

House Bill 3446

Sponsored by Representatives BOSHART DAVIS, DRAZAN, BOLES; Representative RESCHKE, Senator GIROD

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 basic necessities from commercial activity subject to corporate activity tax.

Defines "basic necessity."

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) **"Basic necessity" means:**

10 (a) **Soap, including dishwashing detergent, laundry detergent, bath soap, hand soap,**
11 **shampoo and similar products used for personal hygiene;**

12 (b) **Feminine hygiene products, including tampons, sanitary napkins and similar products,**
13 **and feminine cleansing products;**

14 (c) **Contraceptives that do not require a prescription;**

15 (d) **Toilet paper;**

16 (e) **Oral health products, including toothbrushes, toothpaste, dental floss, mouthwash and**
17 **similar products;**

18 (f) **Feed or food for a domestic animal, as defined in ORS 686.435;**

19 (g) **Diapers, baby wipes, breast pumps, baby bottles and nipples, pacifiers, teething rings**
20 **and infant syringes;**

21 (h) **Over-the-counter drugs; or**

22 (i) **Durable medical equipment sold by a retailer. As used in this paragraph, "durable**
23 **medical equipment" includes:**

24 (A) **Prosthetic devices, hearing aids, eyeglasses and other reusable products and devices**
25 **purchased to correct or alleviate physical incapacity in human beings; and**

26 (B) **Repair parts and replacement parts for durable medical equipment.**

27 [(1)(a)] (2)(a) **"Commercial activity" means the total amount realized by a person, arising from**
28 **transactions and activity in the regular course of the person's trade or business, without deduction**
29 **for expenses incurred by the trade or business.**

30 (b) **"Commercial activity" does not include:**

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 (A) Interest income except interest on credit sales;
- 2 (B) Receipts from the sale, exchange or other disposition of an asset described in section 1221
3 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset;
- 4 (C) Proceeds received attributable to the repayment, maturity or redemption of the principal of
5 a loan, bond, mutual fund, certificate of deposit or marketable instrument;
- 6 (D) The principal amount received under a repurchase agreement or on account of any trans-
7 action properly characterized as a loan to the person;
- 8 (E) Contributions received by a trust, plan or other arrangement, any of which is described in
9 section 501(a) of the Internal Revenue Code, or to which title 26, subtitle A, chapter 1, subchapter
10 (D) of the Internal Revenue Code applies;
- 11 (F) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts or
12 calls, or from the sale of the taxpayer's treasury stock;
- 13 (G) Proceeds received on the account of payments from insurance policies, except those proceeds
14 received for the loss of business revenue;
- 15 (H) Gifts or charitable contributions received, membership dues received by trade, professional,
16 homeowners' or condominium associations, payments received for educational courses, meetings or
17 meals, or similar payments to a trade, professional or other similar association, and fundraising re-
18 cepts received by any person when any excess receipts are donated or used exclusively for chari-
19 table purposes;
- 20 (I) Damages received as the result of litigation in excess of amounts that, if received without
21 litigation, would be treated as commercial activity;
- 22 (J) Property, money and other amounts received or acquired by an agent on behalf of another
23 in excess of the agent's commission, fee or other remuneration;
- 24 (K) Tax refunds, other tax benefit recoveries and reimbursements for the tax imposed under
25 sections 58 to 76, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)**, [of this 2019 Act]
26 made by entities that are part of the same unitary group as provided under section 60, **chapter 122,**
27 **Oregon Laws 2019 (Enrolled House Bill 3427)** [of this 2019 Act], and reimbursements made by en-
28 tities that are not members of a unitary group that are required to be made for economic parity
29 among multiple owners of an entity whose tax obligation under sections 58 to 76, **chapter 122,**
30 **Oregon Laws 2019 (Enrolled House Bill 3427)**, [of this 2019 Act] is required to be reported and
31 paid entirely by one owner, as provided in section 60, **chapter 122, Oregon Laws 2019 (Enrolled**
32 **House Bill 3427)** [of this 2019 Act];
- 33 (L) Pension reversions;
- 34 (M) Contributions to capital;
- 35 (N) Receipts from the sale, transfer, exchange or other disposition of motor vehicle fuel or any
36 other product used for the propulsion of motor vehicles;
- 37 (O) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer,
38 retail dealer, distributor, manufacturer or seller, an amount equal to the federal and state excise
39 taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the
40 Internal Revenue Code or ORS chapter 323;
- 41 (P) In the case of receipts from the sale of malt beverages, wine or alcoholic liquor, all as de-
42 fined in ORS 471.001, or cider, as defined in ORS 471.023, by a person holding a license issued under
43 ORS chapter 471, an amount equal to the federal and state excise taxes paid by any person on or
44 for such malt beverages, wine or alcoholic liquor under subtitle E of the Internal Revenue Code or
45 ORS chapter 471, and any net amount paid to the Oregon Liquor Control Commission by a person

1 licensed to sell alcoholic liquor under ORS chapter 471 in excess of the purchase price paid by the
2 licensee;

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

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

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

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

19 (U) In the case of amounts retained as commissions by a holder of a license under ORS chapter
20 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or col-
21 lected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to
22 be used as purse money;

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

26 (W) Dividends received;

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

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

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

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

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

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

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

41 (EE) Surcharges collected under ORS 757.736;

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

45 (GG) Moneys collected by a utility for franchise fees, privilege taxes, federal taxes, local taxes

1 and fees payable under ORS 756.310;

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

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

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

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

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

12 (MM) In the case of a transient lodging tax collector, the amount of tax imposed under ORS
13 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;

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

16 (OO) In the case of a qualified heavy equipment provider, the amount of tax imposed under
17 section 2, chapter 64, Oregon Laws 2018, upon the rental price of heavy equipment;

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

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

25 **(RR) Receipts from the sale of basic necessities.**

26 [(2)(a)] (3)(a) “Commercial activity of a financial institution” includes all items of income with-
27 out deduction for expenses.

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

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

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

37 [(3)] (4) “Commercial activity of an insurer” includes all items of income without deduction for
38 expenses and all items of income reported on the statement of income accompanying the annual
39 statement required under ORS 731.574 to be filed with the Director of the Department of Consumer
40 and Business Services.

41 [(4)] (5) “Cost inputs” means the cost of goods sold as calculated under section 471 of the
42 Internal Revenue Code.

43 [(5)] (6) “Doing business” means engaging in any activity, whether legal or illegal, that is con-
44 ducted for, or results in, the receipt of commercial activity at any time during a calendar year.

45 [(6)] (7) “Excluded person” means any of the following:

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

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

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

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

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

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

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

11 (h) Foreign or alien insurance companies, but only with respect to the underwriting profit de-
 12 rived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and
 13 731.828.

14 (i) Governmental entities.

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

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

22 [(7)] (8) “Financial institution” has the meaning given that term in ORS 314.610, except that
 23 “financial institution” does not include a credit union.

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

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

29 [(9)] (10) “Governmental entity” means:

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

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

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

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

35 (e) Any public corporation.

36 (f) A federally recognized Indian tribe.

37 [(10)] (11) “Groceries” means food as defined in 7 U.S.C. 2012(k).

38 [(11)] (12) “Insurer” has the meaning given that term in ORS 317.010.

39 [(12)] (13) “Internal Revenue Code,” except where the Legislative Assembly has provided other-
 40 wise, refers to the laws of the United States or to the Internal Revenue Code as they are amended
 41 and in effect on December 31, 2018.

42 [(13)] (14) “Labor costs” means total compensation of all employees, not to include compensation
 43 paid to any single employee in excess of \$500,000.

44 [(14)(a)] (15)(a) “Motor vehicle fuel or any other product used for the propulsion of motor ve-
 45 hicles” means:

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

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

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

5 (A) Electricity; or

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

8 [(15)] (16) “Person” includes individuals, combinations of individuals of any form, receivers,
9 assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates,
10 partnerships, limited liability partnerships, limited liability companies, associations, joint ventures,
11 clubs, societies, entities organized as for-profit corporations under ORS chapter 60, C corporations,
12 S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that
13 are disregarded for federal income tax purposes and any other entities.

14 [(16)] (17) “Retailer” means a person doing business by selling tangible personal property to a
15 purchaser for a purpose other than:

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

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

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

22 [(17)] (18) “Taxable commercial activity” means commercial activity sourced to this state under
23 section 66, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)** [of this 2019 Act], less any
24 subtraction pursuant to section 64, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)**.
25 [of this 2019 Act.]

26 [(18)(a)] (19)(a) “Taxpayer” means any person or unitary group required to register, file or pay
27 tax under sections 58 to 76, **chapter 122, Oregon Laws 2019** [of this 2019 Act].

28 (b) “Taxpayer” does not include excluded persons.

29 [(19)(a)] (20)(a) “Unitary business” means a business enterprise in which there exists directly
30 or indirectly between the members or parts of the enterprise a sharing or exchange of value as
31 demonstrated by:

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

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

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

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

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

37 or

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

40 [(20)] (21) “Unitary group” means a group of persons with more than 50 percent common own-
41 ership, either direct or indirect, that is engaged in business activities that constitute a unitary
42 business.

43 [(21)] (22) “Wholesaler” means a person primarily doing business by merchant distribution of
44 tangible personal property to retailers or to other wholesalers.

45 **SECTION 2. This 2019 Act takes effect on the 91st day after the date on which the 2019**

1 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

2
