

House Bill 2942

Sponsored by COMMITTEE ON REVENUE

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**.

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

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

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

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

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

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

11 (3) **"Heavy equipment rental tax" means the tax imposed under section 2 of this 2017 Act.**

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

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

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

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

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

21 (a) **Mobile;**

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

23 (c) **Held primarily for rental.**

24 (7)(a) **"Qualified heavy equipment provider" means a person who:**

25 (A) **Is engaged in a line of business classified under Code 532412 of the North American**

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 Industry Classification System published by the United States Census Bureau (2012 Edition);
2 and

3 (B) Who has registered with the Department of Revenue as a qualified heavy equipment
4 provider.

5 (b) "Qualified heavy equipment provider" does not include a person whose primary busi-
6 ness is the rental of qualified heavy equipment to one or more affiliates.

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

9 (9) "Rental price" means the rental charge for qualified heavy equipment, net of any in-
10 voice credits provided to the renter. "Rental price" does not include delivery and pickup fees,
11 damage waivers or environmental mitigation fees.

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

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

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

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

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

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

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

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

41 **SECTION 5.** If the amount paid by a qualified heavy equipment provider to the Depart-
42 ment of Revenue under section 4 of this 2017 Act exceeds the amount of tax payable, the
43 department shall refund the amount of the excess with interest at the rate established under
44 ORS 305.220 for each month or fraction of a month during the period beginning 45 days after
45 the later of the due date of the return to which the excess relates or the date the excess

1 was paid, and ending on the date the refund is paid. A refund may not be made to a qualified
 2 heavy equipment provider that fails to claim the refund within two years after the due date
 3 for filing the return to which the claim for refund relates.

4 **SECTION 6.** (1) Every qualified heavy equipment provider is deemed to hold the amount
 5 of heavy equipment rental taxes collected in trust for the State of Oregon and for payment
 6 to the Department of Revenue in the manner and at the time provided under section 4 of this
 7 2017 Act.

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

15 **SECTION 7.** (1) Unless the context requires otherwise, the provisions of ORS chapters
 16 305, 314 and 316 governing the audit and examination of reports and returns, confidentiality
 17 of reports and returns, determination of deficiencies, assessments, claims for refunds, pen-
 18 alties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax
 19 Court, and related procedures, apply to sections 1 to 10 of this 2017 Act as if the heavy
 20 equipment rental tax were a tax imposed upon or measured by net income. The provisions
 21 apply to the taxpayer liable for the tax and to any qualified heavy equipment provider re-
 22 quired to collect the tax.

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

26 **SECTION 8.** (1) All moneys received by the Department of Revenue pursuant to sections
 27 1 to 10 of this 2017 Act, and any interest on the moneys, shall be paid to the State Treasurer
 28 to be held in a suspense account established under ORS 293.445.

29 (2) After the payment of refunds:

30 (a) Moneys necessary to reimburse the department for the actual costs incurred by the
 31 department in administering the heavy equipment rental tax, not to exceed three percent of
 32 heavy equipment rental tax collections, are continuously appropriated to the department; and

33 (b) The balance of the moneys received shall be transferred to the treasurer of each
 34 county according to the share of the moneys that are attributable to qualified heavy equip-
 35 ment rented out from rental locations in the county.

36 (3)(a) On or before July 15 of each year, each county treasurer shall distribute the mon-
 37 eys received under subsection (2) of this section that are attributable to each rental location
 38 to the taxing districts in which the rental location is located.

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

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

45 **SECTION 9.** (1) Public records of heavy equipment rental tax moneys collected by the

1 Department of Revenue pursuant to sections 1 to 10 of this 2017 Act are exempt from dis-
2 closure under ORS 192.410 to 192.505. Nothing in this section shall limit the use that can be
3 made of such information for regulatory purposes or its use and admissibility in any
4 enforcement proceedings.

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

7 **SECTION 10.** The Department of Revenue may adopt rules necessary for the adminis-
8 tration and enforcement of the heavy equipment rental tax under sections 1 to 10 of this 2017
9 Act.

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

12 (2) For purposes of complying with section 3 (1) of this 2017 Act for the property tax year
13 beginning on July 1, 2017, a qualified heavy equipment provider shall register with the De-
14 partment of Revenue no later than December 31, 2017.

15 **SECTION 12.** (1)(a) On or before March 31, 2018, each qualified heavy equipment provider
16 shall file with the Department of Revenue a complete report on forms provided by the de-
17 partment, made under penalties for false swearing, that lists the qualified heavy equipment
18 that is assigned to each rental location and that is:

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

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

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

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

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

30 (e) The department shall use the values determined under this section to estimate the
31 amount of ad valorem property taxes that would be due for the property tax year beginning
32 on July 1, 2018, if the qualified heavy equipment were subject to ad valorem property taxa-
33 tion.

34 (2) On or before March 31, 2019, for each rental location, the department shall compare:

35 (a) The total amount of tax reported under section 4 of this 2017 Act, after any adjust-
36 ment or amended returns, that is attributable to qualified heavy equipment rented out from
37 the rental location during the 2018 calendar year; and

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

40 (3)(a) If the total amount determined under subsection (2)(a) of this section is less than
41 the total amount determined under subsection (2)(b) of this section, the department shall
42 collect the amount of the difference from the applicable qualified heavy equipment provider
43 as a supplemental amount of the heavy equipment rental tax imposed under section 2 of this
44 2017 Act.

45 (b) The supplemental tax amount shall be payable on or before the later of June 30, 2019,

1 or within 60 days after the date of the notice from the department.

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

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

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

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

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

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

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

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

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

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

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

33 (a) The total amount of tax reported under section 4 of this 2017 Act, after any adjust-
34 ment or amended returns, that is attributable to qualified heavy equipment rented out from
35 the rental location during the 2019 calendar year; and

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

38 (3)(a) If the total amount determined under subsection (2)(a) of this section is less than
39 the total amount determined under subsection (2)(b) of this section, the department shall
40 collect the amount of the difference from the applicable qualified heavy equipment provider
41 as a supplemental amount of the heavy equipment rental tax imposed under section 2 of this
42 2017 Act.

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

45 (c) The department shall remit each supplemental tax amount collected under this sub-

1 section to the treasurer of the county in which the applicable rental location is located and
2 the county treasurer shall deposit all such amounts in the county's unsegregated tax col-
3 lections account.

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

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

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

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

14 SECTION 16. (1) Not later than July 1, 2021, the Department of Revenue, after consulting
15 with the Legislative Revenue Officer as necessary, shall submit a report in the manner pro-
16 vided in ORS 192.245 to the interim committees of the Legislative Assembly related to re-
17 venue regarding the heavy equipment rental tax imposed under section 2 of this 2017 Act.

18 (2) For tax years with valuation dates of January 1, 2018, and January 1, 2019, the report
19 shall set forth:

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

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

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

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

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

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