HOUSE AMENDMENTS TO
HOUSE BILL 4009

By COMMITTEE ON REVENUE

February 24

1   On page 1 of the printed bill, line 2, after "317A.100," insert "317A.106,".

2   On page 2, line 25, after "policies" insert ", including crop insurance policies,".

3   In line 26, delete "business revenue" and insert "commercial activity".

4   In line 36, after "refunds" insert "from any tax program".

5   On page 4, line 35, delete "and".

6   In line 39, delete the period and insert "; and

7   "(VV) Receipts from the sale of fluid milk by dairy farmers that are not members of an agri-

8 cultural cooperative.".

9   Delete lines 40 and 41 and insert:

10   "(2) 'Cost inputs' means:

11   "(a) The cost of goods sold as calculated in arriving at federal taxable income under the Internal

12 Revenue Code; or

13   "(b) In the case of a taxpayer that is engaged in a farming operation, as defined in section 3b

14 of this 2020 Act, and that does not report cost of goods sold for federal tax purposes, the taxpayer's

15 operating expenses excluding labor costs.".

16   On page 5, after line 19, insert:

17   "(L) Manufactured dwelling park nonprofit cooperatives organized under ORS chapter 62.".

18   On page 6, line 31, delete "that is taxable under" and insert "as defined in".

19   On page 7, after line 1, insert:

20   "**SECTION 1a.** ORS 317A.106 is amended to read:

21   "317A.106. **(1)** A unitary group shall register, file and pay taxes under ORS 317A.100 to 317A.158

22 as a single taxpayer and may exclude receipts from transactions among its members. The Depart-

23 ment of Revenue may collect identifying information about all members of a unitary group and may

24 require disclosure to the department, for each member, of the commercial activity in Oregon and in

25 the United States.

26   "**(2) Notwithstanding the provisions of ORS 317A.100 to 317A.158 as applicable to unitary**

27 **groups, unitary group taxpayers may elect to modify unitary group membership to exclude**

28 **all foreign members with no commercial activity, or amounts realized but by definition ex-**

29 **cluded from commercial activity, that is sourced to Oregon. The Department of Revenue**

30 **shall by rule adopt policies and procedures for elections made under this subsection, includ-**

31 **ing:**

32   "**(a) The time and manner of making or terminating an election;**

33   "**(b) The allowed duration of an election;**

34   "**(c) The department's discretion to disallow an election in whole or in part;**

35   "**(d) The withdrawal before filing of an election by a taxpayer;**

"(e) The treatment of property of the unitary group transferred into this state;

"(f) Filing, payment of fees and registration governing the election; and

"(g) Any other policies and procedures that the department deems necessary for the administration and operation of an election allowed under this subsection.".

In line 13, before "year" insert "calendar".

Delete line 14 and insert "returns or allowances are made.".

On page 8, delete lines 4 through 14 and insert:

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

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

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

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

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

"(b) For taxpayers subject to alternative apportionment under ORS chapter 314, the required applicable apportionment method; or

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

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

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

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

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

"**SECTION 3a. Section 3b of this 2020 Act is added to and made a part of ORS 317A.100 to 317A.158.**

"**SECTION 3b. (1) As used in this section:**

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

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

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

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

"(2) A taxpayer that is engaged in a farming operation that sells agricultural commodities to a broker or wholesaler may demonstrate the percentage of the taxpayer's goods sold

1 **in this state compared to outside this state, for purposes of determining commercial activity,**
2 **by:**
3 **"(a) Obtaining from the broker or wholesaler receiving an agricultural commodity from**
4 **the taxpayer a certificate that states the percentage; or**
5 **"(b) Using an industry average percentage, for sales of the agricultural commodity made**
6 **the previous tax year, that is based on the most recent information from the United States**
7 **Department of Agriculture National Agricultural Statistics Service and other sources of**
8 **sales information.".**
9 In line 38, delete "20" and insert "five" and after "amount" insert ", except that the department
10 may not impose a penalty under this subsection for any quarter for which the taxpayer has paid an
11 amount at least equal to the taxpayer's required installment for the corresponding quarter of the
12 preceding tax year".
13 Delete lines 42 through 45.
14 On page 9, delete lines 1 through 6 and insert:
15 "**SECTION 6.** ORS 317A.161, as amended by section 5 of this 2020 Act, is amended to read:
16 "317A.161. [*(1) The Department of Revenue may not impose any interest that would otherwise apply*
17 *to taxes due if the interest is based on underpayment or underreporting that results solely from the*
18 *operation of ORS 317A.100 to 317A.158.*]
19 "[*(2)*] **(1)** A taxpayer shall pay at least [*80*] **90** percent of the balance due for any quarter or the
20 Department **of Revenue** may impose, for any quarter that this threshold is not met, a penalty of five
21 percent of the underpayment amount, except that the department may not impose a penalty under
22 this subsection for any quarter for which the taxpayer has paid an amount at least equal to the
23 taxpayer's required installment for the corresponding quarter of the preceding tax year.
24 "[*(3)*] **(2)** The provisions of ORS 314.400 (1) and (2) apply to a taxpayer that fails to file an an-
25 nual return as required under ORS 317A.137 or that fails to pay the tax imposed under ORS
26 317A.100 to 317A.158 by the due date of the annual return.".
27 In line 7, after the period insert "Section 3b of this 2020 Act and" and after "317A.100," insert
28 "317A.106,".
29 In line 12, delete "2021" and insert "2022" in both places.
30 In line 14, delete "2021" and insert "2022" in both places.
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