42 by the purchaser of the motor vehicle and passed to the third party by the dealer;

43 (T) Receipts from a financial institution for services provided to the financial institution in
44 connection with the issuance, processing, servicing and management of loans or credit accounts, if
45 the financial institution and the recipient of the receipts have at least 50 percent of their ownership

1 interests owned or controlled, directly or constructively through related interests, by common own-
 2 ers;

3 (U) In the case of amounts retained as commissions by a holder of a license under ORS chapter
 4 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or col-
 5 lected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to
 6 be used as purse money;

7 (V) Net revenue of residential care facilities as defined in ORS 443.400 or in-home care agencies
 8 as defined in ORS 443.305, to the extent that the revenue is derived from or received as compen-
 9 sation for providing services to a medical assistance or Medicare recipient;

10 (W) Dividends received;

11 (X) Distributive income received from a pass-through entity;

12 (Y) Receipts from sales to a wholesaler in this state, if the seller receives certification at the
 13 time of sale from the wholesaler that the wholesaler will sell the purchased property outside this
 14 state;

15 (Z) Rebates paid to purchasers by retailers or wholesalers;

16 (AA) Receipts from the wholesale or retail sale of groceries;

17 (BB) Receipts from transactions among members of a unitary group;

18 (CC) Moneys, including public purpose charge moneys collected under ORS 757.612 and costs
 19 of funding or implementing cost-effective energy conservation measures collected under ORS 757.689,
 20 that are collected from customers, passed to a utility and approved by the Public Utility Commission
 21 and that support energy conservation, renewable resource acquisition and low-income assistance
 22 programs;

23 (DD) Moneys collected by a utility from customers for the payment of loans through on-bill fi-
 24 nancing;

25 (EE) Surcharges collected under ORS 757.736;

26 (FF) Moneys passed to a utility by the Bonneville Power Administration for the purpose of
 27 effectuating the Regional Power Act Exchange credits or pursuant to any settlement associated with
 28 the exchange credit;

29 (GG) Moneys collected by a utility for franchise fees, privilege taxes, federal taxes, local taxes
 30 and fees payable under ORS 756.310;

31 (HH) Charges paid to the Residential Service Protection Fund required by chapter 290, Oregon
 32 Laws 1987;

33 (II) Universal service surcharge moneys collected by telecommunications carriers and paid into
 34 the universal service fund established in ORS 759.425;

35 (JJ) Moneys collected for public purpose funding as described in ORS 759.430;

36 (KK) Moneys collected for the federal universal service fund as determined by the Federal
 37 Communications Commission;

38 (LL) In the case of a seller or provider of telecommunications services, the amount of tax im-
 39 posed under ORS 403.200 for access to the emergency communications system that is collected from
 40 subscribers or consumers;

41 (MM) In the case of a transient lodging tax collector, the amount of tax imposed under ORS
 42 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;

43 (NN) In the case of a seller of bicycles, the amount of tax imposed under ORS 320.415 upon re-
 44 tail sales of bicycles;

45 (OO) In the case of a qualified heavy equipment provider, the amount of tax imposed under

1 section 2, chapter 64, Oregon Laws 2018, upon the rental price of heavy equipment;

2 (PP) Receipts representing business done with or for members of an agricultural cooperative in
 3 this state that is a cooperative organization described in section 1381 of the Internal Revenue Code;
 4 [and]

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

9 **(RR) Receipts from the sale of agricultural, floricultural, horticultural, viticultural, veg-**
 10 **etable and fruit products, livestock and meats, poultry, eggs, fluid milk, bees and honey or**
 11 **any products that have their situs of production on the farm.**

12 (2)(a) “Commercial activity of a financial institution” includes all items of income without de-
 13 duction for expenses.

14 (b) If the reporting person for a financial institution is a holding company, “commercial activity
 15 of a financial institution” includes all items of income reported on the FR Y-9 filed by the holding
 16 company.

17 (c) If the reporting person for a financial institution is a bank organization, “commercial activity
 18 of a financial institution” includes all items of income reported on the call report filed by the bank
 19 organization.

20 (d) If the reporting person for a financial institution is a nonbank financial organization, “com-
 21 mercial activity of a financial institution” includes all items of income reported in accordance with
 22 generally accepted accounting principles.

23 (3) “Commercial activity of an insurer” includes all items of income without deduction for ex-
 24 penses and all items of income reported on the statement of income accompanying the annual
 25 statement required under ORS 731.574 to be filed with the Director of the Department of Consumer
 26 and Business Services.

27 (4) “Cost inputs” means the cost of goods sold as calculated under section 471 of the Internal
 28 Revenue Code.

29 (5) “Doing business” means engaging in any activity, whether legal or illegal, that is conducted
 30 for, or results in, the receipt of commercial activity at any time during a calendar year.

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

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

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

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

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

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

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

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

42 (h) Foreign or alien insurance companies, but only with respect to the underwriting profit de-
 43 rived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and
 44 731.828.

45 (i) Governmental entities.

1 (j) Any person with commercial activity that does not exceed \$1 million for the calendar year,
 2 other than a person that is part of a unitary group as provided in section 60, **chapter 122, Oregon**
 3 **Laws 2019 (Enrolled House Bill 3427)**, [of this 2019 Act] with commercial activity in excess of \$1
 4 million.

5 (k) Hospitals subject to assessment under section 2, chapter 736, Oregon Laws 2003, long term
 6 care facilities subject to assessment under section 16, chapter 736, Oregon Laws 2003, or any entity
 7 subject to assessment under section 3, 5 or 9, chapter 538, Oregon Laws 2017.

8 (7) “Financial institution” has the meaning given that term in ORS 314.610, except that “finan-
 9 cial institution” does not include a credit union.

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

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

15 (9) “Governmental entity” means:

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

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

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

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

21 (e) Any public corporation.

22 (f) A federally recognized Indian tribe.

23 (10) “Groceries” means food as defined in 7 U.S.C. 2012(k).

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

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

28 (13) “Labor costs” means total compensation of all employees, not to include compensation paid
 29 to any single employee in excess of \$500,000.

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

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

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

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

36 (A) Electricity; or

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

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

45 (16) “Retailer” means a person doing business by selling tangible personal property to a pur-

1 chaser for a purpose other than:

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

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

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

8 (17) "Taxable commercial activity" means commercial activity sourced to this state under sec-
9 tion 66, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)** [*of this 2019 Act*], less any
10 subtraction pursuant to section 64, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)**
11 [*of this 2019 Act*].

12 (18)(a) "Taxpayer" means any person or unitary group required to register, file or pay tax under
13 sections 58 to 76, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)** [*of this 2019 Act*].

14 (b) "Taxpayer" does not include excluded persons.

15 (19)(a) "Unitary business" means a business enterprise in which there exists directly or indi-
16 rectly between the members or parts of the enterprise a sharing or exchange of value as demon-
17 strated by:

18 (A) Centralized management or a common executive force;

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

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

21 (b) "Unitary business" may include a business enterprise the activities of which:

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

23 or

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

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

28 (21) "Wholesaler" means a person primarily doing business by merchant distribution of tangible
29 personal property to retailers or to other wholesalers.

30 **SECTION 2. This 2019 Act takes effect on the 91st day after the date on which the 2019**
31 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

32