

House Bill 4202

Sponsored by Representative KOTEK (at the request of Joint Committee on the First Special Session of 2020)

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 **as introduced**.

Modifies administrative provisions of corporate activity tax. Exempts from taxation certain sales of milk and manufactured dwelling park nonprofit cooperatives. Allows unitary group taxpayer to exclude members lacking ties to state. Defines "cost inputs" for taxpayer engaged in farming operation, for purpose of calculating subtraction. Establishes methods for taxpayer engaged in farming operation to demonstrate percentage of goods sold in state compared to outside state for purposes of determining commercial activity. Specifies that taxpayer is required to register only one time. Provides that returns and allowances are allowed as offset against commercial activity in year that returns or allowances are made. Prescribes methods for apportionment of subtraction. Establishes penalties for failure to file annual return or failure to pay tax by due date of annual return. Requires minimum payment per quarter but bars penalty if taxpayer makes payment equal to required installment for corresponding quarter of prior year. Applies to tax years beginning on or after January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 317A.100, 317A.106, 317A.116, 317A.119,
3 317A.131 and 317A.161 and section 78, chapter 122, Oregon Laws 2019; and prescribing an ef-
4 fective date.

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

6 **SECTION 1.** ORS 317A.100 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 activity in the regular
10 course of the person's trade or business, without deduction for expenses incurred by the trade or
11 business;

12 (B) If received by a financial institution:

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

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

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

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

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

25 (b) "Commercial activity" does not include:

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) Interest income except:
 2 (i) Interest on credit sales; or
 3 (ii) Interest income, including service charges, received by financial institutions;
 4 (B) Receipts from the sale, exchange or other disposition of an asset described in section 1221
 5 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset;
 6 (C) If received by an insurer, federally reinsured premiums or income from transactions between
 7 a reciprocal insurer and its attorney in fact operating under ORS 731.142;
 8 (D) Receipts from hedging transactions, to the extent that the transactions are entered into
 9 primarily to protect a financial position, including transactions intended to manage the risk of ex-
 10 posure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity or in-
 11 vestments in foreign operations, risk of exposure to interest rate fluctuations or risk of commodity
 12 price fluctuations;
 13 (E) Proceeds received attributable to the repayment, maturity or redemption of the principal of
 14 a loan, bond, mutual fund, certificate of deposit or marketable instrument;
 15 (F) The principal amount received under a repurchase agreement or on account of any trans-
 16 action properly characterized as a loan to the person;
 17 (G) Contributions received by a trust, plan or other arrangement, any of which is described in
 18 section 501(a) of the Internal Revenue Code, or to which title 26, subtitle A, chapter 1, subchapter
 19 (D) of the Internal Revenue Code applies;
 20 (H) Compensation, whether current or deferred, and whether in cash or in kind, received or to
 21 be received by an employee, a former employee or the employee's legal successor for services ren-
 22 dered to or for an employer, including reimbursements received by or for an individual for medical
 23 or education expenses, health insurance premiums or employee expenses or on account of a de-
 24 pendent care spending account, legal services plan, any cafeteria plan described in section 125 of
 25 the Internal Revenue Code or any similar employee reimbursement;
 26 (I) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts or
 27 calls, or from the sale of the taxpayer's treasury stock;
 28 (J) Proceeds received on the account of payments from insurance policies, **including crop in-**
 29 **surance policies**, owned by the taxpayer, except those proceeds received for the loss of [*business*
 30 *revenue*] **commercial activity**;
 31 (K) Gifts or charitable contributions received, membership dues received by trade, professional,
 32 homeowners' or condominium associations, payments received for educational courses, meetings or
 33 meals, or similar payments to a trade, professional or other similar association, and fundraising re-
 34 cepts received by any person when any excess receipts are donated or used exclusively for chari-
 35 table purposes;
 36 (L) Damages received as the result of litigation in excess of amounts that, if received without
 37 litigation, would be treated as commercial activity;
 38 (M) Property, money and other amounts received or acquired by an agent on behalf of another
 39 in excess of the agent's commission, fee or other remuneration;
 40 (N) Tax refunds **from any tax program**, other tax benefit recoveries and reimbursements for
 41 the tax imposed under ORS 317A.100 to 317A.158 made by entities that are part of the same unitary
 42 group as provided under ORS 317A.106, and reimbursements made by entities that are not members
 43 of a unitary group that are required to be made for economic parity among multiple owners of an
 44 entity whose tax obligation under ORS 317A.100 to 317A.158 is required to be reported and paid
 45 entirely by one owner, as provided in ORS 317A.106;

- 1 (O) Pension reversions;
- 2 (P) Contributions to capital;
- 3 (Q) Receipts from the sale, transfer, exchange or other disposition of motor vehicle fuel or any
- 4 other product used for the propulsion of motor vehicles;
- 5 (R) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer,
- 6 retail dealer, distributor, manufacturer or seller, an amount equal to the federal and state excise
- 7 taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the
- 8 Internal Revenue Code or ORS chapter 323;
- 9 (S) In the case of receipts from the sale of malt beverages or wine, as defined in ORS 471.001,
- 10 cider, as defined in ORS 471.023 or distilled liquor, as defined in ORS 471.001, by a person holding
- 11 a license issued under ORS chapter 471, an amount equal to the federal and state excise taxes paid
- 12 by any person on or for such malt beverages, wine or distilled liquor under subtitle E of the Internal
- 13 Revenue Code or ORS chapter 471 or 473, and any amount paid to the Oregon Liquor Control
- 14 Commission for sales of distilled spirits by an agent appointed under ORS 471.750;
- 15 (T) In the case of receipts from the sale of marijuana items, as defined in ORS 475B.015, by a
- 16 person holding a license issued under ORS 475B.010 to 475B.545, an amount equal to the federal and
- 17 state excise taxes paid by any person on or for such marijuana items under subtitle E of the Internal
- 18 Revenue Code or ORS 475B.700 to 475B.760 and any local retail taxes authorized under ORS
- 19 475B.491;
- 20 (U) Local taxes collected by a restaurant or other food establishment on sales of meals, prepared
- 21 food or beverages;
- 22 (V) Tips or gratuities collected by a restaurant or other food establishment and passed on to
- 23 employees;
- 24 (W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in
- 25 ORS 320.400 (8)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360,
- 26 to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the
- 27 sale or other transfer was based upon the transferee's need to meet a specific customer's preference
- 28 for a motor vehicle;
- 29 (X) Registration fees or taxes collected by a vehicle dealer certified under ORS 822.020 **or a**
- 30 **person described in ORS 320.400 (8)(a)(B)** at the sale or other transfer of a motor vehicle, as de-
- 31 fined in ORS 801.360, that are owed to a third party by the purchaser of the motor vehicle and
- 32 passed to the third party by the dealer;
- 33 (Y) Receipts from a financial institution for services provided to the financial institution in
- 34 connection with the issuance, processing, servicing and management of loans or credit accounts, if
- 35 the financial institution and the recipient of the receipts have at least 50 percent of their ownership
- 36 interests owned or controlled, directly or constructively through related interests, by common own-
- 37 ers;
- 38 (Z) In the case of amounts retained as commissions by a holder of a license under ORS chapter
- 39 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or col-
- 40 lected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to
- 41 be used as purse money;
- 42 (AA) Net revenue of residential care facilities as defined in ORS 443.400 or in-home care agen-
- 43 cies as defined in ORS 443.305, to the extent that the revenue is derived from or received as com-
- 44 pensation for providing services to a medical assistance or Medicare recipient;
- 45 (BB) Dividends received;

- 1 (CC) Distributive income received from a pass-through entity;
- 2 (DD) Receipts from sales to a wholesaler in this state, if the seller receives certification at the
3 time of sale from the wholesaler that the wholesaler will sell the purchased property outside this
4 state;
- 5 (EE) Receipts from the wholesale or retail sale of groceries;
- 6 (FF) Receipts from transactions among members of a unitary group;
- 7 (GG) Moneys, including public purpose charge moneys collected under ORS 757.612 and costs
8 of funding or implementing cost-effective energy conservation measures collected under ORS 757.689,
9 that are collected from customers, passed to a utility and approved by the Public Utility Commission
10 and that support energy conservation, renewable resource acquisition and low-income assistance
11 programs;
- 12 (HH) Moneys collected by a utility from customers for the payment of loans through on-bill fi-
13 nancing;
- 14 (II) Surcharges collected under ORS 757.736;
- 15 (JJ) Moneys passed to a utility by the Bonneville Power Administration for the purpose of
16 effectuating the Regional Power Act Exchange credits or pursuant to any settlement associated with
17 the exchange credit;
- 18 (KK) Moneys collected or recovered, by entities listed in ORS 756.310, cable operators as de-
19 fined in 47 U.S.C. 522(5), telecommunications carriers as defined in 47 U.S.C. 153(51) and providers
20 of information services as defined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-
21 way fees, franchise fees, privilege taxes, federal taxes and local taxes;
- 22 (LL) Charges paid to the Residential Service Protection Fund required by chapter 290, Oregon
23 Laws 1987;
- 24 (MM) Universal service surcharge moneys collected or recovered and paid into the universal
25 service fund established in ORS 759.425;
- 26 (NN) Moneys collected for public purpose funding as described in ORS 759.430;
- 27 (OO) Moneys collected or recovered and paid into the federal universal service fund as deter-
28 mined by the Federal Communications Commission;
- 29 (PP) In the case of a seller or provider of telecommunications services, the amount of tax im-
30 posed under ORS 403.200 for access to the emergency communications system that is collected from
31 subscribers or consumers;
- 32 (QQ) In the case of a transient lodging tax collector, the amount of tax imposed under ORS
33 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;
- 34 (RR) In the case of a seller of bicycles, the amount of tax imposed under ORS 320.415 upon retail
35 sales of bicycles;
- 36 (SS) In the case of a qualified heavy equipment provider, the amount of tax imposed under ORS
37 307.872 upon the rental price of heavy equipment;
- 38 (TT) Farmer sales to an agricultural cooperative in this state that is a cooperative organization
39 described in section 1381 of the Internal Revenue Code; *[and]*
- 40 (UU) Revenue received by a business entity that is mandated by contract or subcontract to be
41 distributed to another person or entity if the revenue constitutes sales commissions that are paid
42 to a person who is not an employee of the business entity, including, without limitation, a split-fee
43 real estate commission[.]; **and**
- 44 **(VV) Receipts from the sale of fluid milk by dairy farmers that are not members of an**
45 **agricultural cooperative.**

1 [(2) “Cost inputs” means the cost of goods sold as calculated in arriving at federal taxable income
2 under the Internal Revenue Code.]

3 **(2) “Cost inputs” means:**

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

6 **(b) In the case of a taxpayer that is engaged in a farming operation, as defined in section**
7 **6 of this 2020 special session Act, and that does not report cost of goods sold for federal tax**
8 **purposes, the taxpayer’s operating expenses excluding labor costs.**

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

11 (4) “Excluded person” means any of the following:

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

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

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

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

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

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

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

22 (h) Foreign or alien insurance companies, but only with respect to the underwriting profit de-
23 rived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and
24 731.828.

25 (i) Governmental entities.

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

29 (k) Hospitals subject to assessment under ORS 414.855, long term care facilities subject to as-
30 sessment under ORS 409.801 or any entity subject to assessment under ORS 414.880 or section 3 or
31 5, chapter 538, Oregon Laws 2017.

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

33 (5) “Financial institution” has the meaning given that term in ORS 314.610, except that “finan-
34 cial institution” does not include a credit union.

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

37 (b) In the case of a holding company required to file both consolidated and parent-only financial
38 statements, “FR Y-9” means the consolidated financial statements that the holding company is re-
39 quired to file.

40 (7) “Governmental entity” means:

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

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

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

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

- 1 (e) A special government body as defined in ORS 174.117.
- 2 (f) A federally recognized Indian tribe.
- 3 (8) “Groceries” means food as defined in 7 U.S.C. 2012(k), but does not include cannabinoid
4 edibles or marijuana seeds.
- 5 (9)(a) “Hedging transaction” means a hedging transaction as defined in section 1221 of the
6 Internal Revenue Code or a transaction accorded hedge accounting treatment under Financial Ac-
7 counting Standards Board Statement No. 133.
- 8 (b) “Hedging transaction” does not include a transaction in which an actual transfer of title of
9 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 provided otherwise,
12 refers to the laws of the United States or to the Internal Revenue Code as they are amended and
13 in effect on December 31, 2018.
- 14 (12) “Labor costs” means total compensation of all employees, not to include compensation paid
15 to any single employee in excess of \$500,000.
- 16 (13)(a) “Motor vehicle fuel or any other product used for the propulsion of motor vehicles”
17 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 ORS 319.530.
- 20 (b) “Motor vehicle fuel or any other product used for the propulsion of motor vehicles” does not
21 mean:
- 22 (A) Electricity; or
- 23 (B) Electric batteries or any other mechanical or physical component or accessory of a motor
24 vehicle.
- 25 (14) “Person” includes individuals, combinations of individuals of any form, receivers, assignees,
26 trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partner-
27 ships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs,
28 societies, entities organized as for-profit corporations under ORS chapter 60, C corporations, S cor-
29 porations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are
30 disregarded for federal income tax purposes and any other entities.
- 31 (15) “Retailer” means a person doing business by selling tangible personal property to a pur-
32 chaser for a purpose other than:
- 33 (a) Resale by the purchaser of the property as tangible personal property in the regular course
34 of business;
- 35 (b) Incorporation by the purchaser of the property in the course of regular business as an in-
36 gredient or component of real or personal property; or
- 37 (c) Consumption by the purchaser of the property in the production for sale of a new article of
38 tangible personal property.
- 39 (16) “Taxable commercial activity” means commercial activity sourced to this state under ORS
40 317A.128, less any subtraction pursuant to ORS 317A.119.
- 41 (17)(a) “Taxpayer” means any person or unitary group required to register, file or pay tax under
42 ORS 317A.100 to 317A.158.
- 43 (b) “Taxpayer” does not include excluded persons, except to the extent that a tax-exempt entity
44 has unrelated business income [*that is taxable under*] **as described in** the Internal Revenue Code.
- 45 (18)(a) “Unitary business” means a business enterprise in which there exists directly or indi-

1 rectly between the members or parts of the enterprise a sharing or exchange of value as demon-
 2 strated by:

- 3 (A) Centralized management or a common executive force;
- 4 (B) Centralized administrative services or functions resulting in economies of scale; or
- 5 (C) Flow of goods, capital resources or services demonstrating functional integration.

6 (b) "Unitary business" may include a business enterprise the activities of which:

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

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

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

13 (20) "Wholesaler" means a person primarily doing business by merchant distribution of tangible
 14 personal property to retailers or to other wholesalers.

15 **SECTION 2.** ORS 317A.106 is amended to read:

16 317A.106. (1) A unitary group shall register, file and pay taxes under ORS 317A.100 to 317A.158
 17 as a single taxpayer and may exclude receipts from transactions among its members. The Depart-
 18 ment of Revenue may collect identifying information about all members of a unitary group and may
 19 require disclosure to the department, for each member, of the commercial activity in Oregon and in
 20 the United States.

21 **(2) Notwithstanding the provisions of ORS 317A.100 to 317A.158 applicable to unitary**
 22 **groups, unitary group taxpayers may elect to modify unitary group membership to exclude**
 23 **all foreign members with no commercial activity, or amounts realized but by definition ex-**
 24 **cluded from commercial activity, that is sourced to Oregon. The department shall by rule**
 25 **adopt policies and procedures for elections made under this subsection, including:**

- 26 (a) **The time and manner of making or terminating an election;**
- 27 (b) **The allowed duration of an election;**
- 28 (c) **The department's discretion to disallow an election in whole or in part;**
- 29 (d) **The withdrawal before filing of an election by a taxpayer;**
- 30 (e) **The treatment of property of the unitary group that is transferred into this state;**
- 31 (f) **Filing, payment of fees and registration governing the election; and**
- 32 (g) **Any other policies and procedures that the department deems necessary for the ad-**
 33 **ministration and operation of an election allowed under this subsection.**

34 **SECTION 3.** ORS 317A.116 is amended to read:

35 317A.116. (1) A corporate activity tax is imposed on each person with taxable commercial ac-
 36 tivity for the privilege of doing business in this state. The tax is imposed upon persons with sub-
 37 stantial nexus with this state. The tax imposed under this section is not a transactional tax and is
 38 not subject to the Interstate Income Act of 1959 (P.L. 86-272). The tax imposed under this section
 39 is in addition to any other taxes or fees imposed under the tax laws of this state. The tax imposed
 40 under this section is imposed on the person with the commercial activity and is not a tax imposed
 41 directly on a purchaser. The tax imposed under this section is an annual privilege tax for the cal-
 42 endar year and shall be remitted quarterly to the Department of Revenue. A taxpayer is subject to
 43 the annual corporate activity tax for doing business during any portion of such calendar year.

44 **(2) Returns and allowances, as those terms are applicable to section 448 of the Internal**
 45 **Revenue Code, are allowed as an offset against commercial activity in the calendar year that**

1 **the returns or allowances are made.**

2 [(2)] (3) A person has substantial nexus with this state if any of the following applies. The per-
3 son:

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

5 (b) Holds a certificate of existence or authorization issued by the Secretary of State authorizing
6 the person to do business in this state.

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

8 (d) Otherwise has nexus with this state to an extent that the person can be required to remit
9 the tax imposed under ORS 317A.100 to 317A.158 under the United States Constitution.

10 [(3)] (4) A person has bright-line presence in this state for the calendar year if any of the fol-
11 lowing applies. The person:

12 (a) Owns at any time during the calendar year property in this state with an aggregate value
13 of at least \$50,000. For purposes of this paragraph, owned property is valued at original cost and
14 rented property is valued at eight times the net annual rental charge.

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

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

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

20 (C) Any amount the person pays for services performed in this state on the person's behalf by
21 another.

22 (c) Has during the calendar year commercial activity, sourced to this state under ORS 317A.128,
23 of at least \$750,000.

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

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

28 [(4)] (5) Notwithstanding subsection (1) of this section, a vehicle dealer may collect from the
29 purchaser of a motor vehicle the estimated portion of the tax imposed under this section that is
30 attributable to commercial activity from the sale of the vehicle.

31 **SECTION 4.** ORS 317A.119 is amended to read:

32 317A.119. (1) A taxpayer shall subtract from commercial activity sourced to this state 35 percent
33 of the greater of the following amounts paid or incurred by the taxpayer in the tax year:

34 (a) The amount of cost inputs; or

35 (b) The taxpayer's labor costs.

36 [(2) *The amounts in subsection (1)(a) or (b) of this section shall be apportioned to this state in the*
37 *manner required for apportionment of income under ORS 314.605 to 314.675.*]

38 [(3) *A subtraction under this section is not allowed for any amount of:*]

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

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

43 [(4) *Notwithstanding subsection (1) of this section, the subtraction under this section may not ex-*
44 *ceed 95 percent of the taxpayer's commercial activity in this state.*]

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

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

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

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

8 (a) As provided in ORS 314.650 and 314.665;

9 (b) For taxpayers subject to alternative apportionment under ORS chapter 314, the re-
 10 quired applicable apportionment method; or

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

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

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

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

21 (7) A taxpayer or unitary group may elect to use the taxpayer's or unitary group's most
 22 recent fiscal year information for purposes of determining the subtraction under this sec-
 23 tion. An election under this section must be made on a timely filed, original return. An
 24 election under this section is binding for and applicable to the tax year in which it is made.

25 **SECTION 5.** Section 6 of this 2020 special session Act is added to and made a part of ORS
 26 317A.100 to 317A.158.

27 **SECTION 6.** (1) As used in this section:

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

30 (B) "Agricultural commodity" does not include timber or timber products.

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

34 (c) "Farming operation" means an entity doing business in a sector described under codes
 35 111, 112 or 115 of the North American Industry Classification System.

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

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

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

1 **SECTION 7.** ORS 317A.131 is amended to read:

2 317A.131. (1)(a) Any person or unitary group with commercial activity in excess of \$750,000 in
3 *[the]* a tax year shall register with the Department of Revenue.

4 **(b) Except as provided in paragraph (c) of this subsection, a person or unitary group shall**
5 **be required to register only once and shall register in the year in which the person or unitary**
6 **group first exceeds \$750,000 in commercial activity.**

7 **(c) If a person or unitary group that has registered under this section subsequently**
8 **undergoes a merger or other reorganization, the department may require the person or**
9 **unitary group, or any successor, to register at a later date.**

10 (2) The department by rule may establish the information pertaining to the person or unitary
11 group that must be submitted to the department accompanying the registration and the time and
12 manner for issuance of registrations under this section.

13 (3) The department may impose a penalty for failing to register as required under this section,
14 not to exceed \$100 per month that a person or unitary group has failed to register or a total of
15 \$1,000 in a calendar year. The penalty under this subsection may be imposed not earlier than 30
16 days after the date on which the commercial activity of the person or unitary group exceeds
17 \$750,000 for the tax year.

18 **SECTION 8. Section 6 of this 2020 special session Act and the amendments to ORS**
19 **317A.100, 317A.106, 317A.116, 317A.119 and 317A.131 by sections 1 to 4 and 7 of this 2020 special**
20 **session Act apply to tax years beginning on or after January 1, 2020.**

21 **SECTION 9.** ORS 317A.161 is amended to read:

22 317A.161. (1) The Department of Revenue may not impose any interest *[or penalty]* that would
23 otherwise apply to taxes due if the interest *[or penalty]* is based on underpayment or underreporting
24 that results solely from the operation of ORS 317A.100 to 317A.158.

25 (2) A taxpayer shall pay at least 80 percent of the balance due for any quarter or the depart-
26 ment may impose, **for any quarter that this threshold is not met**, a penalty *[as provided in ORS*
27 *314.400 (3).]* **of five percent of the underpayment amount, except that the department may**
28 **not impose a penalty under this subsection for any quarter for which the taxpayer has paid**
29 **an amount at least equal to the taxpayer's required installment for the corresponding quar-**
30 **ter of the preceding tax year.**

31 **(3) The provisions of ORS 314.400 (1) and (2) apply to a taxpayer that fails to file an an-**
32 **annual return as required under ORS 317A.137 or that fails to pay the tax imposed under ORS**
33 **317A.100 to 317A.158 by the due date of the annual return.**

34 **SECTION 10.** ORS 317A.161, as amended by section 9 of this 2020 special session Act, is
35 amended to read:

36 317A.161. *[(1) The Department of Revenue may not impose any interest that would otherwise apply*
37 *to taxes due if the interest is based on underpayment or underreporting that results solely from the*
38 *operation of ORS 317A.100 to 317A.158.]*

39 *[(2)]* (1) A taxpayer shall pay at least [80] **90** percent of the balance due for any quarter or the
40 Department **of Revenue** may impose, for any quarter that this threshold is not met, a penalty of five
41 percent of the underpayment amount, except that the department may not impose a penalty under
42 this subsection for any quarter for which the taxpayer has paid an amount at least equal to the
43 taxpayer's required installment for the corresponding quarter of the preceding tax year.

44 *[(3)]* (2) The provisions of ORS 314.400 (1) and (2) apply to a taxpayer that fails to file an annual
45 return as required under ORS 317A.137 or that fails to pay the tax imposed under ORS 317A.100 to

1 317A.158 by the due date of the annual return.

2 **SECTION 11.** Section 78, chapter 122, Oregon Laws 2019, is amended to read:

3 **Sec. 78. (1)** *[Section 77 of this 2019 Act applies]* **The amendments to ORS 317A.161 by section**
4 **9 of this 2020 special session Act apply** to tax years beginning on or after January 1, 2020, and
5 before January 1, *[2021]* **2022**, and to returns filed on or before April 15, *[2021]* **2022**.

6 **(2) The amendments to ORS 317A.161 by section 10 of this 2020 special session Act apply**
7 **to tax years beginning on or after January 1, 2022, and to returns filed after April 15, 2022.**

8 **SECTION 12.** This 2020 special session Act takes effect on the 91st day after the date on
9 **which the 2020 special session of the Eightieth Legislative Assembly adjourns sine die.**

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