

HB 4009-16
(LC 249)
2/17/20 (CMT/ps)

Requested by HOUSE COMMITTEE ON REVENUE (at the request of Council on State Taxation
and Department of Revenue)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4009**

1 On page 1 of the printed bill, line 2, after “317A.100,” insert “317A.106,”.

2 On page 2, line 26, delete “business revenue” and insert “commercial ac-
3 tivity”.

4 In line 36, after “refunds” insert “from any tax program”.

5 On page 5, after line 19, insert:

6 “(L) Manufactured dwelling park nonprofit cooperatives organized under
7 ORS chapter 62.”.

8 On page 6, line 31, delete “that is taxable under” and insert “as defined
9 in”.

10 On page 7, after line 1, insert:

11 **“SECTION 1a.** ORS 317A.106 is amended to read:

12 “317A.106. (1) A unitary group shall register, file and pay taxes under
13 ORS 317A.100 to 317A.158 as a single taxpayer and may exclude receipts from
14 transactions among its members. The Department of Revenue may collect
15 identifying information about all members of a unitary group and may re-
16 quire disclosure to the department, for each member, of the commercial ac-
17 tivity in Oregon and in the United States.

18 **“(2) Notwithstanding the provisions of ORS 317A.100 to 317A.158 as**
19 **applicable to unitary groups, unitary group taxpayers may elect to**
20 **modify unitary group membership to exclude all foreign members with**
21 **no commercial activity, or amounts realized but by definition excluded**

1 **from commercial activity, that is sourced to Oregon. The Department**
2 **of Revenue shall by rule adopt policies and procedures for elections**
3 **made under this subsection, including:**

4 **“(a) The time and manner of making or terminating an election;**

5 **“(b) The allowed duration of an election;**

6 **“(c) The department’s discretion to disallow an election in whole**
7 **or in part;**

8 **“(d) The withdrawal before filing of an election by a taxpayer;**

9 **“(e) The treatment of property of the unitary group transferred into**
10 **this state;**

11 **“(f) Filing, payment of fees and registration governing the election;**
12 **and**

13 **“(g) Any other policies and procedures that the department deems**
14 **necessary for the administration and operation of an election allowed**
15 **under this subsection.”.**

16 In line 13, before “year” insert “calendar”.

17 Delete line 14 and insert “returns or allowances are made.”.

18 On page 8, delete lines 4 through 14 and insert:

19 **“(2) The amount in subsection (1)(a) or (b) of this section may not include:**

20 **“(a) Expenses from transactions among members of a unitary group, as**
21 **excluded under ORS 317A.106; or**

22 **“(b) Cost inputs or labor costs that are attributable to a taxpayer’s re-**
23 **ceipts from an item that is not commercial activity.**

24 **“(3) Any taxpayer having commercial activity both within and without**
25 **this state shall apportion the amount of the subtraction in subsection (1) of**
26 **this section, after providing for any exclusions in subsection (2) of this sec-**
27 **tion, as follows:**

28 **“(a) As provided in ORS 314.650 and 314.665;**

29 **“(b) For taxpayers subject to alternative apportionment under ORS chap-**
30 **ter 314, the required applicable apportionment method; or**

1 “(c) As provided for by the Department of Revenue by rule.

2 “(4) Notwithstanding subsection (3) of this section, a unitary group with
3 members subject to multiple apportionment methods under ORS chapter 314
4 shall apportion the amount of the subtraction in subsection (1) of this sec-
5 tion, after providing for any exclusions, as provided by the department by
6 rule.

7 “(5) Notwithstanding subsection (1) of this section, the subtraction under
8 this section may not exceed 95 percent of the taxpayer’s commercial activity
9 in this state.

10 “(6) A unitary group required to apportion the amount of the subtraction
11 shall include all members of the unitary group for purposes of determining
12 the group’s subtraction amount and apportionment ratio.

13 “(7) A taxpayer or unitary group may elect to use the taxpayer’s or
14 unitary group’s most recent fiscal year information for purposes of deter-
15 mining the subtraction under this section. An election under this section
16 must be made on a timely filed, original return. An election under this sec-
17 tion is binding for and applicable to the tax year in which it is made.”.

18 In line 38, delete “20” and insert “five” and after “amount” insert “, ex-
19 cept that the department may not impose a penalty under this subsection for
20 any quarter for which the taxpayer has paid an amount at least equal to the
21 taxpayer’s required installment for the corresponding quarter of the preced-
22 ing tax year.”.

23 Delete lines 42 through 45.

24 On page 9, delete lines 1 through 6 and insert:

25 “**SECTION 6.** ORS 317A.161, as amended by section 5 of this 2020 Act,
26 is amended to read:

27 “317A.161. [(1) *The Department of Revenue may not impose any interest that*
28 *would otherwise apply to taxes due if the interest is based on underpayment*
29 *or underreporting that results solely from the operation of ORS 317A.100 to*
30 *317A.158.*]

1 “[2] (1) A taxpayer shall pay at least [80] **90** percent of the balance due
2 for any quarter or the Department of **Revenue** may impose, for any quarter
3 that this threshold is not met, a penalty of five percent of the underpayment
4 amount, except that the department may not impose a penalty under this
5 subsection for any quarter for which the taxpayer has paid an amount at
6 least equal to the taxpayer’s required installment for the corresponding
7 quarter of the preceding tax year.

8 “[3] (2) The provisions of ORS 314.400 (1) and (2) apply to a taxpayer
9 that fails to file an annual return as required under ORS 317A.137 or that
10 fails to pay the tax imposed under ORS 317A.100 to 317A.158 by the due date
11 of the annual return.”.

12 In line 7, after “317A.100,” insert “317A.106,”.

13 In line 12, delete “2021” and insert “2022” in both places.

14 In line 14, delete “2021” and insert “2022” in both places.

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