

DRAFT

SUMMARY

Imposes tax on rental price of construction, mining, earthmoving or industrial equipment that is mobile and held primarily for rental. Directs Department of Revenue to administer heavy equipment rental tax program. Provides for distribution to counties of tax revenues attributable to rentals made from locations in county. Directs county treasurer to distribute tax moneys to local taxing districts according to proportionate share of total tax rate for purposes of ad valorem property taxes of each district. 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, 2021.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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

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

SECTION 1. As used in sections 1 to 10 of this 2017 Act:

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

(2) “Control,” for purposes of the definition of “affiliate” under this section, means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person,

1 whether through the ownership of voting securities, by contract or
2 otherwise.

3 (3) “Heavy equipment rental tax” means the tax imposed under
4 section 2 of this 2017 Act.

5 (4) “Mobile” means that qualified heavy equipment:

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

7 (b) Is not intended to be permanently affixed to real property when
8 put to its intended use.

9 (5) “Own,” for purposes of the definition of “affiliate” under this
10 section, means to have ownership of an equity interest, or the equiv-
11 alent, of 10 percent or more in a person.

12 (6) “Qualified heavy equipment” means any construction, mining,
13 earthmoving or industrial equipment, together with attachments and
14 other equipment and tools, including, but not limited to, towable
15 trailers and fixed load vehicles, that is:

16 (a) Mobile;

17 (b) Owned by a qualified heavy equipment provider; and

18 (c) Held primarily for rental.

19 (7)(a) “Qualified heavy equipment provider” means a person who:

20 (A) Is engaged in a line of business classified under Code 532412 of
21 the North American Industry Classification System published by the
22 United States Census Bureau (2012 Edition); and

23 (B) Who has registered with the Department of Revenue as a qual-
24 ified heavy equipment provider.

25 (b) “Qualified heavy equipment provider” does not include a person
26 whose primary business is the rental of qualified heavy equipment to
27 one or more affiliates.

28 (8) “Rental location” means a qualified heavy equipment provider’s
29 store or other business location in this state from which qualified
30 heavy equipment is rented.

31 (9) “Rental price” means the rental charge for qualified heavy

equipment, net of any invoice credits provided to the renter. “Rental price” does not include delivery and pickup fees, damage waivers or environmental mitigation fees.

SECTION 2. (1) A tax of 1.75 percent is imposed on the rental price received for any qualified heavy equipment.

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

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

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

SECTION 3. (1) Every qualified heavy equipment provider shall register with the Department of Revenue no later than _____ immediately preceding the beginning of the next property tax year by certifying that the provider is engaged in the line of business described in section 1 (7) of this 2017 Act.

(2) Every qualified heavy equipment provider shall keep records, render statements and comply with rules adopted by the Department of Revenue with respect to the heavy equipment rental tax. The records and statements required by this section must be sufficient to show whether there is a tax liability under section 2 of this 2017 Act.

SECTION 4. (1) Every qualified heavy equipment provider that rents out qualified heavy equipment is responsible for collecting the heavy equipment rental tax and shall file a return with the Department of Revenue, on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter. The department shall prescribe the form of the return required by this section, provided that the form shall require the qualified heavy equipment provider to report, for each county in the state,

1 the aggregate rental prices and taxes collected for qualified heavy
2 equipment rented out from each of its rental locations in the county
3 during the applicable calendar quarter. The rules of the department
4 shall require that returns be made under penalties for false swearing.

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

9 SECTION 5. If the amount paid by a qualified heavy equipment
10 provider to the Department of Revenue under section 4 of this 2017
11 Act exceeds the amount of tax payable, the department shall refund
12 the amount of the excess with interest at the rate established under
13 ORS 305.220 for each month or fraction of a month during the period
14 beginning 45 days after the later of the due date of the return to which
15 the excess relates or the date the excess was paid, and ending on the
16 date the refund is paid. A refund may not be made to a qualified heavy
17 equipment provider that fails to claim the refund within two years
18 after the due date for filing the return to which the claim for refund
19 relates.

20 SECTION 6. (1) Every qualified heavy equipment provider is deemed
21 to hold the amount of heavy equipment rental taxes collected in trust
22 for the State of Oregon and for payment to the Department of Revenue
23 in the manner and at the time provided under section 4 of this 2017
24 Act.

25 (2) At any time the qualified heavy equipment provider fails to re-
26 mit any amount of heavy equipment rental taxes deemed to be held
27 in trust for the State of Oregon, the department may enforce col-
28 lection by the issuance of a distraint warrant for the collection of the
29 delinquent amount and all penalties, interest and collection charges
30 accrued on the delinquent amount. The warrant shall be issued,
31 docketed and proceeded upon in the same manner and shall have the

1 same force and effect as warrants for the collection of delinquent in-
2 come taxes.

3 **SECTION 7.** (1) Unless the context requires otherwise, the pro-
4 visions of ORS chapters 305, 314 and 316 governing the audit and ex-
5 amination of reports and returns, confidentiality of reports and
6 returns, determination of deficiencies, assessments, claims for re-
7 funds, penalties, interest, jeopardy assessments, warrants, conferences
8 and appeals to the Oregon Tax Court, and related procedures, apply
9 to sections 1 to 10 of this 2017 Act as if the heavy equipment rental tax
10 were a tax imposed upon or measured by net income. The provisions
11 apply to the taxpayer liable for the tax and to any qualified heavy
12 equipment provider required to collect the tax.

13 (2) Any amount collected and required to be remitted to the De-
14 partment of Revenue is considered a tax upon the qualified heavy
15 equipment provider required to collect the tax and the qualified heavy
16 equipment provider is considered a taxpayer.

17 **SECTION 8.** (1) All moneys received by the Department of Revenue
18 pursuant to sections 1 to 10 of this 2017 Act, and any interest on the
19 moneys, shall be paid to the State Treasurer to be held in a suspense
20 account established under ORS 293.445.

21 (2) After the payment of refunds:

22 (a) Moneys necessary to reimburse the department for the actual
23 costs incurred by the department in administering the heavy equip-
24 ment rental tax, not to exceed three percent of heavy equipment
25 rental tax collections, are continuously appropriated to the depart-
26 ment; and

27 (b) The balance of the moneys received shall be transferred to the
28 treasurer of each county according to the share of the moneys that
29 are attributable to qualified heavy equipment rented out from rental
30 locations in the county.

31 (3)(a) On or before July 15 of each year, each county treasurer shall

1 distribute the moneys received under subsection (2) of this section that
2 are attributable to each rental location to the taxing districts in which
3 the rental location is located.

4 (b) The distribution of moneys shall be based on the ratio that each
5 taxing district's total tax rate for purposes of ad valorem property
6 taxation bears to the total tax rates for all districts in which a rental
7 location is located.

8 (4) Provisions of law relating to the confidentiality of public records
9 do not apply to the extent that remittances made by the department
10 pursuant to this section disclose information derived from heavy
11 equipment rental tax returns.

12 SECTION 9. (1) Public records of heavy equipment rental tax mon-
13 eys collected by the Department of Revenue pursuant to sections 1 to
14 10 of this 2017 Act are exempt from disclosure under ORS 192.410 to
15 192.505. Nothing in this section shall limit the use that can be made
16 of such information for regulatory purposes or its use and
17 admissibility in any enforcement proceedings.

18 (2) If a conflict is found to exist between subsection (1) of this sec-
19 tion and ORS 314.835, ORS 314.835 controls.

20 SECTION 10. The Department of Revenue may adopt rules neces-
21 sary for the administration and enforcement of the heavy equipment
22 rental tax under sections 1 to 10 of this 2017 Act.

23 SECTION 11. (1) Sections 1 to 10 of this 2017 Act apply to rentals
24 of qualified heavy equipment occurring on or after January 1, 2018.

25 (2) For purposes of complying with section 3 (1) of this 2017 Act for
26 the property tax year beginning on July 1, 2017, a qualified heavy
27 equipment provider shall register with the Department of Revenue no
28 later than December 31, 2017.

29 SECTION 12. (1)(a) On or before March 31, 2018, each qualified
30 heavy equipment provider shall file with the Department of Revenue
31 a complete report on forms provided by the department, made under

1 penalties for false swearing, that lists the qualified heavy equipment
2 that is assigned to each rental location and that is:

3 (A) In this state on January 1, 2018, at 1:00 a.m.; and

4 (B) Subject to the heavy equipment rental tax imposed under sec-
5 tion 2 of this 2017 Act.

6 (b) The report required under this subsection shall provide the cost,
7 acquisition date, description and rental location of each piece of qual-
8 ified heavy equipment.

9 (c) The department shall use the report required under this section
10 and the 14 years personal property valuation factors found in Table 2
11 of the department's Personal Property Valuation Guidelines 2016, as
12 revised effective December 2015, to determine a real market value for
13 the qualified heavy equipment for purposes of this section.

14 (d) For purposes of this section, the department shall determine the
15 maximum assessed value and assessed value for the qualified heavy
16 equipment under ORS 308.153 as if the qualified heavy equipment were
17 new property.

18 (e) The department shall use the values determined under this sec-
19 tion to estimate the amount of ad valorem property taxes that would
20 be due for the property tax year beginning on July 1, 2018, if the
21 qualified heavy equipment were subject to ad valorem property taxa-
22 tion.

23 (2) On or before March 31, 2019, for each rental location, the de-
24 partment shall compare:

25 (a) The total amount of tax reported under section 4 of this 2017
26 Act, after any adjustment or amended returns, that is attributable to
27 qualified heavy equipment rented out from the rental location during
28 the 2018 calendar year; and

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

31 (3)(a) If the total amount determined under subsection (2)(a) of this

section is less than the total amount determined under subsection (2)(b) of this section, the department shall collect the amount of the difference from the applicable qualified heavy equipment provider as a supplemental amount of the heavy equipment rental tax imposed under section 2 of this 2017 Act.

(b) The supplemental tax amount shall be payable on or before the later of June 30, 2019, or within 60 days after the date of the notice from the department.

(c) The department shall remit each supplemental tax amount collected under this subsection to the treasurer of the county in which the applicable rental location is located and the county treasurer shall deposit all such amounts in the county's unsegregated tax collections account.

(4) If the amount determined under subsection (2)(a) of this section is greater than the amount determined under subsection (2)(b) of this section, the department shall refund the amount of the difference to the qualified heavy equipment provider in the manner provided in section 5 of this 2017 Act.

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

SECTION 13. (1)(a) On or before March 31, 2019, each qualified heavy equipment provider shall file with the Department of Revenue a complete report on forms provided by the department, made under penalties for false swearing, that lists the qualified heavy equipment that is assigned to each rental location and that is:

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

(B) Subject to the heavy equipment rental tax imposed under section 2 of this 2017 Act.

(b) The report required under this subsection shall provide the cost,

1 acquisition date, description and rental location of each piece of qual-
2 ified heavy equipment.

3 (c) The department shall use the report required under this section
4 and the 14 years personal property valuation factors found in Table 2
5 of the department's Personal Property Valuation Guidelines 2016, as
6 revised effective December 2015, to determine a real market value for
7 the qualified heavy equipment for purposes of this section.

8 (d) For purposes of this section, the department shall determine the
9 maximum assessed value and assessed value for the qualified heavy
10 equipment under ORS 308.153 as if the qualified heavy equipment were
11 new property.

12 (e) The department shall use the values determined under this sec-
13 tion to estimate the amount of ad valorem property taxes that would
14 be due for the property tax year beginning on July 1, 2019, if the
15 qualified heavy equipment were subject to ad valorem property taxa-
16 tion.

17 (2) On or before March 31, 2020, for each rental location, the de-
18 partment shall compare:

19 (a) The total amount of tax reported under section 4 of this 2017
20 Act, after any adjustment or amended returns, that is attributable to
21 qualified heavy equipment rented out from the rental location during
22 the 2019 calendar year; and

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

25 (3)(a) If the total amount determined under subsection (2)(a) of this
26 section is less than the total amount determined under subsection
27 (2)(b) of this section, the department shall collect the amount of the
28 difference from the applicable qualified heavy equipment provider as
29 a supplemental amount of the heavy equipment rental tax imposed
30 under section 2 of this 2017 Act.

31 (b) The supplemental tax amount shall be payable on or before the

1 later of June 30, 2020, or within 60 days after the date of the notice
2 from the department.

3 (c) The department shall remit each supplemental tax amount col-
4 lected under this subsection to the treasurer of the county in which
5 the applicable rental location is located and the county treasurer shall
6 deposit all such amounts in the county's unsegregated tax collections
7 account.

8 (4) If the amount determined under subsection (2)(a) of this section
9 is greater than the amount determined under subsection (2)(b) of this
10 section, the department shall refund the amount of the difference to
11 the qualified heavy equipment provider in the manner provided in
12 section 5 of this 2017 Act.

13 (5) Provisions of law relating to the confidentiality of public records
14 do not apply to the extent that remittances and refunds made by the
15 department pursuant to this section disclose information derived from
16 heavy equipment rental tax returns.

17 SECTION 14. Sections 7, 9 and 10 of this 2017 Act apply to sections
18 12 and 13 of this 2017 Act.

19 SECTION 15. Sections 12 and 13 of this 2017 Act are repealed on
20 January 2, 2021.

21 SECTION 16. (1) Not later than July 1, 2021, the Department of
22 Revenue, after consulting with the Legislative Revenue Officer as
23 necessary, shall submit a report in the manner provided in ORS 192.245
24 to the interim committees of the Legislative Assembly related to rev-
25 enue regarding the heavy equipment rental tax imposed under section
26 2 of this 2017 Act.

27 (2) For tax years with valuation dates of January 1, 2018, and Jan-
28 uary 1, 2019, the report shall set forth:

29 (a) The revenue collected under sections 12 (3)(a) and 13 (3)(a) of
30 this 2017 Act, after payment of refunds, for all taxpayers registered as
31 qualified heavy equipment providers; and

1 (b) The amount of ad valorem property taxes that would have been
2 due for the property tax years beginning on July 1, 2018, and July 1,
3 2019, respectively, if the qualified heavy equipment had been subject
4 to ad valorem property taxation.

5 (3) In the report the Legislative Revenue Officer shall propose a tax
6 rate for section 2 of this 2017 Act that, based on the experience of the
7 heavy equipment rental tax to date, will maintain revenue neutrality
8 with respect to the replacement of the ad valorem property tax by the
9 heavy equipment rental tax.

10 SECTION 17. Section 16 of this 2017 Act is repealed on January 2,
11 2022.

12 SECTION 18. This 2017 Act takes effect on the 91st day after the
13 date on which the 2017 regular session of the Seventy-ninth Legislative
14 Assembly adjourns sine die.

15 _____