

HB 4009-27  
(LC 249)  
2/21/20 (CMT/ps)

Requested by HOUSE COMMITTEE ON REVENUE (at the request of Representative Nancy Nathanson)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4009**

- 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  
3 policies,”.
- 4 In line 26, delete “business revenue” and insert “commercial activity”.
- 5 In line 36, after “refunds” insert “from any tax program”.
- 6 On page 4, line 35, delete “and”.
- 7 In line 39, delete the period and insert “; and  
8 “(VV) Receipts from the sale of fluid milk by dairy farmers that are not  
9 members of an agricultural cooperative.”.
- 10 Delete lines 40 and 41 and insert:  
11 “(2) ‘Cost inputs’ means:  
12 “(a) The cost of goods sold as calculated in arriving at federal taxable  
13 income under the Internal Revenue Code; or  
14 “(b) In the case of a taxpayer that is engaged in a farming operation, as  
15 defined in section 3b of this 2020 Act, and that does not report cost of goods  
16 sold for federal tax purposes, the taxpayer’s operating expenses excluding  
17 labor costs.”.
- 18 On page 5, after line 19, insert:  
19 “(L) Manufactured dwelling park nonprofit cooperatives organized under  
20 ORS chapter 62.”.
- 21 On page 6, line 31, delete “that is taxable under” and insert “as defined

1 in”.

2 On page 7, after line 1, insert:

3 **“SECTION 1a.** ORS 317A.106 is amended to read:

4 “317A.106. (1) A unitary group shall register, file and pay taxes under  
5 ORS 317A.100 to 317A.158 as a single taxpayer and may exclude receipts from  
6 transactions among its members. The Department of Revenue may collect  
7 identifying information about all members of a unitary group and may re-  
8 quire disclosure to the department, for each member, of the commercial ac-  
9 tivity in Oregon and in the United States.

10 **“(2) Notwithstanding the provisions of ORS 317A.100 to 317A.158 as**  
11 **applicable to unitary groups, unitary group taxpayers may elect to**  
12 **modify unitary group membership to exclude all foreign members with**  
13 **no commercial activity, or amounts realized but by definition excluded**  
14 **from commercial activity, that is sourced to Oregon. The Department**  
15 **of Revenue shall by rule adopt policies and procedures for elections**  
16 **made under this subsection, including:**

17 **“(a) The time and manner of making or terminating an election;**

18 **“(b) The allowed duration of an election;**

19 **“(c) The department’s discretion to disallow an election in whole**  
20 **or in part;**

21 **“(d) The withdrawal before filing of an election by a taxpayer;**

22 **“(e) The treatment of property of the unitary group transferred into**  
23 **this state;**

24 **“(f) Filing, payment of fees and registration governing the election;**  
25 **and**

26 **“(g) Any other policies and procedures that the department deems**  
27 **necessary for the administration and operation of an election allowed**  
28 **under this subsection.”.**

29 In line 13, before “year” insert “calendar”.

30 Delete line 14 and insert “returns or allowances are made.”.

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

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

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

5 “(b) Cost inputs or labor costs that are attributable to a taxpayer’s re-  
6 ceipts from an item that is not commercial activity.

7 “(3) Any taxpayer having commercial activity both within and without  
8 this state shall apportion the amount of the subtraction in subsection (1) of  
9 this section, after providing for any exclusions in subsection (2) of this sec-  
10 tion, as follows:

11 “(a) As provided in ORS 314.650 and 314.665;

12 “(b) For taxpayers subject to alternative apportionment under ORS chap-  
13 ter 314, the required applicable apportionment method; or

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

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

20 “(5) Notwithstanding subsection (1) of this section, the subtraction under  
21 this section may not exceed 95 percent of the taxpayer’s commercial activity  
22 in this state.

23 “(6) A unitary group required to apportion the amount of the subtraction  
24 shall include all members of the unitary group for purposes of determining  
25 the group’s subtraction amount and apportionment ratio.

26 “(7) A taxpayer or unitary group may elect to use the taxpayer’s or  
27 unitary group’s most recent fiscal year information for purposes of deter-  
28 mining the subtraction under this section. An election under this section  
29 must be made on a timely filed, original return. An election under this sec-  
30 tion is binding for and applicable to the tax year in which it is made.

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

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

4       **“(a)(A) ‘Agricultural commodity’ includes all agricultural,**  
5 **horticultural, viticultural and vegetable products produced in this**  
6 **state, including bees and honey.**

7       **“(B) ‘Agricultural commodity’ does not include timber or timber**  
8 **products.**

9       **“(b) ‘Broker’ means any person, other than a dealer, commission**  
10 **merchant or cash buyer, that negotiates the purchase or sale of any**  
11 **agricultural commodity but does not handle the agricultural com-**  
12 **modity.**

13       **“(c) ‘Farming operation’ means an entity doing business in a sector**  
14 **described under codes 111, 112 or 115 of the North American Industry**  
15 **Classification System.**

16       **“(2) A taxpayer that is engaged in a farming operation that sells**  
17 **agricultural commodities to a broker or wholesaler may demonstrate**  
18 **the percentage of the taxpayer’s goods sold in this state compared to**  
19 **outside this state, for purposes of determining commercial activity,**  
20 **by:**

21       **“(a) Obtaining from the broker or wholesaler receiving an agricul-**  
22 **tural commodity from the taxpayer a certificate that states the per-**  
23 **centage; or**

24       **“(b) Using an industry average percentage, for sales of the agricul-**  
25 **tural commodity made the previous tax year, that is based on the most**  
26 **recent information from the United States Department of Agriculture**  
27 **National Agricultural Statistics Service and other sources of sales in-**  
28 **formation.”.**

29       In line 38, delete “20” and insert “five” and after “amount” insert “, ex-  
30 cept that the department may not impose a penalty under this subsection for

1 any quarter for which the taxpayer has paid an amount at least equal to the  
2 taxpayer's required installment for the corresponding quarter of the preced-  
3 ing tax year".

4 Delete lines 42 through 45.

5 On page 9, delete lines 1 through 6 and insert:

6 "**SECTION 6.** ORS 317A.161, as amended by section 5 of this 2020 Act,  
7 is amended to read:

8 "317A.161. [(1) *The Department of Revenue may not impose any interest that*  
9 *would otherwise apply to taxes due if the interest is based on underpayment*  
10 *or underreporting that results solely from the operation of ORS 317A.100 to*  
11 *317A.158.]*

12 "[2)] (1) A taxpayer shall pay at least [80] **90** percent of the balance due  
13 for any quarter or the Department of **Revenue** may impose, for any quarter  
14 that this threshold is not met, a penalty of five percent of the underpayment  
15 amount, except that the department may not impose a penalty under this  
16 subsection for any quarter for which the taxpayer has paid an amount at  
17 least equal to the taxpayer's required installment for the corresponding  
18 quarter of the preceding tax year.

19 "[3)] (2) The provisions of ORS 314.400 (1) and (2) apply to a taxpayer  
20 that fails to file an annual return as required under ORS 317A.137 or that  
21 fails to pay the tax imposed under ORS 317A.100 to 317A.158 by the due date  
22 of the annual return."

23 In line 7, after the period insert "Section 3b of this 2020 Act and" and  
24 after "317A.100," insert "317A.106,".

25 In line 12, delete "2021" and insert "2022" in both places.

26 In line 14, delete "2021" and insert "2022" in both places.

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