

Requested by JOINT COMMITTEE ON TAX EXPENDITURES

**PROPOSED AMENDMENTS TO
HOUSE BILL 2164**

1 On line 2 of the printed bill, after “taxation;” insert “creating new pro-
2 visions; amending sections 58, 63, 64 and 67, chapter 122, Oregon Laws 2019
3 (Enrolled House Bill 3427);”.

4 Delete lines 4 through 11 and insert:

5 **“SECTION 1.** Section 58, chapter 122, Oregon Laws 2019 (Enrolled House
6 Bill 3427), is amended to read:

7 **“Sec. 58.** As used in sections 58 to 76, **chapter 122, Oregon Laws 2019**
8 **(Enrolled House Bill 3427)** [*of this 2019 Act*]:

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

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

13 **“(B) If received by a financial institution, in addition to the defi-**
14 **inition in subparagraph (A) of this paragraph:**

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

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

21 **“(iii) If the reporting person for a financial institution is a nonbank**

1 **financial organization, all items of income reported in accordance with**
2 **generally accepted accounting principles; and**

3 **“(C)(i) If received by an insurer, in addition to the definition in**
4 **subparagraph (A) of this paragraph, as reported on the statement of**
5 **premiums accompanying the annual statement required under ORS**
6 **731.574 to be filed with the Director of the Department of Consumer**
7 **and Business Services, all gross direct life insurance premiums, gross**
8 **direct accident and health insurance premiums and gross direct prop-**
9 **erty and casualty insurance premiums; and**

10 **“(ii) The gross amount of surplus lines premiums received on**
11 **Oregon home state risks as shown in the report required by ORS**
12 **735.465.**

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

14 **“(A) Interest income except:**

15 **“(i) Interest on credit sales; or**

16 **“(ii) Interest income received by financial institutions;**

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

20 **“(C) If received by an insurer, federally reinsured premiums or in-**
21 **come from transactions between a reciprocal insurer and its attorney**
22 **in fact operating under ORS 731.142;**

23 **“(D) Receipts from hedging transactions, to the extent that the**
24 **transactions are entered into primarily to protect a financial position,**
25 **including transactions intended to manage the risk of exposure to**
26 **foreign currency fluctuations that affect assets, liabilities, profits,**
27 **losses, equity or investments in foreign operations, risk of exposure**
28 **to interest rate fluctuations or risk of commodity price fluctuations;**

29 **“[(C)] (E) Proceeds received attributable to the repayment, maturity or**
30 **redemption of the principal of a loan, bond, mutual fund, certificate of de-**

1 posit or marketable instrument;

2 “[*D*] (F) The principal amount received under a repurchase agreement
3 or on account of any transaction properly characterized as a loan to the
4 person;

5 “[*E*] (G) Contributions received by a trust, plan or other arrangement,
6 any of which is described in section 501(a) of the Internal Revenue Code, or
7 to which title 26, subtitle A, chapter 1, subchapter (D) of the Internal Reve-
8 nue Code applies;

9 **“(H) Compensation, whether current or deferred, and whether in
10 cash or in kind, received or to be received by an employee, a former
11 employee or the employee’s legal successor for services rendered to
12 or for an employer, including reimbursements received by or for an
13 individual for medical or education expenses, health insurance premi-
14 ums or employee expenses or on account of a dependent care spending
15 account, legal services plan, any cafeteria plan described in section 125
16 of the Internal Revenue Code or any similar employee reimbursement;**

17 “[*F*] (I) Proceeds received from the issuance of the taxpayer’s own stock,
18 options, warrants, puts or calls, or from the sale of the taxpayer’s treasury
19 stock;

20 “[*G*] (J) Proceeds received on the account of payments from insurance
21 policies, except those proceeds received for the loss of business revenue;

22 “[*H*] (K) Gifts or charitable contributions received, membership dues
23 received by trade, professional, homeowners’ or condominium associations,
24 payments received for educational courses, meetings or meals, or similar
25 payments to a trade, professional or other similar association, and
26 fundraising receipts received by any person when any excess receipts are
27 donated or used exclusively for charitable purposes;

28 “[*I*] (L) Damages received as the result of litigation in excess of
29 amounts that, if received without litigation, would be treated as commercial
30 activity;

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

4 “[(K)] (N) Tax refunds, other tax benefit recoveries and reimbursements
5 for the tax imposed under sections 58 to 76, **chapter 122, Oregon Laws 2019**
6 **(Enrolled House Bill 3427)**, [of this 2019 Act] made by entities that are part
7 of the same unitary group as provided under section 60, **chapter 122,**
8 **Oregon Laws 2019 (Enrolled House Bill 3427)** [of this 2019 Act], and re-
9 imbursements made by entities that are not members of a unitary group that
10 are required to be made for economic parity among multiple owners of an
11 entity whose tax obligation under sections 58 to 76, **chapter 122, Oregon**
12 **Laws 2019 (Enrolled House Bill 3427)**, [of this 2019 Act] is required to be
13 reported and paid entirely by one owner, as provided in section 60, **chapter**
14 **122, Oregon Laws 2019 (Enrolled House Bill 3427)** [of this 2019 Act];

15 “[(L)] (O) Pension reversions;

16 “[(M)] (P) Contributions to capital;

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

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

25 “[(P)] (S) In the case of receipts from the sale of malt beverages[, *wine*
26 *or alcoholic liquor, all*] **or wine**, as defined in ORS 471.001, or cider, as de-
27 fined in ORS 471.023, by a person holding a license issued under ORS chapter
28 471, an amount equal to the federal and state excise taxes paid by any person
29 on or for such malt beverages[, *wine or alcoholic liquor*] **or wine** under sub-
30 title E of the Internal Revenue Code or ORS chapter 471 **or 473**, and any

1 [net] amount paid to the Oregon Liquor Control Commission [by a person li-
2 censed to sell alcoholic liquor under ORS chapter 471 in excess of the purchase
3 price paid by the licensee] **for sales of distilled spirits by an agent ap-
4 pointed under ORS 471.750;**

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

11 “(U) **Local taxes collected by a restaurant or other food establish-
12 ment on sales of meals, prepared food or beverages;**

13 “[R] (V) Receipts realized by a vehicle dealer certified under ORS
14 822.020 from the sale or other transfer of a motor vehicle, as defined in ORS
15 801.360, to another vehicle dealer for the purpose of resale by the transferee
16 vehicle dealer, but only if the sale or other transfer was based upon the
17 transferee’s need to meet a specific customer’s preference for a motor vehicle;

18 “[S] (W) Registration fees or taxes collected by a vehicle dealer certified
19 under ORS 822.020 at the sale or other transfer of a motor vehicle, as defined
20 in ORS 801.360, that are owed to a third party by the purchaser of the motor
21 vehicle and passed to the third party by the dealer;

22 “[T] (X) Receipts from a financial institution for services provided to
23 the financial institution in connection with the issuance, processing, servic-
24 ing and management of loans or credit accounts, if the financial institution
25 and the recipient of the receipts have at least 50 percent of their ownership
26 interests owned or controlled, directly or constructively through related in-
27 terests, by common owners;

28 “[U] (Y) In the case of amounts retained as commissions by a holder of
29 a license under ORS chapter 462, an amount equal to the amounts specified
30 under ORS chapter 462 that must be paid to or collected by the Department

1 of Revenue as a tax and the amounts specified under ORS chapter 462 to be
2 used as purse money;

3 “[*V*] (**Z**) Net revenue of residential care facilities as defined in ORS
4 443.400 or in-home care agencies as defined in ORS 443.305, to the extent that
5 the revenue is derived from or received as compensation for providing ser-
6 vices to a medical assistance or Medicare recipient;

7 “[*W*] (**AA**) Dividends received;

8 “[*X*] (**BB**) Distributive income received from a pass-through entity;

9 “[*Y*] (**CC**) Receipts from sales to a wholesaler in this state, if the seller
10 receives certification at the time of sale from the wholesaler that the
11 wholesaler will sell the purchased property outside this state;

12 “[*Z*] (**DD**) Rebates paid to purchasers by retailers or wholesalers;

13 “[*AA*] (**EE**) Receipts from the wholesale or retail sale of groceries, **or**
14 **of fruits, vegetables, dairy products, seafood or meat;**

15 “[*BB*] (**FF**) Receipts from transactions among members of a unitary
16 group;

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

23 “[*DD*] (**HH**) Moneys collected by a utility from customers for the pay-
24 ment of loans through on-bill financing;

25 “[*EE*] (**II**) Surcharges collected under ORS 757.736;

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

29 “[*GG*] (**KK**) Moneys collected [*by a utility for*] **or recovered for right-**
30 **of-way fees**, franchise fees, privilege taxes, federal taxes, local taxes and

1 fees payable under ORS 756.310;

2 “[*HH*] (**LL**) Charges paid to the Residential Service Protection Fund
3 required by chapter 290, Oregon Laws 1987;

4 “[*II*] (**MM**) Universal service surcharge moneys collected [*by telecom-*
5 *munications carriers*] **or recovered** and paid into the universal service fund
6 established in ORS 759.425;

7 “[*JJ*] (**NN**) Moneys collected for public purpose funding as described in
8 ORS 759.430;

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

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

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

19 “[*NN*] (**RR**) In the case of a seller of bicycles, the amount of tax imposed
20 under ORS 320.415 upon retail sales of bicycles;

21 “[*OO*] (**SS**) In the case of a qualified heavy equipment provider, the
22 amount of tax imposed under section 2, chapter 64, Oregon Laws 2018, upon
23 the rental price of heavy equipment;

24 “[*PP*] (**TT**) [*Receipts representing business done with or for members of*]
25 **Farmer sales to** an agricultural cooperative in this state that is a cooper-
26 ative organization described in section 1381 of the Internal Revenue Code;
27 and

28 “[*QQ*] (**UU**) Revenue received by a business entity that is mandated by
29 contract or subcontract to be distributed to another person or entity if the
30 revenue constitutes:

1 “(i) Sales commissions that are paid to a person who is not an employee
2 of the business entity, including, without limitation, a split-fee real estate
3 commission[.]; **or**

4 **“(ii) Subcontracting payments under a contract or subcontract en-
5 tered into by a business entity to provide services, labor or materials
6 in connection with the actual or proposed design, construction, re-
7 modeling, remediation or repair of improvements on real property or
8 the location of the boundaries of real property.**

9 “[(2)(a) ‘Commercial activity of a financial institution’ includes all items
10 of income without deduction for expenses.]

11 “[(b) If the reporting person for a financial institution is a holding com-
12 pany, ‘commercial activity of a financial institution’ includes all items of in-
13 come reported on the FR Y-9 filed by the holding company.]

14 “[(c) If the reporting person for a financial institution is a bank organiza-
15 tion, ‘commercial activity of a financial institution’ includes all items of in-
16 come reported on the call report filed by the bank organization.]

17 “[(d) If the reporting person for a financial institution is a nonbank fi-
18 nancial organization, ‘commercial activity of a financial institution’ includes
19 all items of income reported in accordance with generally accepted accounting
20 principles.]

21 “[(3) ‘Commercial activity of an insurer’ includes all items of income with-
22 out deduction for expenses and all items of income] [reported on the statement
23 of income accompanying the annual statement required under ORS 731.574 to
24 be filed with the Director of the Department of Consumer and Business Ser-
25 vices.]

26 “[(4)] **(2) ‘Cost inputs’ means the cost of goods sold as calculated [under
27 section 471 of the Internal Revenue Code] in arriving at federal taxable
28 income under the Internal Revenue Code irrespective of any election
29 of a taxpayer.**

30 “[(5)] **(3) ‘Doing business’ means engaging in any activity, whether legal**

1 or illegal, that is conducted for, or results in, the receipt of commercial ac-
2 tivity at any time during a calendar year.

3 “[6] (4) ‘Excluded person’ means any of the following:

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

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

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

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

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

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

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

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

22 “(i) Governmental entities.

23 “(j) Any person with commercial activity that does not exceed \$1 million
24 for the calendar year, other than a person that is part of a unitary group
25 as provided in section 60, **chapter 122, Oregon Laws 2019 (Enrolled House**
26 **Bill 3427)**, [of this 2019 Act] with commercial activity in excess of \$1 million.

27 “(k) Hospitals subject to assessment under section 2, chapter 736, Oregon
28 Laws 2003, long term care facilities subject to assessment under section 16,
29 chapter 736, Oregon Laws 2003, or any entity subject to assessment under
30 section 3, 5 or 9, chapter 538, Oregon Laws 2017.

1 “[7] (5) ‘Financial institution’ has the meaning given that term in ORS
2 314.610, except that ‘financial institution’ does not include a credit union.

3 “[8(a)] (6)(a) ‘FR Y-9’ means the consolidated or parent-only financial
4 statements that a holding company is required to file with the Federal Re-
5 serve Board pursuant to 12 U.S.C. 1844.

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

9 “[9] (7) ‘Governmental entity’ means:

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

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

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

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

18 “(e) Any public corporation.

19 “(f) A federally recognized Indian tribe.

20 “[10] (8) ‘Groceries’ means food as defined in 7 U.S.C. 2012(k), **but does**
21 **not include cannabinoid edibles or marijuana seeds.**

22 “(9)(a) ‘**Hedging transaction’ means a hedging transaction as de-**
23 **defined in section 1221 of the Internal Revenue Code or a transaction**
24 **accorded hedge accounting treatment under Financial Accounting**
25 **Standards Board Statement No. 133.**

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

29 “[11] (10) ‘Insurer’ has the meaning given that term in ORS 317.010.

30 “[12] (11) ‘Internal Revenue Code,’ except where the Legislative Assem-

1 bly has provided otherwise, refers to the laws of the United States or to the
2 Internal Revenue Code as they are amended and in effect on December 31,
3 2018.

4 “[~~(13)~~] **(12)** ‘Labor costs’ means total compensation of all employees, not
5 to include compensation paid to any single employee in excess of \$500,000.

6 “[~~(14)(a)~~] **(13)(a)** ‘Motor vehicle fuel or any other product used for the
7 propulsion of motor vehicles’ means:

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

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

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

13 “(A) Electricity; or

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

16 “[~~(15)~~] **(14)** ‘Person’ includes individuals, combinations of individuals of
17 any form, receivers, assignees, trustees in bankruptcy, firms, companies,
18 joint-stock companies, business trusts, estates, partnerships, limited liability
19 partnerships, limited liability companies, associations, joint ventures, clubs,
20 societies, entities organized as for-profit corporations under ORS chapter 60,
21 C corporations, S corporations, qualified subchapter S subsidiaries, qualified
22 subchapter S trusts, trusts, entities that are disregarded for federal income
23 tax purposes and any other entities.

24 “[~~(16)~~] **(15)** ‘Retailer’ means a person doing business by selling tangible
25 personal property to a purchaser for a purpose other than:

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

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

30 “(c) Consumption by the purchaser of the property in the production for

1 sale of a new article of tangible personal property.

2 “[~~(17)~~] (16) ‘Taxable commercial activity’ means commercial activity
3 sourced to this state under section 66, **chapter 122, Oregon Laws 2019**
4 **(Enrolled House Bill 3427)** [of this 2019 Act], less any subtraction pursuant
5 to section 64, **chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427)**
6 [of this 2019 Act].

7 “[~~(18)(a)~~] (17)(a) ‘Taxpayer’ means any person or unitary group required
8 to register, file or pay tax under sections 58 to 76, **chapter 122, Oregon**
9 **Laws 2019 (Enrolled House Bill 3427)** [of this 2019 Act].

10 “(b) ‘Taxpayer’ does not include excluded persons, **except to the extent**
11 **that a tax-exempt entity has unrelated business income that is taxable**
12 **under the Internal Revenue Code.**

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

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

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

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

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

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

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

28 “[~~(20)~~] (19) ‘Unitary group’ means a group of persons with more than 50
29 percent common ownership, either direct or indirect, that is engaged in
30 business activities that constitute a unitary business.

1 “[~~(21)~~] **(20)** ‘Wholesaler’ means a person primarily doing business by mer-
2 chant distribution of tangible personal property to retailers or to other
3 wholesalers.

4 **“SECTION 2.** Section 63, chapter 122, Oregon Laws 2019 (Enrolled House
5 Bill 3427), is amended to read:

6 **“Sec. 63.** (1) A corporate activity tax is imposed on each person with
7 taxable commercial activity for the privilege of doing business in this state.
8 The tax is imposed upon persons with substantial nexus with this state. The
9 tax imposed under this section is not a transactional tax and is not subject
10 to the Interstate Income Act of 1959 (P.L. 86-272). The tax imposed under this
11 section is in addition to any other taxes or fees imposed under the tax laws
12 of this state. The tax imposed under this section is imposed on the person
13 receiving the commercial activity and is not a tax imposed directly on a
14 purchaser. The tax imposed under this section is an annual privilege tax for
15 the calendar year and shall be remitted quarterly to the Department of
16 Revenue. A taxpayer is subject to the annual corporate activity tax for do-
17 ing business during any portion of such calendar year.

18 “(2) A person has substantial nexus with this state if any of the following
19 applies. The person:

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

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

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

24 “(d) Otherwise has nexus with this state to an extent that the person can
25 be required to remit the tax imposed under sections 58 to 76, **chapter 122,**
26 **Oregon Laws 2019 (Enrolled House Bill 3427),** [*of this 2019 Act*] under the
27 United States Constitution.

28 “(3) A person has bright-line presence in this state for the calendar year
29 if any of the following applies. The person:

30 “(a) Owns at any time during the calendar year property in this state with

1 an aggregate value of at least \$50,000. For purposes of this paragraph, owned
2 property is valued at original cost and rented property is valued at eight
3 times the net annual rental charge.

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

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

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

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

13 “(c) Has during the calendar year commercial activity, sourced to this
14 state under section 66, **chapter 122, Oregon Laws 2019 (Enrolled House**
15 **Bill 3427)** [*of this 2019 Act*], of at least \$750,000.

16 “(d) Has at any time during the calendar year within this state at least
17 25 percent of the person’s total property, total payroll or total commercial
18 activity.

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

21 “**(4) Notwithstanding subsection (1) of this section, a vehicle dealer**
22 **may collect from the purchaser of a motor vehicle the estimated por-**
23 **tion of the tax imposed under this section that is attributable to**
24 **commercial activity from the sale of the vehicle.**

25 “**SECTION 3.** Section 64, chapter 122, Oregon Laws 2019 (Enrolled House
26 Bill 3427), is amended to read:

27 “**Sec. 64.** (1) A taxpayer shall subtract from commercial activity sourced
28 to this state 35 percent of the greater of the following amounts paid or in-
29 curred by the taxpayer in the tax year:

30 “(a) The amount of cost inputs; or

1 “(b) The taxpayer’s labor costs.

2 “(2) The amounts in subsection (1)(a) or (b) of this section shall be ap-
3 portioned to this state in the manner required for apportionment of income
4 under ORS 314.605 to 314.675.

5 “(3) **A subtraction under this section is not allowed for:**

6 “(a) **Intracompany transfers; or**

7 “(b) **Any amount of cost inputs or labor costs that are attributable**
8 **to a person’s receipts from an item that is not commercial activity.**

9 “[3] (4) Notwithstanding subsection (1) of this section, the subtraction
10 under this section may not exceed 95 percent of the taxpayer’s commercial
11 activity in this state.

12 “**SECTION 4.** Section 67, chapter 122, Oregon Laws 2019 (Enrolled House
13 Bill 3427), is amended to read:

14 “**Sec. 67.** (1) Except as expressly authorized by this section, the authority
15 to impose, in this state, a tax upon the commercial activity of an entity is
16 vested solely in the Legislative Assembly. A city, county, district or other
17 political subdivision or municipal corporation of this state may not impose,
18 by ordinance or other law, a tax upon commercial activity or upon receipts
19 from grocery sales.

20 “(2) Subsection (1) of this section does not apply:

21 “(a) To any tax, or to subsequent amendments of the provisions of any
22 tax, if the ordinance or other law imposing the tax is in effect and operative
23 on April 1, 2019, or is adopted by initiative or referendum petition at an
24 election held prior to March 1, 2019; or

25 “(b) To the imposition of franchise fees or [*franchise*] **privilege** taxes.

26 “**SECTION 5.** **The amendments to sections 58, 63, 64 and 67, chapter**
27 **122, Oregon Laws 2019 (Enrolled House Bill 3427), by sections 1 to 4 of**
28 **this 2019 Act apply to tax years beginning on or after January 1, 2020.**

29 “**SECTION 6.** **Sections 7 to 13 of this 2019 Act are added to and made**
30 **a part of sections 58 to 76, chapter 122, Oregon Laws 2019 (Enrolled**

1 **House Bill 3427).**

2 **“SECTION 7. As used in sections 7 to 13 of this 2019 Act:**

3 **“(1) ‘Business enterprise’ means a party to a qualifying economic**
4 **development contract other than a state agency.**

5 **“(2)(a) ‘Full-time equivalent employee’ means an employee of a**
6 **business enterprise who works at least 1,820 hours per year, other than**
7 **hours attributable to vacation, sick leave or any other paid time where**
8 **no work is performed.**

9 **“(b) ‘Full-time equivalent employee’ does not include leased work-**
10 **ers or temporary workers.**

11 **“(3) ‘Leased worker’ means a worker provided by a worker leasing**
12 **company licensed under ORS 656.850.**

13 **“(4) ‘Oregon average wage’ means the most recently available av-**
14 **erage annual wage for this state that has been determined as final by**
15 **the Oregon Business Development Department for an entire calendar**
16 **year based on amounts determined by the Employment Department.**

17 **“(5) ‘Taxpayer’ means a taxpayer that has receipts from a business**
18 **enterprise that has executed a qualifying economic development con-**
19 **tract.**

20 **“(6) ‘Temporary worker’ means a worker provided by a temporary**
21 **service provider, as defined in ORS 656.850.**

22 **“SECTION 8. The Governor, in consultation with the Director of**
23 **the Oregon Business Development Department and the Director of the**
24 **Department of Revenue, may enter into, on behalf of the State of**
25 **Oregon, a qualifying economic development contract with a business**
26 **enterprise. Subject to approval by the Oregon Business Development**
27 **Commission under ORS 285A.045, the Oregon Business Development**
28 **Department may recommend that the Governor execute a qualifying**
29 **economic development contract with a business enterprise if the fol-**
30 **lowing conditions are met:**

1 “(1) The business enterprise agrees, as specified in the qualifying
2 economic development contract, to make a capital investment in an
3 economic development project. The capital investment must be at
4 least \$1 billion over not more than 10 years and be made at a single
5 eligible site or multiple eligible sites located on real property within
6 this state.

7 “(2) The business enterprise increases its full-time equivalent em-
8 ployee count in each county where the capital investment is made by
9 at least 500 new full-time equivalent employees after completion of the
10 capital investment or maintains no less than 90 percent of its total
11 full-time equivalent employee count as of the date of the contract.
12 Employment is measured by comparing the full-time equivalent em-
13 ployee count in the county as of the date of the contract and ending
14 December 31 of the year the economic development project is com-
15 pleted.

16 “(3) During the term of the contract, the business enterprise must
17 pay all employees at all eligible sites wages, on average, of at least 150
18 percent of the Oregon average wage.

19 “(4) A contract authorized under this section may not be entered
20 into for an economic development project involving a capital invest-
21 ment related to the energy sector.

22 “SECTION 9. (1) For tax years beginning during the term of a con-
23 tract authorized under section 8 of this 2019 Act, the following
24 amounts received by a taxpayer from sales to a business enterprise
25 that has executed a qualifying economic development contract are
26 excluded from taxation under the tax imposed by section 63, chapter
27 122, Oregon Laws 2019 (Enrolled House Bill 3427):

28 “(a) Receipts derived from performing construction on the eligible
29 site;

30 “(b) Receipts derived from selling material, goods, machinery or

1 equipment, including machinery and equipment component parts, for
2 use at the eligible site; or

3 “(c) Receipts derived from services performed during and for the
4 purposes of constructing or installing property as described at the el-
5 igible site.

6 “(2) Receipts derived from operating expenses of the capital invest-
7 ment are not eligible for exclusion under this section.

8 **“SECTION 10.** (1) Upon execution of a contract under section 8 of
9 this 2019 Act, the Oregon Business Development Department shall is-
10 sue to a business enterprise certificates of exclusion verifying that an
11 exclusion under section 9 of this 2019 Act has been granted for a tax-
12 payer doing business with the business enterprise. The business en-
13 terprise shall provide to the Department of Revenue an anonymized
14 list of taxpayers with which it does business, using unique numeric
15 identifiers for each taxpayer. By January 31 following the close of each
16 calendar year, a business enterprise shall provide a certificate to each
17 taxpayer with which it has done business. Each certificate must con-
18 tain the unique numeric identifier specific to the taxpayer, in order
19 that the Department of Revenue may match the certificate’s authen-
20 ticity to returns filed by the taxpayer.

21 “(2) The Department of Revenue may prescribe by rule additional
22 information a business enterprise must provide to the Department of
23 Revenue in connection with an economic development contract.

24 “(3) A taxpayer may exclude the receipts described in section 9 (1)
25 of this 2019 Act from the taxpayer’s calculation of commercial activity
26 upon receipt of a certificate from the business enterprise. This certif-
27 icate must be retained in the taxpayer’s records and be made available
28 upon audit by the Department of Revenue.

29 **“SECTION 11.** Notwithstanding section 70, chapter 122, Oregon
30 Laws 2019 (Enrolled House Bill 3427), a taxpayer claiming an exclusion

1 under section 9 of this 2019 Act is required to file a return as provided
2 in section 70, chapter 122, Oregon Laws 2019 (Enrolled House Bill 3427),
3 showing the taxpayer's Oregon commercial activity before and after
4 the application of the exclusion.

5 **“SECTION 12. (1) If a business enterprise fails to comply with all**
6 **terms of a qualifying economic development contract, the Department**
7 **of Revenue shall immediately proceed to collect all taxes otherwise due**
8 **as a result of the exclusion allowed under section 9 of this 2019 Act.**

9 **“(2) The business enterprise, and not the taxpayer, shall be liable**
10 **for the unpaid taxes.**

11 **“SECTION 13. Notwithstanding ORS 314.835, the Oregon Business**
12 **Development Department and the Department of Revenue may share**
13 **otherwise confidential information between them to administer the**
14 **provisions of sections 7 to 13 of this 2019 Act.**

15 **“SECTION 14. Sections 7 to 13 of this 2019 Act apply to tax years**
16 **beginning on or after January 1, 2020.**

17 **“SECTION 15. This 2019 Act takes effect on the 91st day after the**
18 **date on which the 2019 regular session of the Eightieth Legislative**
19 **Assembly adjourns sine die.”.**

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