

# House Bill 4138

Sponsored by Representative MOORE-GREEN, Senator LINTHICUM; Representatives LIVELY, SMITH G, WITT, Senators FINDLEY, KNOPP, MONNES ANDERSON, THOMSEN (Presession filed.)

## 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**.

Exempts receipts from sales of prescription drugs by licensed pharmacies from commercial activity subject to corporate activity tax. Applies to tax years beginning on or after January 1, 2021. Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to treatment of prescription drug sales under corporate activity tax; creating new pro-  
3 visions; amending ORS 317A.100; and prescribing an effective date.

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

5 **SECTION 1.** ORS 317A.100 is amended to read:

6 317A.100. As used in ORS 317A.100 to 317A.158:

7 (1)(a) "Commercial activity" means:

8 (A) The total amount realized by a person, arising from transactions and activity in the regular  
9 course of the person's trade or business, without deduction for expenses incurred by the trade or  
10 business;

11 (B) If received by a financial institution:

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

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

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

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

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

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

25 (A) Interest income except:

26 (i) Interest on credit sales; or

27 (ii) Interest income, including service charges, received by financial institutions;

28 (B) Receipts from the sale, exchange or other disposition of an asset described in section 1221  
29 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset;

30 (C) If received by an insurer, federally reinsured premiums or income from transactions between

**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 reciprocal insurer and its attorney in fact operating under ORS 731.142;

2 (D) Receipts from hedging transactions, to the extent that the transactions are entered into  
 3 primarily to protect a financial position, including transactions intended to manage the risk of ex-  
 4 posure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity or in-  
 5 vestments in foreign operations, risk of exposure to interest rate fluctuations or risk of commodity  
 6 price fluctuations;

7 (E) Proceeds received attributable to the repayment, maturity or redemption of the principal of  
 8 a loan, bond, mutual fund, certificate of deposit or marketable instrument;

9 (F) The principal amount received under a repurchase agreement or on account of any trans-  
 10 action properly characterized as a loan to the person;

11 (G) Contributions received by a trust, plan or other arrangement, any of which is described in  
 12 section 501(a) of the Internal Revenue Code, or to which title 26, subtitle A, chapter 1, subchapter  
 13 (D) of the Internal Revenue Code applies;

14 (H) Compensation, whether current or deferred, and whether in cash or in kind, received or to  
 15 be received by an employee, a former employee or the employee's legal successor for services ren-  
 16 dered to or for an employer, including reimbursements received by or for an individual for medical  
 17 or education expenses, health insurance premiums or employee expenses or on account of a de-  
 18 pendent care spending account, legal services plan, any cafeteria plan described in section 125 of  
 19 the Internal Revenue Code or any similar employee reimbursement;

20 (I) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts or  
 21 calls, or from the sale of the taxpayer's treasury stock;

22 (J) Proceeds received on the account of payments from insurance policies owned by the tax-  
 23 payer, except those proceeds received for the loss of business revenue;

24 (K) Gifts or charitable contributions received, membership dues received by trade, professional,  
 25 homeowners' or condominium associations, payments received for educational courses, meetings or  
 26 meals, or similar payments to a trade, professional or other similar association, and fundraising re-  
 27 ceipts received by any person when any excess receipts are donated or used exclusively for chari-  
 28 table purposes;

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

31 (M) Property, money and other amounts received or acquired by an agent on behalf of another  
 32 in excess of the agent's commission, fee or other remuneration;

33 (N) Tax refunds, other tax benefit recoveries and reimbursements for the tax imposed under ORS  
 34 317A.100 to 317A.158 made by entities that are part of the same unitary group as provided under  
 35 ORS 317A.106, and reimbursements made by entities that are not members of a unitary group that  
 36 are required to be made for economic parity among multiple owners of an entity whose tax obli-  
 37 gation under ORS 317A.100 to 317A.158 is required to be reported and paid entirely by one owner,  
 38 as provided in ORS 317A.106;

39 (O) Pension reversions;

40 (P) Contributions to capital;

41 (Q) Receipts from the sale, transfer, exchange or other disposition of motor vehicle fuel or any  
 42 other product used for the propulsion of motor vehicles;

43 (R) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer,  
 44 retail dealer, distributor, manufacturer or seller, an amount equal to the federal and state excise  
 45 taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the

1 Internal Revenue Code or ORS chapter 323;

2 (S) In the case of receipts from the sale of malt beverages or wine, as defined in ORS 471.001,  
 3 cider, as defined in ORS 471.023 or distilled liquor, as defined in ORS 471.001, by a person holding  
 4 a license issued under ORS chapter 471, an amount equal to the federal and state excise taxes paid  
 5 by any person on or for such malt beverages, wine or distilled liquor under subtitle E of the Internal  
 6 Revenue Code or ORS chapter 471 or 473, and any amount paid to the Oregon Liquor Control  
 7 Commission for sales of distilled spirits by an agent appointed under ORS 471.750;

8 (T) In the case of receipts from the sale of marijuana items, as defined in ORS 475B.015, by a  
 9 person holding a license issued under ORS 475B.010 to 475B.545, an amount equal to the federal and  
 10 state excise taxes paid by any person on or for such marijuana items under subtitle E of the Internal  
 11 Revenue Code or ORS 475B.700 to 475B.760 and any local retail taxes authorized under ORS  
 12 475B.491;

13 (U) Local taxes collected by a restaurant or other food establishment on sales of meals, prepared  
 14 food or beverages;

15 (V) Tips or gratuities collected by a restaurant or other food establishment and passed on to  
 16 employees;

17 (W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in  
 18 ORS 320.400 (8)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360,  
 19 to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the  
 20 sale or other transfer was based upon the transferee's need to meet a specific customer's preference  
 21 for a motor vehicle;

22 (X) Registration fees or taxes collected by a vehicle dealer certified under ORS 822.020 at the  
 23 sale or other transfer of a motor vehicle, as defined in ORS 801.360, that are owed to a third party  
 24 by the purchaser of the motor vehicle and passed to the third party by the dealer;

25 (Y) Receipts from a financial institution for services provided to the financial institution in  
 26 connection with the issuance, processing, servicing and management of loans or credit accounts, if  
 27 the financial institution and the recipient of the receipts have at least 50 percent of their ownership  
 28 interests owned or controlled, directly or constructively through related interests, by common own-  
 29 ers;

30 (Z) In the case of amounts retained as commissions by a holder of a license under ORS chapter  
 31 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or col-  
 32 lected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to  
 33 be used as purse money;

34 (AA) Net revenue of residential care facilities as defined in ORS 443.400 or in-home care agen-  
 35 cies as defined in ORS 443.305, to the extent that the revenue is derived from or received as com-  
 36 pensation for providing services to a medical assistance or Medicare recipient;

37 (BB) Dividends received;

38 (CC) Distributive income received from a pass-through entity;

39 (DD) Receipts from sales to a wholesaler in this state, if the seller receives certification at the  
 40 time of sale from the wholesaler that the wholesaler will sell the purchased property outside this  
 41 state;

42 (EE) Receipts from the wholesale or retail sale of groceries;

43 (FF) Receipts from transactions among members of a unitary group;

44 (GG) Moneys, including public purpose charge moneys collected under ORS 757.612 and costs  
 45 of funding or implementing cost-effective energy conservation measures collected under ORS 757.689,

1 that are collected from customers, passed to a utility and approved by the Public Utility Commission  
 2 and that support energy conservation, renewable resource acquisition and low-income assistance  
 3 programs;

4 (HH) Moneys collected by a utility from customers for the payment of loans through on-bill fi-  
 5 nancing;

6 (II) Surcharges collected under ORS 757.736;

7 (JJ) Moneys passed to a utility by the Bonneville Power Administration for the purpose of  
 8 effectuating the Regional Power Act Exchange credits or pursuant to any settlement associated with  
 9 the exchange credit;

10 (KK) Moneys collected or recovered, by entities listed in ORS 756.310, cable operators as de-  
 11 fined in 47 U.S.C. 522(5), telecommunications carriers as defined in 47 U.S.C. 153(51) and providers  
 12 of information services as defined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-  
 13 way fees, franchise fees, privilege taxes, federal taxes and local taxes;

14 (LL) Charges paid to the Residential Service Protection Fund required by chapter 290, Oregon  
 15 Laws 1987;

16 (MM) Universal service surcharge moneys collected or recovered and paid into the universal  
 17 service fund established in ORS 759.425;

18 (NN) Moneys collected for public purpose funding as described in ORS 759.430;

19 (OO) Moneys collected or recovered and paid into the federal universal service fund as deter-  
 20 mined by the Federal Communications Commission;

21 (PP) In the case of a seller or provider of telecommunications services, the amount of tax im-  
 22 posed under ORS 403.200 for access to the emergency communications system that is collected from  
 23 subscribers or consumers;

24 (QQ) In the case of a transient lodging tax collector, the amount of tax imposed under ORS  
 25 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;

26 (RR) In the case of a seller of bicycles, the amount of tax imposed under ORS 320.415 upon retail  
 27 sales of bicycles;

28 (SS) In the case of a qualified heavy equipment provider, the amount of tax imposed under ORS  
 29 307.872 upon the rental price of heavy equipment;

30 (TT) Farmer sales to an agricultural cooperative in this state that is a cooperative organization  
 31 described in section 1381 of the Internal Revenue Code; *[and]*

32 (UU) Revenue received by a business entity that is mandated by contract or subcontract to be  
 33 distributed to another person or entity if the revenue constitutes sales commissions that are paid  
 34 to a person who is not an employee of the business entity, including, without limitation, a split-fee  
 35 real estate commission[.]; **and**

36 **(VV) Amounts received from the sale of a prescription drug, as defined in ORS 689.005,**  
 37 **by a pharmacy licensed by the State Board of Pharmacy.**

38 (2) "Cost inputs" means the cost of goods sold as calculated in arriving at federal taxable in-  
 39 come under the Internal Revenue Code.

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

42 (4) "Excluded person" means any of the following:

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

- 1 (b) Organizations described in section 501(d) of the Internal Revenue Code, unless the exemption  
 2 is denied under section 502 or 503 of the Internal Revenue Code.
- 3 (c) Organizations described in section 501(e) of the Internal Revenue Code.
- 4 (d) Organizations described in section 501(f) of the Internal Revenue Code.
- 5 (e) Charitable risk pools described in section 501(n) of the Internal Revenue Code.
- 6 (f) Organizations described in section 521 of the Internal Revenue Code.
- 7 (g) Qualified state tuition programs described in section 529 of the Internal Revenue Code.
- 8 (h) Foreign or alien insurance companies, but only with respect to the underwriting profit de-  
 9 rived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and  
 10 731.828.
- 11 (i) Governmental entities.
- 12 (j) Any person with commercial activity that does not exceed \$750,000 for the calendar year,  
 13 other than a person that is part of a unitary group as provided in ORS 317A.106 with commercial  
 14 activity in excess of \$750,000.
- 15 (k) Hospitals subject to assessment under ORS 414.855, long term care facilities subject to as-  
 16 sessment under ORS 409.801 or any entity subject to assessment under ORS 414.880 or section 3 or  
 17 5, chapter 538, Oregon Laws 2017.
- 18 (5) “Financial institution” has the meaning given that term in ORS 314.610, except that “finan-  
 19 cial institution” does not include a credit union.
- 20 (6)(a) “FR Y-9” means the consolidated or parent-only financial statements that a holding com-  
 21 pany is required to file with the Federal Reserve Board pursuant to 12 U.S.C. 1844.
- 22 (b) In the case of a holding company required to file both consolidated and parent-only financial  
 23 statements, “FR Y-9” means the consolidated financial statements that the holding company is re-  
 24 quired to file.
- 25 (7) “Governmental entity” means:
- 26 (a) The United States and any of its unincorporated agencies and instrumentalities.
- 27 (b) Any incorporated agency or instrumentality of the United States wholly owned by the United  
 28 States or by a corporation wholly owned by the United States.
- 29 (c) The State of Oregon and any of its unincorporated agencies and instrumentalities.
- 30 (d) Any county, city, district or other political subdivision of the state.
- 31 (e) A special government body as defined in ORS 174.117.
- 32 (f) A federally recognized Indian tribe.
- 33 (8) “Groceries” means food as defined in 7 U.S.C. 2012(k), but does not include cannabinoid  
 34 edibles or marijuana seeds.
- 35 (9)(a) “Hedging transaction” means a hedging transaction as defined in section 1221 of the  
 36 Internal Revenue Code or a transaction accorded hedge accounting treatment under Financial Ac-  
 37 counting Standards Board Statement No. 133.
- 38 (b) “Hedging transaction” does not include a transaction in which an actual transfer of title of  
 39 real or tangible property to another entity occurs.
- 40 (10) “Insurer” has the meaning given that term in ORS 317.010.
- 41 (11) “Internal Revenue Code,” except where the Legislative Assembly has provided otherwise,  
 42 refers to the laws of the United States or to the Internal Revenue Code as they are amended and  
 43 in effect on December 31, 2018.
- 44 (12) “Labor costs” means total compensation of all employees, not to include compensation paid  
 45 to any single employee in excess of \$500,000.

- 1 (13)(a) “Motor vehicle fuel or any other product used for the propulsion of motor vehicles”  
 2 means:  
 3 (A) Motor vehicle fuel as defined in ORS 319.010; and  
 4 (B) Fuel the use of which in a motor vehicle is subject to taxation under ORS 319.530.  
 5 (b) “Motor vehicle fuel or any other product used for the propulsion of motor vehicles” does not  
 6 mean:  
 7 (A) Electricity; or  
 8 (B) Electric batteries or any other mechanical or physical component or accessory of a motor  
 9 vehicle.  
 10 (14) “Person” includes individuals, combinations of individuals of any form, receivers, assignees,  
 11 trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partner-  
 12 ships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs,  
 13 societies, entities organized as for-profit corporations under ORS chapter 60, C corporations, S cor-  
 14 porations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are  
 15 disregarded for federal income tax purposes and any other entities.  
 16 (15) “Retailer” means a person doing business by selling tangible personal property to a pur-  
 17 chaser for a purpose other than:  
 18 (a) Resale by the purchaser of the property as tangible personal property in the regular course  
 19 of business;  
 20 (b) Incorporation by the purchaser of the property in the course of regular business as an in-  
 21 gredient or component of real or personal property; or  
 22 (c) Consumption by the purchaser of the property in the production for sale of a new article of  
 23 tangible personal property.  
 24 (16) “Taxable commercial activity” means commercial activity sourced to this state under ORS  
 25 317A.128, less any subtraction pursuant to ORS 317A.119.  
 26 (17)(a) “Taxpayer” means any person or unitary group required to register, file or pay tax under  
 27 ORS 317A.100 to 317A.158.  
 28 (b) “Taxpayer” does not include excluded persons, except to the extent that a tax-exempt entity  
 29 has unrelated business income that is taxable under the Internal Revenue Code.  
 30 (18)(a) “Unitary business” means a business enterprise in which there exists directly or indi-  
 31 rectly between the members or parts of the enterprise a sharing or exchange of value as demon-  
 32 strated by:  
 33 (A) Centralized management or a common executive force;  
 34 (B) Centralized administrative services or functions resulting in economies of scale; or  
 35 (C) Flow of goods, capital resources or services demonstrating functional integration.  
 36 (b) “Unitary business” may include a business enterprise the activities of which:  
 37 (A) Are in the same general line of business, such as manufacturing, wholesaling or retailing;  
 38 or  
 39 (B) Constitute steps in a vertically integrated process, such as the steps involved in the pro-  
 40 duction of natural resources, which might include exploration, mining, refining and marketing.  
 41 (19) “Unitary group” means a group of persons with more than 50 percent common ownership,  
 42 either direct or indirect, that is engaged in business activities that constitute a unitary business.  
 43 (20) “Wholesaler” means a person primarily doing business by merchant distribution of tangible  
 44 personal property to retailers or to other wholesalers.  
 45 **SECTION 2. The amendments to ORS 317A.100 by section 1 of this 2020 Act apply to tax**

1 years beginning on or after January 1, 2021.

2 **SECTION 3.** This 2020 Act takes effect on the 91st day after the date on which the 2020  
3 regular session of the Eightieth Legislative Assembly adjourns sine die.

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