

SB 164-7
(LC 2791)
5/7/21 (CMT/ps)

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO
SENATE BILL 164**

1 On page 1 of the printed bill, line 2, after “317A.100” delete the rest of
2 the line and insert “, 317A.103, 317A.106, 317A.116, 317A.119, 317A.125,
3 317A.131 and 317A.137;”.

4 Delete lines 5 through 27 and delete pages 2 through 8 and insert:

5 **“SECTION 1. Section 2 of this 2021 Act is added to and made a part**
6 **of ORS 317A.100 to 317A.158.**

7 **“SECTION 2. (1) For the 2021 calendar year, taxpayers using a fed-**
8 **eral tax year other than the calendar year, pursuant to section 441 of**
9 **the Internal Revenue Code or under rules adopted by the Department**
10 **of Revenue, must register with the department and file a short year**
11 **tax return.**

12 **“(2) The short year tax return required under this section is appli-**
13 **cable to a period starting January 1, 2021, and ending on the last day**
14 **of the taxpayer’s federal tax year that ends in calendar year 2021. A**
15 **taxpayer subject to the short year registration and filing requirement**
16 **shall prorate, for the number of days to which the short year tax re-**
17 **turn is applicable, the commercial activity threshold of \$750,000 pro-**
18 **vided in ORS 317A.100, 317A.116 and 317A.131, the tax rate threshold**
19 **of \$1 million provided in ORS 317A.125 and 317A.137 and the subtraction**
20 **amount allowed in ORS 317A.119.**

21 **“(3) A taxpayer shall file the 2021 short year tax return required**

1 **under this section no later than April 15, 2022.**

2 **“(4) The department may adopt rules necessary to carry out the**
3 **provisions of fiscal year filing and short year tax returns, including**
4 **policies and procedures for payment methods, due dates, timelines,**
5 **forms, proration methods and reconciling accounting inconsistencies**
6 **between tax years.**

7 **“SECTION 3.** ORS 317A.100, as amended by section 1, chapter 2, Oregon
8 Laws 2020 (first special session), is amended to read:

9 “317A.100. As used in ORS 317A.100 to 317A.158:

10 “(1)(a) ‘Commercial activity’ means:

11 “(A) The total amount realized by a person, arising from transactions and
12 activity in the regular course of the person’s trade or business, without de-
13 duction for expenses incurred by the trade or business;

14 “(B) If received by a financial institution:

15 “(i) If the reporting person for a financial institution is a holding com-
16 pany, all items of income reported on the FR Y-9 filed by the holding com-
17 pany;

18 “(ii) If the reporting person for a financial institution is a bank organ-
19 ization, all items of income reported on the call report filed by the bank or-
20 ganization; and

21 “(iii) If the reporting person for a financial institution is a nonbank fi-
22 nancial organization, all items of income reported in accordance with gen-
23 erally accepted accounting principles; and

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

30 “(ii) The gross amount of surplus lines premiums received on Oregon

1 home state risks as shown in the report required by ORS 735.465.

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

3 “(A) Interest income except:

4 “(i) Interest on credit sales; or

5 “(ii) Interest income, including service charges, received by financial in-
6 stitutions;

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

10 “(C) If received by an insurer, federally reinsured premiums or income
11 from transactions between a reciprocal insurer and its attorney in fact op-
12 erating under ORS 731.142;

13 “(D) Receipts from hedging transactions, to the extent that the trans-
14 actions are entered into primarily to protect a financial position, including
15 transactions intended to manage the risk of exposure to foreign currency
16 fluctuations that affect assets, liabilities, profits, losses, equity or invest-
17 ments in foreign operations, risk of exposure to interest rate fluctuations or
18 risk of commodity price fluctuations;

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

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

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

28 “(H) Compensation, whether current or deferred, and whether in cash or
29 in kind, received or to be received by an employee, a former employee or the
30 employee’s legal successor for services rendered to or for an employer, in-

1 cluding reimbursements received by or for an individual for medical or edu-
2 cation expenses, health insurance premiums or employee expenses or on
3 account of a dependent care spending account, legal services plan, any cafe-
4 teria plan described in section 125 of the Internal Revenue Code or any
5 similar employee reimbursement;

6 “(I) 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 “(J) Proceeds received on the account of payments from insurance poli-
10 cies, including crop insurance policies, owned by the taxpayer, except those
11 proceeds received for the loss of commercial activity;

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

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

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

23 “(N) Tax refunds from any tax program, other tax benefit recoveries and
24 reimbursements for the tax imposed under ORS 317A.100 to 317A.158 made
25 by entities that are part of the same unitary group as provided under ORS
26 317A.106, and reimbursements made by entities that are not members of a
27 unitary group that are required to be made for economic parity among mul-
28 tiple owners of an entity whose tax obligation under ORS 317A.100 to
29 317A.158 is required to be reported and paid entirely by one owner, as pro-
30 vided in ORS 317A.106;

1 “(O) Pension reversions;

2 “(P) Contributions to capital;

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

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

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

19 “(T) In the case of receipts from the sale of marijuana items, as defined
20 in ORS 475B.015, by a person holding a license issued under ORS 475B.010
21 to 475B.545, an amount equal to the federal and state excise taxes paid by
22 any person on or for such marijuana items under subtitle E of the Internal
23 Revenue Code or ORS 475B.700 to 475B.760 and any local retail taxes au-
24 thorized under ORS 475B.491;

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

27 “(V) Tips or gratuities collected by a restaurant or other food establish-
28 ment and passed on to employees;

29 “(W) Receipts realized by a vehicle dealer certified under ORS 822.020 or
30 a person described in ORS 320.400 (8)(a)(B) from the sale or other transfer

1 of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for
2 the purpose of resale by the transferee vehicle dealer, but only if the sale
3 or other transfer was based upon the transferee's need to meet a specific
4 customer's preference for a motor vehicle;

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

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

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

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

25 “(BB) Dividends received;

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

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

30 “(EE) Receipts from the wholesale or retail sale of groceries;

1 “(FF) Receipts from transactions among members of a unitary group;
2 “(GG) Moneys, including public purpose charge moneys collected under
3 ORS 757.612 and costs of funding or implementing cost-effective energy con-
4 servation measures collected under ORS 757.689, that are collected from
5 customers, passed to a utility and approved by the Public Utility Commission
6 and that support energy conservation, renewable resource acquisition and
7 low-income assistance programs;
8 “(HH) Moneys collected by a utility from customers for the payment of
9 loans through on-bill financing;
10 “(II) Surcharges collected under ORS 757.736;
11 “(JJ) Moneys passed to a utility by the Bonneville Power Administration
12 for the purpose of effectuating the Regional Power Act Exchange credits or
13 pursuant to any settlement associated with the exchange credit;
14 “(KK) Moneys collected or recovered, by entities listed in ORS 756.310,
15 cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers
16 as defined in 47 U.S.C. 153(51) and providers of information services as de-
17 fined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way
18 fees, franchise fees, privilege taxes, federal taxes and local taxes;
19 “(LL) Charges paid to the Residential Service Protection Fund required
20 by chapter 290, Oregon Laws 1987;
21 “(MM) Universal service surcharge moneys collected or recovered and
22 paid into the universal service fund established in ORS 759.425;
23 “(NN) Moneys collected for public purpose funding as described in ORS
24 759.430;
25 “(OO) Moneys collected or recovered and paid into the federal universal
26 service fund as determined by the Federal Communications Commission;
27 “(PP) In the case of a seller or provider of telecommunications services,
28 the amount of tax imposed under ORS 403.200 for access to the emergency
29 communications system that is collected from subscribers or consumers;
30 “(QQ) In the case of a transient lodging tax collector, the amount of tax

1 imposed under ORS 320.305 and of any local transient lodging tax imposed
2 upon the occupancy of transit lodging;

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

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

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

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

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

17 “(2) ‘Cost inputs’ means:

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

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

24 “(3) ‘Doing business’ means engaging in any activity, whether legal or
25 illegal, that is conducted for, or results in, the receipt of commercial activity
26 at any time during a calendar year.

27 “(4) ‘Excluded person’ means any of the following:

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

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

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

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

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

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

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

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

16 “(i) Governmental entities.

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

20 “(k) Hospitals subject to assessment under ORS 414.855, long term care
21 facilities subject to assessment under ORS 409.801 or any entity subject to
22 assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws
23 2017.

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

26 “(5) ‘Financial institution’ has the meaning given that term in ORS
27 314.610, except that ‘financial institution’ does not include a credit union.

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

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

4 “(7) ‘Governmental entity’ means:

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

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

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

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

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

14 “(f) A federally recognized Indian tribe.

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

17 “(9)(a) ‘Hedging transaction’ means a hedging transaction as defined in
18 section 1221 of the Internal Revenue Code or a transaction accorded hedge
19 accounting treatment under Financial Accounting Standards Board State-
20 ment No. 133.

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

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

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

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

29 “(13)(a) ‘Motor vehicle fuel or any other product used for the propulsion
30 of motor vehicles’ 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
3 ORS 319.530.

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

6 “(A) Electricity; or

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

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

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

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

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

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

25 “(16) ‘Taxable commercial activity’ means commercial activity sourced to
26 this state under ORS 317A.128, less any subtraction pursuant to ORS
27 317A.119.

28 “(17)(a) ‘Taxpayer’ means any person or unitary group required to regis-
29 ter, file or pay tax under ORS 317A.100 to 317A.158.

30 “(b) ‘Taxpayer’ does not include excluded persons, except to the extent

1 that a tax-exempt entity has unrelated business income as described in the
2 Internal Revenue Code.

3 “(18) ‘Tax year’ means, except as otherwise provided in ORS
4 317A.103, a taxpayer’s annual accounting period used for federal in-
5 come tax purposes under section 441 of the Internal Revenue Code.

6 “[18)(a)] (19)(a) ‘Unitary business’ means a business enterprise in which
7 there exists directly or indirectly between the members or parts of the en-
8 terprise a sharing or exchange of value as demonstrated by:

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

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

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

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

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

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

21 “[19)] (20) ‘Unitary group’ means a group of persons with more than 50
22 percent common ownership, either direct or indirect, that is engaged in
23 business activities that constitute a unitary business.

24 “[20)] (21) ‘Wholesaler’ means a person primarily doing business by mer-
25 chant distribution of tangible personal property to retailers or to other
26 wholesalers.

27 “**SECTION 4.** ORS 317A.116, as amended by section 3, chapter 2, Oregon
28 Laws 2020 (first special session), is amended to read:

29 “317A.116. (1) A corporate activity tax is imposed on each person with
30 taxable commercial activity for the privilege of doing business in this state.

1 The tax is imposed upon persons with substantial nexus with this state. The
2 tax imposed under this section is not a transactional tax and is not subject
3 to the Interstate Income Act of 1959 (P.L. 86-272). The tax imposed under this
4 section is in addition to any other taxes or fees imposed under the tax laws
5 of this state. The tax imposed under this section is imposed on the person
6 with the commercial activity and is not a tax imposed directly on a pur-
7 chaser. The tax imposed under this section is an annual privilege tax for the
8 [calendar] **tax** year and shall be remitted quarterly to the Department of
9 Revenue. A taxpayer is subject to the annual corporate activity tax for doing
10 business during any portion of such [calendar] **tax** year.

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

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

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

17 “(b) Holds a certificate of existence or authorization issued by the Sec-
18 retary of State authorizing the person to do business in this state.

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

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

23 “(4) A person has bright-line presence in this state for the [calendar] **tax**
24 year if any of the following applies. The person:

25 “(a) Owns at any time during the [calendar] **tax** year property in this
26 state with an aggregate value of at least \$50,000. For purposes of this para-
27 graph, owned property is valued at original cost and rented property is val-
28 ued at eight times the net annual rental charge.

29 “(b) Has during the [calendar] **tax** year payroll in this state of at least
30 \$50,000. Payroll in this state includes the following:

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

3 “(B) Any other amount the person pays as compensation to an individual
4 under the supervision or control of the person for work done in this state;
5 and

6 “(C) Any amount the person pays for services performed in this state on
7 the person’s behalf by another.

8 “(c) Has during the [*calendar*] **tax** year commercial activity, sourced to
9 this state under ORS 317A.128, of at least \$750,000.

10 “(d) Has at any time during the [*calendar*] **tax** year within this state at
11 least 25 percent of the person’s total property, total payroll or total com-
12 mercial activity.

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

15 “(5) Notwithstanding subsection (1) of this section, a vehicle dealer may
16 collect from the purchaser of a motor vehicle the estimated portion of the
17 tax imposed under this section that is attributable to commercial activity
18 from the sale of the vehicle.

19 “**SECTION 5.** ORS 317A.100, as amended by section 1, chapter 2, Oregon
20 Laws 2020 (first special session), and section 3 of this 2021 Act, is amended
21 to read:

22 “317A.100. As used in ORS 317A.100 to 317A.158:

23 “(1)(a) ‘Commercial activity’ means:

24 “(A) The total amount realized by a person, arising from transactions and
25 activity in the regular course of the person’s trade or business, without de-
26 duction for expenses incurred by the trade or business;

27 “(B) If received by a financial institution:

28 “(i) If the reporting person for a financial institution is a holding com-
29 pany, all items of income reported on the FR Y-9 filed by the holding com-
30 pany;

1 “(ii) If the reporting person for a financial institution is a bank organ-
2 ization, all items of income reported on the call report filed by the bank or-
3 ganization; and

4 “(iii) If the reporting person for a financial institution is a nonbank fi-
5 nancial organization, all items of income reported in accordance with gen-
6 erally accepted accounting principles; and

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

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

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

16 “(A) Interest income except:

17 “(i) Interest on credit sales; or

18 “(ii) Interest income, including service charges, received by financial in-
19 stitutions;

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

23 “(C) If received by an insurer, federally reinsured premiums or income
24 from transactions between a reciprocal insurer and its attorney in fact op-
25 erating under ORS 731.142;

26 “(D) Receipts from hedging transactions, to the extent that the trans-
27 actions are entered into primarily to protect a financial position, including
28 transactions intended to manage the risk of exposure to foreign currency
29 fluctuations that affect assets, liabilities, profits, losses, equity or invest-
30 ments in foreign operations, risk of exposure to interest rate fluctuations or

1 risk of commodity price fluctuations;

2 “(E) Proceeds received attributable to the repayment, maturity or re-
3 demption of the principal of a loan, bond, mutual fund, certificate of deposit
4 or marketable instrument;

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

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

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

19 “(I) Proceeds received from the issuance of the taxpayer’s own stock,
20 options, warrants, puts or calls, or from the sale of the taxpayer’s treasury
21 stock;

22 “(J) Proceeds received on the account of payments from insurance poli-
23 cies, including crop insurance policies, owned by the taxpayer, except those
24 proceeds received for the loss of commercial activity;

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

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

3 “(M) Property, money and other amounts received or acquired by an agent
4 on behalf of another in excess of the agent’s commission, fee or other
5 remuneration;

6 “(N) Tax refunds from any tax program, other tax benefit recoveries and
7 reimbursements for the tax imposed under ORS 317A.100 to 317A.158 made
8 by entities that are part of the same unitary group as provided under ORS
9 317A.106, and reimbursements made by entities that are not members of a
10 unitary group that are required to be made for economic parity among mul-
11 tiple owners of an entity whose tax obligation under ORS 317A.100 to
12 317A.158 is required to be reported and paid entirely by one owner, as pro-
13 vided in ORS 317A.106;

14 “(O) Pension reversions;

15 “(P) Contributions to capital;

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

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

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

1 spirits by an agent appointed under ORS 471.750;

2 “(T) In the case of receipts from the sale of marijuana items, as defined
3 in ORS 475B.015, by a person holding a license issued under ORS 475B.010
4 to 475B.545, an amount equal to the federal and state excise taxes paid by
5 any person on or for such marijuana items under subtitle E of the Internal
6 Revenue Code or ORS 475B.700 to 475B.760 and any local retail taxes au-
7 thorized under ORS 475B.491;

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

10 “(V) Tips or gratuities collected by a restaurant or other food establish-
11 ment and passed on to employees;

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

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

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

30 “(Z) In the case of amounts retained as commissions by a holder of a li-

1 cense under ORS chapter 462, an amount equal to the amounts specified un-
2 der ORS chapter 462 that must be paid to or collected by the Department of
3 Revenue as a tax and the amounts specified under ORS chapter 462 to be
4 used as purse money;

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

9 “(BB) Dividends received;

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

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

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

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

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

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

25 “(II) Surcharges collected under ORS 757.736;

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

29 “(KK) Moneys collected or recovered, by entities listed in ORS 756.310,
30 cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers

1 as defined in 47 U.S.C. 153(51) and providers of information services as de-
2 fined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way
3 fees, franchise fees, privilege taxes, federal taxes and local taxes;

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

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

8 “(NN) Moneys collected for public purpose funding as described in ORS
9 759.430;

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

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

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

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

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

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

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

30 “(VV) Receipts from the sale of fluid milk by dairy farmers that are not

1 members of an agricultural cooperative.

2 “(2) ‘Cost inputs’ means:

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

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

9 “(3) ‘Doing business’ means engaging in any activity, whether legal or
10 illegal, that is conducted for, or results in, the receipt of commercial activity
11 at any time during a calendar year.

12 “(4) ‘Excluded person’ means any of the following:

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

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

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

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

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

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

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

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

1 “(i) Governmental entities.

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

5 “(k) Hospitals subject to assessment under ORS 414.855, long term care
6 facilities subject to assessment under ORS 409.801 or any entity subject to
7 assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws
8 2017.

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

11 “(5) ‘Financial institution’ has the meaning given that term in ORS
12 314.610, except that ‘financial institution’ does not include a credit union.

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

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

19 “(7) ‘Governmental entity’ means:

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

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

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

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

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

29 “(f) A federally recognized Indian tribe.

30 “(8) ‘Groceries’ means food as defined in 7 U.S.C. 2012(k), but does not

1 include cannabinoid edibles or marijuana seeds.

2 “(9)(a) ‘Hedging transaction’ means a hedging transaction as defined in
3 section 1221 of the Internal Revenue Code or a transaction accorded hedge
4 accounting treatment under Financial Accounting Standards Board State-
5 ment No. 133.

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

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

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

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

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

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

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

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

21 “(A) Electricity; or

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

24 “(14) ‘Person’ includes individuals, combinations of individuals of any
25 form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-
26 stock companies, business trusts, estates, partnerships, limited liability
27 partnerships, limited liability companies, associations, joint ventures, clubs,
28 societies, entities organized as for-profit corporations under ORS chapter 60,
29 C corporations, S corporations, qualified subchapter S subsidiaries, qualified
30 subchapter S trusts, trusts, entities that are disregarded for federal income

1 tax purposes and any other entities.

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

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

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

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

10 “(16) ‘Taxable commercial activity’ means commercial activity sourced to
11 this state under ORS 317A.128, less any subtraction pursuant to ORS
12 317A.119.

13 “(17)(a) ‘Taxpayer’ means any person or unitary group required to regis-
14 ter, file or pay tax under ORS 317A.100 to 317A.158.

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

18 “(18) ‘Tax year’ means, except as otherwise provided in ORS 317A.103, a
19 taxpayer’s annual accounting period used for federal income tax purposes
20 under section 441 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

12 **“SECTION 6.** ORS 317A.116, as amended by section 3, chapter 2, Oregon
13 Laws 2020 (first special session), and section 4 of this 2021 Act, is amended
14 to read:

15 “317A.116. (1) A corporate activity tax is imposed on each person with
16 taxable commercial activity for the privilege of doing business in this state.
17 The tax is imposed upon persons with substantial nexus with this state. The
18 tax imposed under this section is not a transactional tax and is not subject
19 to the Interstate Income Act of 1959 (P.L. 86-272). The tax imposed under this
20 section is in addition to any other taxes or fees imposed under the tax laws
21 of this state. The tax imposed under this section is imposed on the person
22 with the commercial activity and is not a tax imposed directly on a pur-
23 chaser. The tax imposed under this section is an annual privilege tax for the
24 tax year and shall be remitted quarterly to the Department of Revenue. A
25 taxpayer is subject to the annual corporate activity tax for doing business
26 during any portion of such tax year.

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

30 “(3) A person has substantial nexus with this state if any of the following

1 applies. The person:

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

3 “(b) Holds a certificate of existence or authorization issued by the Sec-
4 retary of State authorizing the person to do business in this state.

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

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

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

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

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

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

19 “(B) Any other amount the person pays as compensation to an individual
20 under the supervision or control of the person for work done in this state;
21 and

22 “(C) Any amount the person pays for services performed in this state on
23 the person’s behalf by another.

24 “(c) Has during the tax year commercial activity, sourced to this state
25 under ORS 317A.128, of at least \$750,000.

26 “(d) Has at any time during the tax year within this state at least 25
27 percent of the person’s total property, total payroll or total commercial ac-
28 tivity.

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

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

5 **“SECTION 7.** ORS 317A.103 is amended to read:

6 “317A.103. (1) A taxpayer’s method of accounting for commercial activity,
7 cost inputs and labor costs for a tax year shall be the same as the taxpayer’s
8 method of accounting for federal income tax purposes for the taxpayer’s
9 federal tax year that includes the tax year. If a taxpayer’s method of ac-
10 counting for federal income tax purposes changes, the taxpayer’s method of
11 accounting for commercial activity under ORS 317A.100 to 317A.158 shall be
12 changed accordingly.

13 **“(2) For a unitary group:**

14 **“(a) If all members of the unitary group use the same annual ac-**
15 **counting period for federal income tax purposes, the unitary group’s**
16 **tax year is the annual accounting period used by all members for fed-**
17 **eral income tax purposes under section 441 of the Internal Revenue**
18 **Code.**

19 **“(b) If the unitary group includes members with different account-**
20 **ing periods and two or more members of the unitary group file a fed-**
21 **eral consolidated return, the unitary group’s tax year is the annual**
22 **accounting period of the federal consolidated group under section 441**
23 **of the Internal Revenue Code.**

24 **“(c) In all other instances, the unitary group’s tax year is the ac-**
25 **counting period used by the unitary group’s designated reporting en-**
26 **tity, unless otherwise required or permitted under rules adopted by the**
27 **Department of Revenue.**

28 **“(3) If a taxpayer changes the taxpayer’s tax year for federal income**
29 **tax purposes under section 441 of the Internal Revenue Code, the tax-**
30 **payer shall notify the department of the change in the form, time and**

1 **manner prescribed by the department.**

2 **“SECTION 8.** ORS 317A.106, as amended by section 2, chapter 2, Oregon
3 Laws 2020 (first special session), is amended to read:

4 “317A.106. (1) A unitary group shall register, file and pay taxes under
5 ORS 317A.100 to 317A.158 as a single taxpayer and may exclude receipts from
6 transactions among its members.

7 **“(2) The unitary group shall designate a single member as reporting**
8 **entity to register, file and pay taxes on behalf of the unitary group.**
9 **The unitary group may change the reporting entity only when the**
10 **entity no longer has substantial nexus with this state under ORS**
11 **317A.116, is no longer a member of the unitary group or as otherwise**
12 **permitted or required by the Department of Revenue in rule, at which**
13 **time the unitary group taxpayer shall designate another entity as the**
14 **reporting entity.**

15 **“(3)** The department [*of Revenue*] may collect identifying information
16 about all members of a unitary group and may require disclosure to the de-
17 partment, for each member, of the commercial activity in Oregon and in the
18 United States.

19 “[2)] **(4)** Notwithstanding the provisions of ORS 317A.100 to 317A.158
20 applicable to unitary groups, unitary group taxpayers may elect to modify
21 unitary group membership to exclude all foreign members with no commer-
22 cial activity, or amounts realized but by definition excluded from commercial
23 activity, that is sourced to Oregon. The department shall by rule adopt pol-
24 icies and procedures for elections made under this subsection, including:

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

26 “(b) The allowed duration of an election;

27 “(c) The department’s discretion to disallow an election in whole or in
28 part;

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

30 “(e) The treatment of property of the unitary group that is transferred

1 into this state;

2 “(f) Filing, payment of fees and registration governing the election; and

3 “(g) Any other policies and procedures that the department deems neces-
4 sary for the administration and operation of an election allowed under this
5 subsection.

6 **“SECTION 9.** ORS 317A.119, as amended by section 4, chapter 2, Oregon
7 Laws 2020 (first special session), is amended to read:

8 “317A.119. (1) A taxpayer shall subtract from commercial activity sourced
9 to this state 35 percent of the greater of the following amounts paid or in-
10 curred by the taxpayer in the tax year:

11 “(a) The amount of cost inputs; or

12 “(b) The taxpayer’s labor costs.

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

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

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

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

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

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

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

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

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

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

7 “[*(7) A taxpayer or unitary group may elect to use the taxpayer’s or unitary
8 group’s most recent fiscal year information for purposes of determining the
9 subtraction under this section. An election under this section must be made
10 on a timely filed, original return. An election under this section is binding for
11 and applicable to the tax year in which it is made.*]

12 **“SECTION 10.** ORS 317A.125 is amended to read:

13 “317A.125. (1) The corporate activity tax imposed under ORS 317A.116 for
14 each [*calendar*] **tax** year shall equal \$250 plus the product of the taxpayer’s
15 taxable commercial activity in excess of \$1 million for the [*calendar*] **tax**
16 year multiplied by 0.57 percent.

17 “(2) A tax is not owed under this section if the person’s taxable commer-
18 cial activity does not exceed \$1 million.

19 **“SECTION 11.** ORS 317A.131, as amended by section 7, chapter 2, Oregon
20 Laws 2020 (first special session), is amended to read:

21 “317A.131. (1)(a) Any person or unitary group with commercial activity
22 in excess of \$750,000 in a tax year shall register with the Department of
23 Revenue.

24 “(b) Except as provided in paragraph (c) of this subsection, a person or
25 unitary group shall be required to register only once and shall register in
26 the year in which the person or unitary group first exceeds \$750,000 in
27 commercial activity.

28 “(c) If a person or unitary group that has registered under this section
29 subsequently undergoes a merger or other reorganization, the department
30 may require the person or unitary group, or any successor, to register at a

1 later date.

2 “(2) The department by rule may establish the information pertaining to
3 the person or unitary group that must be submitted to the department ac-
4 companying the registration and the time and manner for issuance of regis-
5 trations under this section.

6 “(3) The department may impose a penalty for failing to register as re-
7 quired under this section, not to exceed \$100 per month that a person or
8 unitary group has failed to register or a total of \$1,000 in a [*calendar*] **tax**
9 year. The penalty under this subsection may be imposed not earlier than 30
10 days after the date on which the commercial activity of the person or unitary
11 group exceeds \$750,000 for the tax year.

12 “**SECTION 12.** ORS 317A.137 is amended to read:

13 “317A.137. (1) For purposes of the corporate activity tax imposed under
14 ORS 317A.116, every person doing business in this state with commercial
15 activity for the tax year in excess of \$1 million shall file **an annual return**
16 not later than [*April 15 of the following year an annual return*] **the 15th day**
17 **of the fourth month following the end of the tax year.** The return must
18 be filed with the Department of Revenue in a form prescribed by the de-
19 partment.

20 “(2) The corporate activity tax imposed under ORS 317A.116 is due and
21 estimated tax payments **for the previous quarter** are payable to the de-
22 partment on or before [*the last day of January, April, July and October of*
23 *each year for the previous calendar quarter.*] **the 4th, 7th and 10th months**
24 **of the tax year and the first month immediately following the end of**
25 **the tax year.**

26 “(3) The department may by rule extend the time for making any return
27 for good cause. If the time for filing a return is extended at the request of
28 a taxpayer, interest on any unpaid tax at the rate established under ORS
29 305.220 from the time the return was originally required to be filed to the
30 time of payment, shall be added and paid.

1 **“SECTION 13. (1) Section 2 of this 2021 Act and the amendments to**
2 **ORS 317A.100, 317A.103, 317A.106, 317A.116, 317A.119, 317A.125, 317A.131**
3 **and 317A.137 by sections 3, 4 and 7 to 12 of this 2021 Act apply to tax**
4 **years beginning on or after January 1, 2021.**

5 **“(2) The amendments to ORS 317A.100 and 317A.116 by sections 5 and**
6 **6 of this 2021 Act apply to tax years beginning on or after January 1,**
7 **2022.**

8 **“SECTION 14. This 2021 Act takes effect on the 91st day after the**
9 **date on which the 2021 regular session of the Eighty-first Legislative**
10 **Assembly adjourns sine die.”.**

11
