

Enrolled House Bill 2073

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue for Representative Nancy Nathanson)

CHAPTER

AN ACT

Relating to the corporate activity tax; creating new provisions; amending ORS 317A.100, 317A.102, 317A.119 and 317A.137; and prescribing an effective date.

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

SECTION 1. ORS 317A.100, as amended by section 5, chapter 82, Oregon Laws 2022, and section 26, chapter 83, Oregon Laws 2022, is amended to read:

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

(1)(a) "Commercial activity" means:

(A) The total amount realized by a person, arising from transactions and activity in the regular course of the person's trade or business, without deduction for expenses incurred by the trade or business;

(B) If received by a financial institution:

(i) If the reporting person for a financial institution is a holding company, all items of income reported on the FR Y-9 filed by the holding company;

(ii) If the reporting person for a financial institution is a bank organization, all items of income reported on the call report filed by the bank organization; and

(iii) If the reporting person for a financial institution is a nonbank financial organization, all items of income reported in accordance with generally accepted accounting principles; and

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

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

(b) "Commercial activity" does not include:

(A) Interest income except:

(i) Interest on credit sales; or

(ii) Interest income, including service charges, received by financial institutions;

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

(C) If received by an insurer, federally reinsured premiums or income from transactions between a reciprocal insurer and its attorney in fact operating under ORS 731.142;

(D) Receipts from hedging transactions, to the extent that the transactions are entered into primarily to protect a financial position, including transactions intended to manage the risk of ex-

posure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity or investments in foreign operations, risk of exposure to interest rate fluctuations or risk of commodity price fluctuations;

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

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

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

(H) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, a former employee or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums or employee expenses or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code or any similar employee reimbursement;

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

(J) Proceeds received on the account of payments from insurance policies, including crop insurance policies, owned by the taxpayer, except those proceeds received for the loss of commercial activity;

(K) Gifts or charitable contributions received, membership dues received by trade, professional, homeowners' or condominium associations, payments received for educational courses, meetings or meals, or similar payments to a trade, professional or other similar association, and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;

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

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

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

(O) Pension reversions;

(P) Contributions to capital;

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

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

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

(T) In the case of receipts from the sale of marijuana items, as defined in ORS 475C.009, by a person holding a license issued under ORS 475C.005 to 475C.525, an amount equal to the federal and

state excise taxes paid by any person on or for such marijuana items under subtitle E of the Internal Revenue Code or ORS 475C.670 to 475C.734 and any local retail taxes authorized under ORS 475C.453;

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

(V) Tips or gratuities collected by a restaurant or other food establishment and passed on to employees;

(W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400 (8)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle or is an exchange of new vehicles between franchised motor vehicle dealerships;

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

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

(Z) In the case of amounts retained as commissions by a holder of a license under ORS chapter 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or collected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to be used as purse money;

(AA) Receipts of residential care facilities as defined in ORS 443.400 or in-home care agencies as defined in ORS 443.305, to the extent that the receipts are derived from or received as compensation for providing services to a medical assistance or Medicare recipient;

(BB) Dividends received;

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

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

(EE) Receipts from the wholesale or retail sale of groceries, including receipts of a person that owns groceries at the time of sale and compensation of any consignee engaged in effecting the sale of groceries on behalf the owner of the groceries, but only to the extent that the compensation relates to grocery sales;

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

(GG) Moneys, including public purpose charge moneys collected under ORS 757.612 and moneys collected to plan for and pursue cost-effective energy efficiency resources under ORS 757.054, that are collected from customers, passed to a utility and approved by the Public Utility Commission and that support energy conservation, renewable resource acquisition and low-income assistance programs;

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

(II) Surcharges collected under ORS 757.736;

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

(KK) Moneys collected or recovered, by entities listed in ORS 756.310, cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers as defined in 47 U.S.C. 153(51) and providers

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

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

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

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

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

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

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

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

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

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

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

(VV) Receipts from the sale of fluid milk by dairy farmers that are not members of an agricultural cooperative[.]; **and**

(WW)(i) Cost paid by a dealer for items of precious metal.

(ii) As used in this subparagraph, "item of precious metal" means an item of gold, silver, platinum, rhodium or palladium that has been put through a process of smelting or refining and that is in a state or condition that its value depends on its contents and not its form.

(2) "Cost inputs" means:

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

(b) In the case of a taxpayer that is engaged in a farming operation, as defined in ORS 317A.102, and that does not report cost of goods sold for federal tax purposes, the taxpayer's operating expenses excluding labor costs.

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

(4) "Excluded person" means any of the following:

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

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

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

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

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

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

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

(h) Foreign or alien insurance companies, but only with respect to the underwriting profit derived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and 731.828 or if an insurance company is subject to the retaliatory tax under ORS 731.854 and 731.859.

(i) Governmental entities.

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

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

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

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

(6)(a) "FR Y-9" means the consolidated or parent-only financial statements that a holding company is required to file with the Federal Reserve Board pursuant to 12 U.S.C. 1844.

(b) In the case of a holding company required to file both consolidated and parent-only financial statements, "FR Y-9" means the consolidated financial statements that the holding company is required to file.

(7) "Governmental entity" means:

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

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

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

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

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

(f) A federally recognized Indian tribe.

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

(9)(a) "Hedging transaction" means a hedging transaction as defined in section 1221 of the Internal Revenue Code or a transaction accorded hedge accounting treatment under Financial Accounting Standards Board Statement No. 133.

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

(10) "Insurer" has the meaning given that term in ORS 317.010.

(11) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise, refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect on December 31, 2021.

(12) "Labor costs" means total compensation of all employees, not to include compensation paid to any single employee in excess of \$500,000.

(13)(a) "Motor vehicle fuel or any other product used for the propulsion of motor vehicles" means:

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

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

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

(A) Electricity; or

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

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

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

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

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

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

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

(17)(a) “Taxpayer” means any person or unitary group required to register, file or pay tax under ORS 317A.100 to 317A.158.

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

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

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

(A) Centralized management or a common executive force;

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

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

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

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

or

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

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

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

SECTION 2. ORS 317A.102 is amended to read:

317A.102. (1) As used in this section:

(a)(A) “Agricultural commodity” includes all agricultural, horticultural, viticultural and vegetable products produced in this state, including bees and honey.

(B) “Agricultural commodity” does not include timber or timber products.

(b) “Broker” means any person, other than a dealer, commission merchant or cash buyer, that negotiates the purchase or sale of any agricultural commodity but does not handle the agricultural commodity.

(c) “Farming operation” means an entity doing business in a sector described under codes 111, 112 or 115 of the North American Industry Classification System.

(d) “Processor” means an entity doing business as a food processor, as defined in ORS 307.455, or as the operator of a custom processing establishment, as defined in ORS 603.010, or otherwise engaged in the business of preparing an agricultural commodity for first sale.

(2) A taxpayer that is engaged in a farming operation that sells agricultural commodities to a broker, **processor** or wholesaler may demonstrate the percentage of the taxpayer’s goods sold in this state compared to outside this state, for purposes of determining commercial activity, by:

(a) Obtaining, from the broker, **processor** or wholesaler receiving an agricultural commodity from the taxpayer, a certificate that states the percentage; or

(b) Using an industry average percentage, for sales of the agricultural commodity made the previous tax year, that is based on the most recent information from the United States Department of Agriculture National Agricultural Statistics Service and other sources of sales information.

SECTION 3. ORS 317A.119 is amended to read:

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

(a) The amount of cost inputs; or

(b) The taxpayer's labor costs.

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

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

(b) Cost inputs or labor costs that are attributable to a taxpayer's receipts from an item that is not commercial activity[.]; or

(c) Cost paid by a dealer for items of precious metal.

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

(a) As provided in ORS 314.650 and 314.665;

(b) For taxpayers subject to alternative apportionment under ORS chapter 314, the required applicable apportionment method; or

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

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

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

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

SECTION 4. ORS 317A.137, as amended by section 6, chapter 82, Oregon Laws 2022, is amended to read:

317A.137. (1) For purposes of the corporate activity tax imposed under ORS 317A.116, every person doing business in this state with commercial activity for the tax year in excess of \$1 million shall file an annual return not later than the 15th day of the fourth month following the end of the tax year. **If the 15th day of the fourth month falls on a Saturday, Sunday or legal holiday, including any legal holiday in the District of Columbia, the return is due on the next business day following the Saturday, Sunday or legal holiday.** The return must be filed with the Department of Revenue in a form prescribed by the department.

(2) The corporate activity tax imposed under ORS 317A.116 is due and estimated tax payments for the previous quarter are payable to the department on or before the last day of the 4th, 7th and 10th months of the tax year and of the first month immediately following the end of the tax year.

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

SECTION 5. (1) **Notwithstanding ORS 315.037, the amendments to ORS 317A.100 and 317A.102 by sections 1 and 2 of this 2023 Act apply to all tax years beginning on or after January 1, 2024.**

(2) The amendments to ORS 317A.119 by section 3 of this 2023 Act apply to tax years beginning on or after January 1, 2024.

(3) The amendments to ORS 317A.137 by section 4 of this 2023 Act apply to tax years beginning on or after January 1, 2023.

SECTION 6. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by House June 7, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 24, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State