

SB 140-3  
(LC 1602)  
6/5/23 (CMT/ps)

Requested by SENATE COMMITTEE ON FINANCE AND REVENUE

**PROPOSED AMENDMENTS TO  
SENATE BILL 140**

1 In line 2 of the printed bill, after “tax” insert “; creating new provisions;  
2 amending ORS 317A.100, 317A.119, 317A.125 and 317A.137; and prescribing an  
3 effective 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 cepts 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[.];

29 **“(WW) Amounts received as reimbursement paid:**

30 **“(i) For the cost of health care provided to medical assistance re-**

1 **ipients under ORS chapter 414;**

2 **“(ii) By the Centers for Medicare and Medicaid Services or by a**  
3 **Medicare Advantage Plan for the cost of care provided to Medicare**  
4 **recipients; or**

5 **“(iii) For the cost of health care provided, and paid by the Public**  
6 **Employees’ Benefit Board, the Oregon Educators Benefit Board, the**  
7 **Children’s Health Insurance Program or the United States Department**  
8 **of Defense, under a TRICARE contract; and**

9 **“(XX) Receipts from the administration or dispensing of**  
10 **medications in a clinical setting other than a hospital.**

11 **“(2) ‘Cost inputs’ means:**

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

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

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

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

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

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

27 **“(c) Organizations described in section 501(e) of the Internal Revenue**  
28 **Code.**

29 **“(d) Organizations described in section 501(f) of the Internal Revenue**  
30 **Code.**



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

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

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

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

10 “(i) Governmental entities.

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

14 “(k) Hospitals subject to assessment under ORS 414.855, long term care  
15 facilities subject to assessment under ORS 409.801 or any entity subject to  
16 assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws  
17 2017.

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

20 “(5) ‘Financial institution’ has the meaning given that term in ORS  
21 314.610, except that ‘financial institution’ does not include a credit union.

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

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

28 “(7) ‘Governmental entity’ means:

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

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

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

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

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

8 “(f) A federally recognized Indian tribe.

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

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

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

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

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

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

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

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

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

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

30 “(A) Electricity; or

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

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

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

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

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

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

19 “(16) ‘Taxable commercial activity’ means commercial activity sourced to  
20 this state under ORS 317A.128, less any subtraction pursuant to ORS  
21 317A.119.

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

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

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

30 “(19)(a) ‘Unitary business’ means a business enterprise in which there

1 exists directly or indirectly between the members or parts of the enterprise  
2 a sharing or exchange of value as demonstrated by:

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

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

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

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

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

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

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

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

21 **“SECTION 2.** ORS 317A.119 is amended to read:

22 “317A.119. (1) A taxpayer shall subtract from commercial activity sourced  
23 to this state [35] **30** percent of the greater of the following amounts paid or  
24 incurred by the taxpayer in the tax year:

25 “(a) The amount of cost inputs; or

26 “(b) The taxpayer’s labor costs.

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

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

30 “(b) Cost inputs or labor costs that are attributable to a taxpayer’s re-

1 cepts from an item that is not commercial activity.

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

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

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

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

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

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

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

21 **“SECTION 3.** ORS 317A.125 is amended to read:

22 “317A.125. (1) The corporate activity tax imposed under ORS 317A.116 for  
23 each tax year shall equal \$250 plus the product of:

24 “(a) The taxpayer’s taxable commercial activity **for the tax year** in ex-  
25 cess of [*\$1 million for the tax year*] **\$2 million, but not exceeding \$10**  
26 **million**, multiplied by 0.57 percent[.]; **and**

27 “(b) **The taxpayer’s taxable commercial activity for the tax year in**  
28 **excess of \$10 million, multiplied by 0.615 percent.**

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

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

3       “317A.137. (1) For purposes of the corporate activity tax imposed under  
4 ORS 317A.116, every person doing business in this state with commercial  
5 activity for the tax year in excess of [*\$1 million*] **\$2 million** shall file an  
6 annual return not later than the 15th day of the fourth month following the  
7 end of the tax year. The return must be filed with the Department of Rev-  
8 enue in a form prescribed by the department.

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

13       “(3) The department may by rule extend the time for making any return  
14 for good cause. If the time for filing a return is extended at the request of  
15 a taxpayer, interest on any unpaid tax at the rate established under ORS  
16 305.220 from the time the return was originally required to be filed to the  
17 time of payment, shall be added and paid.

18       **“SECTION 5. The amendments to ORS 317A.100, 317A.119, 317A.125**  
19 **and 317A.137 by sections 1 to 4 of this 2023 Act apply to all tax years**  
20 **beginning on or after January 1, 2024.**

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

24 \_\_\_\_\_