

Requested by JOINT COMMITTEE ON TAX EXPENDITURES

**PROPOSED AMENDMENTS TO
HOUSE BILL 2164**

1 In line 2 of the printed bill, after “taxation;” insert “creating new pro-
2 visions; amending section 58, chapter 122, Oregon Laws 2019 (Enrolled House
3 Bill 3427);”.

4 Delete lines 4 through 11 and insert:

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

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

9 “(1)(a) ‘Commercial activity’ means the total amount realized by a person,
10 arising from transactions and activity in the regular course of the person’s
11 trade or business, without deduction for expenses incurred by the trade or
12 business.

13 “(b) ‘Commercial activity’ does not include:

14 “(A) Interest income except interest on credit sales;

15 “(B) Receipts from the sale, exchange or other disposition of an asset
16 described in section 1221 or 1231 of the Internal Revenue Code, without re-
17 gard to the length of time the person held the asset;

18 “(C) Proceeds received attributable to the repayment, maturity or re-
19 demption of the principal of a loan, bond, mutual fund, certificate of deposit
20 or marketable instrument;

21 “(D) The principal amount received under a repurchase agreement or on

1 account of any transaction properly characterized as a loan to the person;

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

6 “(F) Proceeds received from the issuance of the taxpayer’s own stock,
7 options, warrants, puts or calls, or from the sale of the taxpayer’s treasury
8 stock;

9 “(G) Proceeds received on the account of payments from insurance poli-
10 cies, except those proceeds received for the loss of business revenue;

11 “(H) Gifts or charitable contributions received, membership dues received
12 by trade, professional, homeowners’ or condominium associations, payments
13 received for educational courses, meetings or meals, or similar payments to
14 a trade, professional or other similar association, and fundraising receipts
15 received by any person when any excess receipts are donated or used exclu-
16 sively for charitable purposes;

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

19 “(J) Property, money and other amounts received or acquired by an agent
20 on behalf of another in excess of the agent’s commission, fee or other
21 remuneration;

22 “(K) Tax refunds, other tax benefit recoveries and reimbursements for the
23 tax imposed under sections 58 to 76, **chapter 122, Oregon Laws 2019 (En-**
24 **rolled House Bill 3427)**, [of this 2019 Act] made by entities that are part of
25 the same unitary group as provided under section 60, **chapter 122, Oregon**
26 **Laws 2019 (Enrolled House Bill 3427)** [of this 2019 Act], and reimburse-
27 ments made by entities that are not members of a unitary group that are
28 required to be made for economic parity among multiple owners of an entity
29 whose tax obligation under sections 58 to 76, **chapter 122, Oregon Laws**
30 **2019 (Enrolled House Bill 3427)**, [of this 2019 Act] is required to be reported

1 and paid entirely by one owner, as provided in section 60, **chapter 122,**
2 **Oregon Laws 2019 (Enrolled House Bill 3427)** [*of this 2019 Act*];

3 “(L) Pension reversions;

4 “(M) Contributions to capital;

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

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

13 “(P) In the case of receipts from the sale of malt beverages, wine or al-
14 coholic liquor, all as defined in ORS 471.001, or cider, as defined in ORS
15 471.023, by a person holding a license issued under ORS chapter 471, an
16 amount equal to the federal and state excise taxes paid by any person on or
17 for such malt beverages, wine or alcoholic liquor under subtitle E of the
18 Internal Revenue Code or ORS chapter 471, and any net amount paid to the
19 Oregon Liquor Control Commission by a person licensed to sell alcoholic li-
20 quor under ORS chapter 471 in excess of the purchase price paid by the
21 licensee;

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

27 “(R) Receipts realized by a vehicle dealer certified under ORS 822.020
28 from the sale or other transfer of a motor vehicle, as defined in ORS 801.360,
29 to another vehicle dealer for the purpose of resale by the transferee vehicle
30 dealer, but only if the sale or other transfer was based upon the transferee’s

1 need to meet a specific customer's preference for a motor vehicle;

2 “(S) Registration fees or taxes collected by a vehicle dealer certified un-
3 der ORS 822.020 at the sale or other transfer of a motor vehicle, as defined
4 in ORS 801.360, that are owed to a third party by the purchaser of the motor
5 vehicle and passed to the third party by the dealer;

6 “(T) Receipts from a financial institution for services provided to the fi-
7 nancial institution in connection with the issuance, processing, servicing and
8 management of loans or credit accounts, if the financial institution and the
9 recipient of the receipts have at least 50 percent of their ownership interests
10 owned or controlled, directly or constructively through related interests, by
11 common owners;

12 “(U) In the case of amounts retained as commissions by a holder of a li-
13 cense under ORS chapter 462, an amount equal to the amounts specified un-
14 der ORS chapter 462 that must be paid to or collected by the Department of
15 Revenue as a tax and the amounts specified under ORS chapter 462 to be
16 used as purse money;

17 “(V) Net revenue of residential care facilities as defined in ORS 443.400
18 or in-home care agencies as defined in ORS 443.305, to the extent that the
19 revenue is derived from or received as compensation for providing services
20 to a medical assistance or Medicare recipient;

21 “(W) Dividends received;

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

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

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

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

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

29 “(CC) Moneys, including public purpose charge moneys collected under
30 ORS 757.612 and costs of funding or implementing cost-effective energy con-

1 servation measures collected under ORS 757.689, that are collected from
2 customers, passed to a utility and approved by the Public Utility Commission
3 and that support energy conservation, renewable resource acquisition and
4 low-income assistance programs;

5 “(DD) Moneys collected by a utility from customers for the payment of
6 loans through on-bill financing;

7 “(EE) Surcharges collected under ORS 757.736;

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

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

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

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

17 “(JJ) Moneys collected for public purpose funding as described in ORS
18 759.430;

19 “(KK) Moneys collected for the federal universal service fund as deter-
20 mined by the Federal Communications Commission;

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

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

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

29 “(OO) In the case of a qualified heavy equipment provider, the amount
30 of tax imposed under section 2, chapter 64, Oregon Laws 2018, upon the

1 rental price of heavy equipment;

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

5 “**(QQ) Receipts from milk sold by a dairy; and**

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

11 “(2)(a) ‘Commercial activity of a financial institution’ includes all items
12 of income without deduction for expenses.

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

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

19 “(d) If the reporting person for a financial institution is a nonbank fi-
20 nancial organization, ‘commercial activity of a financial institution’ includes
21 all items of income reported in accordance with generally accepted account-
22 ing principles.

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

28 “(4) ‘Cost inputs’ means the cost of goods sold as calculated under section
29 471 of the Internal Revenue Code.

30 “(5) ‘Doing business’ means engaging in any activity, whether legal or

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

3 “(6) ‘Excluded person’ means any of the following:

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

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

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

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

14 “(e) Charitable risk pools described in section 501(n) of the Internal Rev-
15 enue Code.

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

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

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

22 “(i) Governmental entities.

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

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

1 “(7) ‘Financial institution’ has the meaning given that term in ORS
2 314.610, except that ‘financial institution’ does not include a credit union.

3 “(8)(a) ‘FR Y-9’ means the consolidated or parent-only financial state-
4 ments that a holding company is required to file with the Federal Reserve
5 Board pursuant to 12 U.S.C. 1844.

6 “(b) In the case of a holding company required to file both consolidated
7 and parent-only financial statements, ‘FR Y-9’ means the consolidated finan-
8 cial statements that the holding company is required to file.

9 “(9) ‘Governmental entity’ means:

10 “(a) The United States and any of its unincorporated agencies and in-
11 strumentalities.

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

15 “(c) The State of Oregon and any of its unincorporated agencies and in-
16 strumentalities.

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

18 “(e) Any public corporation.

19 “(f) A federally recognized Indian tribe.

20 “(10) ‘Groceries’ means food as defined in 7 U.S.C. 2012(k).

21 “(11) ‘Insurer’ has the meaning given that term in ORS 317.010.

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

25 “(13) ‘Labor costs’ means total compensation of all employees, not to in-
26 clude compensation paid to any single employee in excess of \$500,000.

27 “(14)(a) ‘Motor vehicle fuel or any other product used for the propulsion
28 of motor vehicles’ means:

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

30 “(B) Fuel the use of which in a motor vehicle is subject to taxation under

1 ORS 319.530.

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

4 “(A) Electricity; or

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

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

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

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

19 “(b) Incorporation by the purchaser of the property in the course of reg-
20 ular business as an ingredient or component of real or personal property; or

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

23 “(17) ‘Taxable commercial activity’ means commercial activity sourced to
24 this state under section 66, **chapter 122, Oregon Laws 2019 (Enrolled
25 House Bill 3427)** [*of this 2019 Act*], less any subtraction pursuant to section
26 64, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)** [*of this 2019
27 Act*].

28 “(18)(a) ‘Taxpayer’ means any person or unitary group required to regis-
29 ter, file or pay tax under sections 58 to 76, **chapter 122, Oregon Laws 2019
30 (Enrolled House Bill 3427)** [*of this 2019 Act*].

1 “(b) ‘Taxpayer’ does not include excluded persons.

2 “(19)(a) ‘Unitary business’ means a business enterprise in which there
3 exists directly or indirectly between the members or parts of the enterprise
4 a sharing or exchange of value as demonstrated by:

5 “(A) Centralized management or a common executive force;

6 “(B) Centralized administrative services or functions resulting in econo-
7 mies of scale; or

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

10 “(b) ‘Unitary business’ may include a business enterprise the activities
11 of which:

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

14 “(B) Constitute steps in a vertically integrated process, such as the steps
15 involved in the production of natural resources, which might include explo-
16 ration, mining, refining and marketing.

17 “(20) ‘Unitary group’ means a group of persons with more than 50 percent
18 common ownership, either direct or indirect, that is engaged in business ac-
19 tivities that constitute a unitary business.

20 “(21) ‘Wholesaler’ means a person primarily doing business by merchant
21 distribution of tangible personal property to retailers or to other whole-
22 salers.

23 **“SECTION 2. The amendments to section 58, chapter 122, Oregon**
24 **Laws 2019 (Enrolled House Bill 3427), by section 1 of this 2019 Act apply**
25 **to tax years beginning on or after January 1, 2020.**

26 **“SECTION 3. This 2019 Act takes effect on the 91st day after the**
27 **date on which the 2019 regular session of the Eightieth Legislative**
28 **Assembly adjourns sine die.”.**

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