

HB 2073-1
(LC 1588)
5/8/23 (CMT/ps)

Requested by HOUSE COMMITTEE ON REVENUE (at the request of Representative Nancy Nathanson)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2073**

1 In line 2 of the printed bill, after “tax” insert “; creating new provisions;
2 amending ORS 317A.100, 317A.102 and 317A.137; and prescribing an effective
3 date”.

4 Delete lines 4 through 8 and insert:

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

7 “317A.100. As used in ORS 317A.100 to 317A.158:

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

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

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

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

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

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

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

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

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

10 “(A) Interest income except:

11 “(i) Interest on credit sales; or

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

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

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

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

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

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

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

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

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

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

19 “(K) Gifts or charitable contributions received, membership dues received
20 by trade, professional, homeowners’ or condominium associations, payments
21 received for educational courses, meetings or meals, or similar payments to
22 a trade, professional or other similar association, and fundraising receipts
23 received by any person when any excess receipts are donated or used exclu-
24 sively for charitable purposes;

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

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

30 “(N) Tax refunds from any tax program, other tax benefit recoveries and

1 reimbursements for the tax imposed under ORS 317A.100 to 317A.158 made
2 by entities that are part of the same unitary group as provided under ORS
3 317A.106, and reimbursements made by entities that are not members of a
4 unitary group that are required to be made for economic parity among mul-
5 tiple owners of an entity whose tax obligation under ORS 317A.100 to
6 317A.158 is required to be reported and paid entirely by one owner, as pro-
7 vided in ORS 317A.106;

8 “(O) Pension reversions;

9 “(P) Contributions to capital;

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

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

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

26 “(T) In the case of receipts from the sale of marijuana items, as defined
27 in ORS 475C.009, by a person holding a license issued under ORS 475C.005
28 to 475C.525, an amount equal to the federal and state excise taxes paid by
29 any person on or for such marijuana items under subtitle E of the Internal
30 Revenue Code or ORS 475C.670 to 475C.734 and any local retail taxes au-

1 thorized under ORS 475C.453;

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

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

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

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

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

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

29 “(AA) Receipts of residential care facilities as defined in ORS 443.400 or
30 in-home care agencies as defined in ORS 443.305, to the extent that the re-

1 ceipts are derived from or received as compensation for providing services
2 to a medical assistance or Medicare recipient;

3 “(BB) Dividends received;

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

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

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

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

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

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

22 “(II) Surcharges collected under ORS 757.736;

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

26 “(KK) Moneys collected or recovered, by entities listed in ORS 756.310,
27 cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers
28 as defined in 47 U.S.C. 153(51) and providers of information services as de-
29 fined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way
30 fees, franchise fees, privilege taxes, federal taxes and local taxes;

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

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

5 “(NN) Moneys collected for public purpose funding as described in ORS
6 759.430;

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

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

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

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

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

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

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

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

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

30 **“(ii) As used in this subparagraph, ‘item of precious metal’ means**

1 **an item of gold, silver, platinum, rhodium or palladium that has been**
2 **put through a process of smelting or refining and that is in a state or**
3 **condition that its value depends on its contents and not its form.**

4 “(2) ‘Cost inputs’ means:

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

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

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

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

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

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

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

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

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

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

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

29 “(h) Foreign or alien insurance companies, but only with respect to the
30 underwriting profit derived from writing wet marine and transportation in-

1 surance subject to tax under ORS 731.824 and 731.828 or if an insurance
2 company is subject to the retaliatory tax under ORS 731.854 and 731.859.

3 “(i) Governmental entities.

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

7 “(k) Hospitals subject to assessment under ORS 414.855, long term care
8 facilities subject to assessment under ORS 409.801 or any entity subject to
9 assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws
10 2017.

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

13 “(5) ‘Financial institution’ has the meaning given that term in ORS
14 314.610, except that ‘financial institution’ does not include a credit union.

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

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

21 “(7) ‘Governmental entity’ means:

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

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

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

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

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

1 “(f) A federally recognized Indian tribe.

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

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

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

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

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

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

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

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

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

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

23 “(A) Electricity; or

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

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

1 C corporations, S corporations, qualified subchapter S subsidiaries, qualified
2 subchapter S trusts, trusts, entities that are disregarded for federal income
3 tax purposes and any other entities.

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

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

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

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

12 “(16) ‘Taxable commercial activity’ means commercial activity sourced to
13 this state under ORS 317A.128, less any subtraction pursuant to ORS
14 317A.119.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “317A.102. (1) As used in this section:

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

19 “(B) ‘Agricultural commodity’ does not include timber or timber products.

20 “(b) ‘Broker’ means any person, other than a dealer, commission merchant
21 or cash buyer, that negotiates the purchase or sale of any agricultural com-
22 modity but does not handle the agricultural commodity.

23 “(c) ‘Farming operation’ means an entity doing business in a sector de-
24 scribed under codes 111, 112 or 115 of the North American Industry Classi-
25 fication System.

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

30 “(2) A taxpayer that is engaged in a farming operation that sells agri-

1 cultural commodities to a broker, **processor** or wholesaler may demonstrate
2 the percentage of the taxpayer's goods sold in this state compared to outside
3 this state, for purposes of determining commercial activity, by:

4 “(a) Obtaining, from the broker, **processor** or wholesaler receiving an
5 agricultural commodity from the taxpayer, a certificate that states the per-
6 centage; or

7 “(b) Using an industry average percentage, for sales of the agricultural
8 commodity made the previous tax year, that is based on the most recent in-
9 formation from the United States Department of Agriculture National Agri-
10 cultural Statistics Service and other sources of sales information.

11 **“SECTION 3.** ORS 317A.137, as amended by section 6, chapter 82, Oregon
12 Laws 2022, 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 the 15th day of the fourth month following the end of the tax
17 year. **If the 15th day of the fourth month falls on a Saturday, Sunday**
18 **or legal holiday, including any legal holiday in the District of**
19 **Columbia, the return is due on the next business day following the**
20 **Saturday, Sunday or legal holiday.** The return must be filed with the
21 Department of Revenue in a form prescribed by the department.

22 “(2) The corporate activity tax imposed under ORS 317A.116 is due and
23 estimated tax payments for the previous quarter are payable to the depart-
24 ment on or before the last day of the 4th, 7th and 10th months of the tax
25 year and of the first month immediately following the end of 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 4. (1) Notwithstanding ORS 315.037, the amendments to**
2 **ORS 317A.100 by section 1 of this 2023 Act apply to all tax years be-**
3 **ginning on or after January 1, 2024.**

4 **“(2) The amendments to ORS 317A.102 by section 2 of this 2023 Act**
5 **apply to tax years beginning on or after January 1, 2024.**

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

8 **“SECTION 5. This 2023 Act takes effect on the 91st day after the**
9 **date on which the 2023 regular session of the Eighty-second Legislative**
10 **Assembly adjourns sine die.”.**

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