

**A-Engrossed
House Bill 4139**

Ordered by the House February 23
Including House Amendments dated February 23

Sponsored by Representatives BARRETO, MCKEOWN; Representatives BUEHLER, HEARD, MARSH, NOSSE, POST, RESCHKE, SMITH DB, SMITH WARNER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Imposes tax on rental price of construction, mining, earthmoving or industrial equipment, together with attachments and other equipment and tools, that is mobile and held primarily for rental. Directs Department of Revenue to administer heavy equipment rental tax program. **Provides for pro rata distribution of two percent of gross tax revenues among counties that do not otherwise receive qualified heavy equipment rental tax revenues.** Provides for distribution to counties of **net** tax revenues attributable to rentals made from locations in county. Directs county treasurer to distribute tax moneys to local taxing districts in accordance with property tax and interest distribution percentage schedule. Provides for temporary annual payments by or to equipment owner of any difference between heavy equipment rental tax and ad valorem property tax that would be assessed on such equipment if such equipment were subject to ad valorem property tax. Requires department to submit report regarding heavy equipment rental tax experience, including proposed tax rate to maintain revenue neutrality with respect to replacement of ad valorem property tax by heavy equipment rental tax, to interim committees related to revenue no later than July 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the taxation of certain heavy equipment; and prescribing an effective date.

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

4 **SECTION 1. As used in sections 1 to 10 of this 2018 Act:**

5 (1) **"Affiliate"** means a person that directly or indirectly owns or controls, is owned or
6 controlled by, or is under common ownership or control with, another person.

7 (2) **"Control,"** for purposes of the definition of "affiliate" under this section, means direct
8 or indirect possession of the power to direct or cause the direction of the management and
9 policies of a person, whether through the ownership of voting securities, by contract or
10 otherwise.

11 (3) **"Heavy equipment rental tax"** means the tax imposed under section 2 of this 2018 Act.

12 (4) **"Mobile"** means that qualified heavy equipment:

13 (a) **Is intended to be moved among worksites as needed; and**

14 (b) **Is not intended to be permanently affixed to real property when put to its intended**
15 **use.**

16 (5) **"Own,"** for purposes of the definition of "affiliate" under this section, means to have
17 ownership of an equity interest, or the equivalent, of 10 percent or more in a person.

18 (6) **"Qualified heavy equipment"** means any construction, mining, earthmoving or indus-
19 **trial equipment, together with attachments and other equipment and tools, including, but**
20 **not limited to, towable trailers and fixed load vehicles, that is:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (a) Mobile;
- 2 (b) Owned by a qualified heavy equipment provider; and
- 3 (c) Held primarily for rental.

4 (7)(a) "Qualified heavy equipment provider" means a person that is primarily engaged in
5 the business of renting qualified heavy equipment without an operator.

6 (b) "Qualified heavy equipment provider" does not mean a person primarily engaged in
7 the business of renting qualified heavy equipment to one or more of the person's affiliates.

8 (8) "Rent," "rental" and "renting" mean entering into an agreement for the use of
9 property in exchange for consideration for a term of less than 365 consecutive days, an
10 open-ended term or an undefined term.

11 (9) "Rental location" means a qualified heavy equipment provider's store or other busi-
12 ness location in this state from which qualified heavy equipment is rented.

13 (10) "Rental price" means the rental charge for qualified heavy equipment, net of any
14 invoice credits provided to the renter. "Rental price" does not include delivery and pickup
15 fees, damage waivers or environmental mitigation fees.

16 **SECTION 2.** (1) A tax of two percent is imposed on the rental price received for any
17 qualified heavy equipment.

18 (2) The tax imposed under this section shall be collected by the qualified heavy equipment
19 provider from the renter at the time that the rental of the qualified heavy equipment is
20 made.

21 (3) Qualified heavy equipment is exempt from any and all ad valorem property taxes if
22 rental of the qualified heavy equipment is subject to taxation under this section.

23 (4) Notwithstanding ORS 315.037, the exemption granted under subsection (3) of this
24 section does not have a maximum term.

25 **SECTION 3.** (1) Every qualified heavy equipment provider shall register with the De-
26 partment of Revenue in the form and manner prescribed by the department no later than
27 December 15 immediately preceding the beginning of the next property tax year by certifying
28 that the provider is engaged in the line of business described in section 1 (7) of this 2018 Act.

29 (2) Every qualified heavy equipment provider shall keep records, render statements and
30 comply with rules adopted by the department with respect to the heavy equipment rental tax.
31 The records and statements required by this section must be sufficient to show whether
32 there is a tax liability under section 2 of this 2018 Act.

33 **SECTION 4.** (1) Every qualified heavy equipment provider that rents out qualified heavy
34 equipment is responsible for collecting the heavy equipment rental tax and shall file a return
35 with the Department of Revenue, on or before the last day of the month following the end
36 of each calendar quarter, reporting the amount of tax due during the quarter. The depart-
37 ment shall prescribe the form and manner of the return required by this section, provided
38 that the form shall require the qualified heavy equipment provider to report, for each county
39 in the state, the aggregate rental prices and taxes collected for qualified heavy equipment
40 rented out from each of its rental locations in the county during the applicable calendar
41 quarter. The rules of the department shall require that returns be made under penalties for
42 false swearing.

43 (2) When a return is required under subsection (1) of this section, the qualified heavy
44 equipment provider required to make the return shall remit the tax due to the department
45 at the time fixed for filing the return.

1 **SECTION 5.** If the amount paid by a qualified heavy equipment provider to the Depart-
2 ment of Revenue under section 4 of this 2018 Act exceeds the amount of tax payable, the
3 department shall refund the amount of the excess. A refund may not be made to a qualified
4 heavy equipment provider that fails to claim the refund within two years after the due date
5 for filing the return to which the claim for refund relates.

6 **SECTION 6.** (1) Every qualified heavy equipment provider is deemed to hold the amount
7 of heavy equipment rental taxes collected in trust for the State of Oregon and for payment
8 to the Department of Revenue in the manner and at the time provided under section 4 of this
9 2018 Act.

10 (2) At any time the qualified heavy equipment provider fails to remit any amount of
11 heavy equipment rental taxes deemed to be held in trust for the State of Oregon, the de-
12 partment may enforce collection by the issuance of a distraint warrant for the collection of
13 the delinquent amount and all penalties, interest and collection charges accrued on the de-
14 linquent amount. The warrant shall be issued, docketed and proceeded upon in the same
15 manner and shall have the same force and effect as warrants for the collection of delinquent
16 income taxes.

17 **SECTION 7.** (1) Unless the context requires otherwise, the provisions of ORS chapters
18 305, 314 and 316 governing the audit and examination of reports and returns, confidentiality
19 of reports and returns, determination of deficiencies, assessments, claims for refunds, pen-
20 alties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax
21 Court, and related procedures, apply to sections 1 to 10 of this 2018 Act as if the heavy
22 equipment rental tax were a tax imposed upon or measured by net income. The provisions
23 apply to the taxpayer liable for the tax and to any qualified heavy equipment provider re-
24 quired to collect the tax.

25 (2) Any amount collected and required to be remitted to the Department of Revenue is
26 considered a tax upon the qualified heavy equipment provider required to collect the tax and
27 the qualified heavy equipment provider is considered a taxpayer.

28 **SECTION 8.** (1) All moneys received by the Department of Revenue pursuant to sections
29 1 to 10 of this 2018 Act, and any interest on the moneys, shall be paid to the State Treasurer
30 to be held in a suspense account established under ORS 293.445.

31 (2)(a) After the payment of refunds:

32 (A) Moneys necessary to reimburse the department for the actual costs incurred by the
33 department in administering the heavy equipment rental tax, not to exceed five percent of
34 heavy equipment rental tax collections, are continuously appropriated to the department; and

35 (B) An amount equal to two percent of the gross moneys received shall be transferred
36 pro rata to counties that do not receive a transfer of moneys under paragraph (b) of this
37 subsection.

38 (b) After deduction for the amounts described in paragraph (a) of this subsection, the
39 balance of the moneys received shall be transferred to the treasurer of each county accord-
40 ing to the share of the moneys that are attributable to qualified heavy equipment rented out
41 from rental locations in the county.

42 (3) Each county treasurer shall:

43 (a) Deposit the moneys received from the department under subsection (2) of this section
44 in the unsegregated tax collections account described in ORS 311.385; and

45 (b) Distribute the moneys in accordance with ORS 311.390.

1 (4) Provisions of law relating to the confidentiality of public records do not apply to the
2 extent that remittances made by the department pursuant to this section disclose informa-
3 tion derived from heavy equipment rental tax returns.

4 **SECTION 9.** (1) Public records of heavy equipment rental tax moneys collected by the
5 Department of Revenue pursuant to sections 1 to 10 of this 2018 Act are exempt from dis-
6 closure under ORS 192.311 to 192.478. Nothing in this section shall limit the use that can be
7 made of such information for regulatory purposes or its use and admissibility in any
8 enforcement proceedings.

9 (2) If a conflict is found to exist between subsection (1) of this section and ORS 314.835,
10 ORS 314.835 controls.

11 **SECTION 10.** The Department of Revenue may adopt rules necessary for the adminis-
12 tration and enforcement of the heavy equipment rental tax under sections 1 to 10 of this 2018
13 Act.

14 **SECTION 11.** (1) Sections 1 to 10 of this 2018 Act apply to rentals of qualified heavy
15 equipment occurring on or after January 1, 2019.

16 (2) For purposes of complying with section 3 (1) of this 2018 Act for the property tax year
17 beginning on July 1, 2018, a qualified heavy equipment provider shall register with the De-
18 partment of Revenue no later than December 31, 2018.

19 **SECTION 12.** (1)(a) On or before March 31, 2019, each qualified heavy equipment provider
20 shall file with the Department of Revenue a complete report on forms provided by the de-
21 partment, made under penalties for false swearing, that lists the qualified heavy equipment
22 that is assigned to each rental location and that is:

23 (A) In this state on January 1, 2019, at 1:00 a.m.; and

24 (B) Subject to the heavy equipment rental tax imposed under section 2 of this 2018 Act.

25 (b) The report required under this subsection shall provide the cost, acquisition date,
26 description and rental location of each piece of qualified heavy equipment.

27 (c) The department shall use the report required under this subsection and the 14 years
28 personal property valuation factors found in Table 2 of the department's Personal Property
29 Valuation Guidelines 2017, as revised effective December 2016, to determine a real market
30 value for the qualified heavy equipment for purposes of this section.

31 (d) For purposes of this section, the department shall determine the maximum assessed
32 value and assessed value for the qualified heavy equipment under ORS 308.153, treating the
33 qualified heavy equipment as new property within the meaning of ORS 308.149 (6)(a)(C).

34 (e) The department shall use the values determined under this section to estimate the
35 amount of ad valorem property taxes that would be due for the property tax year beginning
36 on July 1, 2019, if the qualified heavy equipment were subject to ad valorem property taxa-
37 tion.

38 (2) On or before March 31, 2020, for each rental location, the department shall compare:

39 (a) The total amount of tax reported under section 4 of this 2018 Act, after any adjust-
40 ment or amended returns, that is attributable to qualified heavy equipment rented out from
41 the rental location during the 2019 calendar year; and

42 (b) The total estimated ad valorem property tax amount determined under subsection (1)
43 of this section.

44 (3)(a) If the total amount determined under subsection (2)(a) of this section is less than
45 the total amount determined under subsection (2)(b) of this section, the department shall

1 collect the amount of the difference from the applicable qualified heavy equipment provider
2 as a supplemental amount of the heavy equipment rental tax imposed under section 2 of this
3 2018 Act.

4 (b) The supplemental tax amount shall be payable on or before the later of June 30, 2020,
5 or within 60 days after the date of the notice from the department.

6 (c) After retaining moneys necessary to reimburse the department for the actual costs
7 incurred by the department in administering this section, not to exceed five percent of the
8 supplemental tax amount, the department shall remit each net supplemental tax amount
9 collected under this subsection to the treasurer of the county in which the applicable rental
10 location is located and the county treasurer shall deposit all such amounts in the county's
11 unsegregated tax collections account.

12 (4) If the amount determined under subsection (2)(a) of this section is greater than the
13 amount determined under subsection (2)(b) of this section, the department shall, in the
14 department's sole discretion, refund the amount of the difference to the qualified heavy
15 equipment provider without interest or issue the amount of the difference without interest
16 as a credit against future heavy equipment rental tax liabilities of the qualified heavy
17 equipment provider.

18 (5) Provisions of law relating to the confidentiality of public records do not apply to the
19 extent that remittances and refunds made by the department pursuant to this section dis-
20 close information derived from heavy equipment rental tax returns.

21 **SECTION 13.** (1)(a) On or before March 31, 2020, each qualified heavy equipment provider
22 shall file with the Department of Revenue a complete report on forms provided by the de-
23 partment, made under penalties for false swearing, that lists the qualified heavy equipment
24 that is assigned to each rental location and that is:

25 (A) In this state on January 1, 2020, at 1:00 a.m.; and

26 (B) Subject to the heavy equipment rental tax imposed under section 2 of this 2018 Act.

27 (b) The report required under this subsection shall provide the cost, acquisition date,
28 description and rental location of each piece of qualified heavy equipment.

29 (c) The department shall use the report required under this subsection and the 14 years
30 personal property valuation factors found in Table 2 of the department's Personal Property
31 Valuation Guidelines 2017, as revised effective December 2016, to determine a real market
32 value for the qualified heavy equipment for purposes of this section.

33 (d) For purposes of this section, the department shall determine the maximum assessed
34 value and assessed value for the qualified heavy equipment under ORS 308.153, treating the
35 qualified heavy equipment as new property within the meaning of ORS 308.149 (6)(a)(C).

36 (e) The department shall use the values determined under this section to estimate the
37 amount of ad valorem property taxes that would be due for the property tax year beginning
38 on July 1, 2020, if the qualified heavy equipment were subject to ad valorem property taxa-
39 tion.

40 (2) On or before March 31, 2021, for each rental location, the department shall compare:

41 (a) The total amount of tax reported under section 4 of this 2018 Act, after any adjust-
42 ment or amended returns, that is attributable to qualified heavy equipment rented out from
43 the rental location during the 2020 calendar year; and

44 (b) The total estimated ad valorem property tax amount determined under subsection (1)
45 of this section.

1 (3)(a) If the total amount determined under subsection (2)(a) of this section is less than
2 the total amount determined under subsection (2)(b) of this section, the department shall
3 collect the amount of the difference from the applicable qualified heavy equipment provider
4 as a supplemental amount of the heavy equipment rental tax imposed under section 2 of this
5 2018 Act.

6 (b) The supplemental tax amount shall be payable on or before the later of June 30, 2021,
7 or within 60 days after the date of the notice from the department.

8 (c) After retaining moneys necessary to reimburse the department for the actual costs
9 incurred by the department in administering this section, not to exceed five percent of the
10 supplemental tax amount, the department shall remit each net supplemental tax amount
11 collected under this subsection to the treasurer of the county in which the applicable rental
12 location is located and the county treasurer shall deposit all such amounts in the county's
13 unsegregated tax collections account.

14 (4) If the amount determined under subsection (2)(a) of this section is greater than the
15 amount determined under subsection (2)(b) of this section, the department shall, in the
16 department's sole discretion, refund the amount of the difference to the qualified heavy
17 equipment provider without interest or issue the amount of the difference without interest
18 as a credit against future heavy equipment rental tax liabilities of the qualified heavy
19 equipment provider.

20 (5) Provisions of law relating to the confidentiality of public records do not apply to the
21 extent that remittances and refunds made by the department pursuant to this section dis-
22 close information derived from heavy equipment rental tax returns.

23 SECTION 14. Sections 7, 9 and 10 of this 2018 Act and the definitions provided by section
24 1 of this 2018 Act apply to sections 12 and 13 of this 2018 Act.

25 SECTION 15. Sections 12 and 13 of this 2018 Act are repealed on January 2, 2022.

26 SECTION 16. (1) Not later than July 1, 2022, the Department of Revenue, after consulting
27 with the Legislative Revenue Officer as necessary, shall submit a report in the manner pro-
28 vided in ORS 192.245 to the interim committees of the Legislative Assembly related to re-
29 venue regarding the heavy equipment rental tax imposed under section 2 of this 2018 Act.

30 (2) For tax years with valuation dates of January 1, 2019, and January 1, 2020, the report
31 shall set forth:

32 (a) The revenue collected under sections 12 (3)(a) and 13 (3)(a) of this 2018 Act, after
33 payment of refunds, for all taxpayers registered as qualified heavy equipment providers; and

34 (b) The amount of ad valorem property taxes that would have been due for the property
35 tax years beginning on July 1, 2019, and July 1, 2020, respectively, if the qualified heavy
36 equipment had been subject to ad valorem property taxation.

37 (3) In the report the Legislative Revenue Officer shall propose a tax rate for section 2
38 of this 2018 Act that, based on the experience of the heavy equipment rental tax to date, will
39 maintain revenue neutrality with respect to the replacement of the ad valorem property tax
40 by the heavy equipment rental tax.

41 SECTION 17. Section 16 of this 2018 Act is repealed on January 2, 2023.

42 SECTION 18. This 2018 Act takes effect on the 91st day after the date on which the 2018
43 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.