

# Enrolled Senate Bill 164

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Finance and Revenue)

CHAPTER .....

AN ACT

Relating to corporate activity tax; creating new provisions; amending ORS 317A.100, 317A.103, 317A.106, 317A.116, 317A.119, 317A.125, 317A.131, 317A.137, 317A.146 and 317A.161 and section 78, chapter 122, Oregon Laws 2019; and prescribing an effective date.

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

**SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 317A.100 to 317A.158.**

**SECTION 2. (1) For the 2021 calendar year, taxpayers using a federal tax year other than the calendar year, pursuant to section 441 of the Internal Revenue Code or under rules adopted by the Department of Revenue, must register with the department and file a short year tax return.**

**(2) The short year tax return required under this section is applicable to a period starting January 1, 2021, and ending on the last day of the taxpayer’s federal tax year that ends in calendar year 2021. A taxpayer subject to the short year registration and filing requirement shall prorate, for the number of days to which the short year tax return is applicable, the commercial activity threshold of \$750,000 provided in ORS 317A.100, 317A.116 and 317A.131, the tax rate threshold of \$1 million provided in ORS 317A.125 and 317A.137 and the subtraction amount allowed in ORS 317A.119.**

**(3) A taxpayer shall file the 2021 short year tax return required under this section no later than April 15, 2022.**

**(4) The department may adopt rules necessary to carry out the provisions of fiscal year filing and short year tax returns, including policies and procedures for payment methods, due dates, timelines, forms, proration methods and reconciling accounting inconsistencies between tax years.**

**SECTION 3. ORS 317A.100, as amended by section 1, chapter 2, Oregon Laws 2020 (first special session), is amended to read:**

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

(1)(a) “Commercial activity” means:

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

(B) If received by a financial institution:

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

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

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

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

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

(b) "Commercial activity" does not include:

(A) Interest income except:

(i) Interest on credit sales; or

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

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

(C) If received by an insurer, federally reinsured premiums or income from transactions between a reciprocal insurer and its attorney in fact operating under ORS 731.142;

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

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

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

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

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

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

(J) Proceeds received on the account of payments from insurance policies, including crop insurance policies, owned by the taxpayer, except those proceeds received for the loss of commercial activity;

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

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

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

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

(O) Pension reversions;

(P) Contributions to capital;

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

(R) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer or seller, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the Internal Revenue Code or ORS chapter 323;

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

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

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

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

(W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400 (8)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle **or is an exchange of new vehicles between franchised motor vehicle dealerships**;

(X) Registration fees or taxes collected by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400 (8)(a)(B) at the sale or other transfer of a motor vehicle, as defined in ORS 801.360, that are owed to a third party by the purchaser of the motor vehicle and passed to the third party by the dealer;

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

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

(AA) [*Net revenue*] **Receipts** of residential care facilities as defined in ORS 443.400 or in-home care agencies as defined in ORS 443.305, to the extent that the [*revenue is*] **receipts are** derived from or received as compensation for providing services to a medical assistance or Medicare recipient;

- (BB) Dividends received;
- (CC) Distributive income received from a pass-through entity;
- (DD) Receipts from sales to a wholesaler in this state, if the seller receives certification at the time of sale from the wholesaler that the wholesaler will sell the purchased property outside this state;
- (EE) Receipts from the wholesale or retail sale of groceries, **including receipts of a person that owns groceries at the time of sale and compensation of any consignee engaged in effecting the sale of groceries on behalf the owner of the groceries, but only to the extent that the compensation relates to grocery sales;**
- (FF) Receipts from transactions among members of a unitary group;
- (GG) Moneys, including public purpose charge moneys collected under ORS 757.612 and costs of funding or implementing cost-effective energy conservation measures collected under ORS 757.689, that are collected from customers, passed to a utility and approved by the Public Utility Commission and that support energy conservation, renewable resource acquisition and low-income assistance programs;
- (HH) Moneys collected by a utility from customers for the payment of loans through on-bill financing;
- (II) Surcharges collected under ORS 757.736;
- (JJ) Moneys passed to a utility by the Bonneville Power Administration for the purpose of effectuating the Regional Power Act Exchange credits or pursuant to any settlement associated with the exchange credit;
- (KK) Moneys collected or recovered, by entities listed in ORS 756.310, cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers as defined in 47 U.S.C. 153(51) and providers of information services as defined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way fees, franchise fees, privilege taxes, federal taxes and local taxes;
- (LL) Charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987;
- (MM) Universal service surcharge moneys collected or recovered and paid into the universal service fund established in ORS 759.425;
- (NN) Moneys collected for public purpose funding as described in ORS 759.430;
- (OO) Moneys collected or recovered and paid into the federal universal service fund as determined by the Federal Communications Commission;
- (PP) In the case of a seller or provider of telecommunications services, the amount of tax imposed under ORS 403.200 for access to the emergency communications system that is collected from subscribers or consumers;
- (QQ) In the case of a transient lodging tax collector, the amount of tax imposed under ORS 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;
- (RR) In the case of a seller of bicycles, the amount of tax imposed under ORS 320.415 upon retail sales of bicycles;
- (SS) In the case of a qualified heavy equipment provider, the amount of tax imposed under ORS 307.872 upon the rental price of heavy equipment;
- (TT) Farmer sales to an agricultural cooperative in this state that is a cooperative organization described in section 1381 of the Internal Revenue Code;
- (UU) Revenue received by a business entity that is mandated by contract or subcontract to be distributed to another person or entity if the revenue constitutes sales commissions that are paid to a person who is not an employee of the business entity, including, without limitation, a split-fee real estate commission; and
- (VV) Receipts from the sale of fluid milk by dairy farmers that are not members of an agricultural cooperative.
- (2) "Cost inputs" means:
- (a) The cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code; or

(b) In the case of a taxpayer that is engaged in a farming operation, as defined in section 6, chapter 2, Oregon Laws 2020 (first special session), and that does not report cost of goods sold for federal tax purposes, the taxpayer's operating expenses excluding labor costs.

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

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

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

(b) Organizations described in section 501(d) of the Internal Revenue Code, unless the exemption is denied under section 502 or 503 of the Internal Revenue Code.

(c) Organizations described in section 501(e) of the Internal Revenue Code.

(d) Organizations described in section 501(f) of the Internal Revenue Code.

(e) Charitable risk pools described in section 501(n) of the Internal Revenue Code.

(f) Organizations described in section 521 of the Internal Revenue Code.

(g) Qualified state tuition programs described in section 529 of the Internal Revenue Code.

(h) Foreign or alien insurance companies, but only with respect to the underwriting profit derived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and 731.828 **or if an insurance company is subject to the retaliatory tax under ORS 731.854 and 731.859.**

(i) Governmental entities.

(j) Any person with commercial activity that does not exceed \$750,000 for the calendar year, other than a person that is part of a unitary group as provided in ORS 317A.106 with commercial activity in excess of \$750,000.

(k) Hospitals subject to assessment under ORS 414.855, long term care facilities subject to assessment under ORS 409.801 or any entity subject to assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws 2017.

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

(5) "Financial institution" has the meaning given that term in ORS 314.610, except that "financial institution" does not include a credit union.

(6)(a) "FR Y-9" means the consolidated or parent-only financial statements that a holding company is required to file with the Federal Reserve Board pursuant to 12 U.S.C. 1844.

(b) In the case of a holding company required to file both consolidated and parent-only financial statements, "FR Y-9" means the consolidated financial statements that the holding company is required to file.

(7) "Governmental entity" means:

(a) The United States and any of its unincorporated agencies and instrumentalities.

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(c) The State of Oregon and any of its unincorporated agencies and instrumentalities.

(d) Any county, city, district or other political subdivision of the state.

(e) A special government body as defined in ORS 174.117.

(f) A federally recognized Indian tribe.

(8) "Groceries" means food as defined in 7 U.S.C. 2012(k), but does not include cannabinoid edibles or marijuana seeds.

(9)(a) "Hedging transaction" means a hedging transaction as defined in section 1221 of the Internal Revenue Code or a transaction accorded hedge accounting treatment under Financial Accounting Standards Board Statement No. 133.

(b) "Hedging transaction" does not include a transaction in which an actual transfer of title of real or tangible property to another entity occurs.

(10) "Insurer" has the meaning given that term in ORS 317.010.

(11) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise, refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect on December 31, 2018.

(12) "Labor costs" means total compensation of all employees, not to include compensation paid to any single employee in excess of \$500,000.

(13)(a) "Motor vehicle fuel or any other product used for the propulsion of motor vehicles" means:

(A) Motor vehicle fuel as defined in ORS 319.010; and

(B) Fuel the use of which in a motor vehicle is subject to taxation under ORS 319.530.

(b) "Motor vehicle fuel or any other product used for the propulsion of motor vehicles" does not mean:

(A) Electricity; or

(B) Electric batteries or any other mechanical or physical component or accessory of a motor vehicle.

(14) "Person" includes individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, entities organized as for-profit corporations under ORS chapter 60, C corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes and any other entities.

(15) "Retailer" means a person doing business by selling tangible personal property to a purchaser for a purpose other than:

(a) Resale by the purchaser of the property as tangible personal property in the regular course of business;

(b) Incorporation by the purchaser of the property in the course of regular business as an ingredient or component of real or personal property; or

(c) Consumption by the purchaser of the property in the production for sale of a new article of tangible personal property.

(16) "Taxable commercial activity" means commercial activity sourced to this state under ORS 317A.128, less any subtraction pursuant to ORS 317A.119.

(17)(a) "Taxpayer" means any person or unitary group required to register, file or pay tax under ORS 317A.100 to 317A.158.

(b) "Taxpayer" does not include excluded persons, except to the extent that a tax-exempt entity has unrelated business income as described in the Internal Revenue Code.

**(18) "Tax year" means, except as otherwise provided in ORS 317A.103, a taxpayer's annual accounting period used for federal income tax purposes under section 441 of the Internal Revenue Code.**

[(18)(a)] **(19)(a)** "Unitary business" means a business enterprise in which there exists directly or indirectly between the members or parts of the enterprise a sharing or exchange of value as demonstrated by:

(A) Centralized management or a common executive force;

(B) Centralized administrative services or functions resulting in economies of scale; or

(C) Flow of goods, capital resources or services demonstrating functional integration.

(b) "Unitary business" may include a business enterprise the activities of which:

(A) Are in the same general line of business, such as manufacturing, wholesaling or retailing;

or

(B) Constitute steps in a vertically integrated process, such as the steps involved in the production of natural resources, which might include exploration, mining, refining and marketing.

[(19)] **(20)** "Unitary group" means a group of persons with more than 50 percent common ownership, either direct or indirect, that is engaged in business activities that constitute a unitary business.

[20] (21) “Wholesaler” means a person primarily doing business by merchant distribution of tangible personal property to retailers or to other wholesalers.

**SECTION 4.** ORS 317A.116, as amended by section 3, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.116. (1) A corporate activity tax is imposed on each person with taxable commercial activity for the privilege of doing business in this state. The tax is imposed upon persons with substantial nexus with this state. The tax imposed under this section is not a transactional tax and is not subject to the Interstate Income Act of 1959 (P.L. 86-272). The tax imposed under this section is in addition to any other taxes or fees imposed under the tax laws of this state. The tax imposed under this section is imposed on the person with the commercial activity and is not a tax imposed directly on a purchaser. The tax imposed under this section is an annual privilege tax for the [calendar] tax year and shall be remitted quarterly to the Department of Revenue. A taxpayer is subject to the annual corporate activity tax for doing business during any portion of such [calendar] tax year.

(2) Returns and allowances, as those terms are applicable to section 448 of the Internal Revenue Code, are allowed as an offset against commercial activity in the [calendar] tax year that the returns or allowances are made.

(3) A person has substantial nexus with this state if any of the following applies. The person:

(a) Owns or uses a part or all of its capital in this state.

(b) Holds a certificate of existence or authorization issued by the Secretary of State authorizing the person to do business in this state.

(c) Has bright-line presence in this state.

(d) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under ORS 317A.100 to 317A.158 under the United States Constitution.

(4) A person has bright-line presence in this state for the [calendar] tax year if any of the following applies. The person:

(a) Owns at any time during the [calendar] tax year property in this state with an aggregate value of at least \$50,000. For purposes of this paragraph, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(b) Has during the [calendar] tax year payroll in this state of at least \$50,000. Payroll in this state includes the following:

(A) Any amount subject to withholding by the person under ORS 316.167 and 316.172;

(B) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and

(C) Any amount the person pays for services performed in this state on the person’s behalf by another.

(c) Has during the [calendar] tax year commercial activity, sourced to this state under ORS 317A.128, of at least \$750,000.

(d) Has at any time during the [calendar] tax year within this state at least 25 percent of the person’s total property, total payroll or total commercial activity.

(e) Is a resident of this state or is domiciled in this state for corporate, commercial or other business purposes.

(5) Notwithstanding subsection (1) of this section, a vehicle dealer may collect from the purchaser of a motor vehicle the estimated portion of the tax imposed under this section that is attributable to commercial activity from the sale or lease of the vehicle.

**SECTION 5.** ORS 317A.103 is amended to read:

317A.103. (1) A taxpayer’s method of accounting for commercial activity, cost inputs and labor costs for a tax year shall be the same as the taxpayer’s method of accounting for federal income tax purposes for the taxpayer’s federal tax year that includes the tax year. If a taxpayer’s method of accounting for federal income tax purposes changes, the taxpayer’s method of accounting for commercial activity under ORS 317A.100 to 317A.158 shall be changed accordingly.

**(2) For a unitary group:**

(a) If all members of the unitary group use the same annual accounting period for federal income tax purposes, the unitary group's tax year is the annual accounting period used by all members for federal income tax purposes under section 441 of the Internal Revenue Code.

(b) If the unitary group includes members with different accounting periods and two or more members of the unitary group file a federal consolidated return, the unitary group's tax year is the annual accounting period of the federal consolidated group under section 441 of the Internal Revenue Code.

(c) In all other instances, the unitary group's tax year is the accounting period used by the unitary group's designated reporting entity, unless otherwise required or permitted under rules adopted by the Department of Revenue.

(3) If a taxpayer changes the taxpayer's tax year for federal income tax purposes under section 441 of the Internal Revenue Code, the taxpayer shall notify the department of the change in the form, time and manner prescribed by the department.

**SECTION 6.** ORS 317A.106, as amended by section 2, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.106. (1) A unitary group shall register, file and pay taxes under ORS 317A.100 to 317A.158 as a single taxpayer and may exclude receipts from transactions among its members.

(2) The unitary group shall designate a single member as reporting entity to register, file and pay taxes on behalf of the unitary group. The unitary group may change the reporting entity only when the entity no longer has substantial nexus with this state under ORS 317A.116, is no longer a member of the unitary group or as otherwise permitted or required by the Department of Revenue in rule, at which time the unitary group taxpayer shall designate another entity as the reporting entity.

(3) The department [*of Revenue*] may collect identifying information about all members of a unitary group and may require disclosure to the department, for each member, of the commercial activity in Oregon and in the United States.

[2] (4) Notwithstanding the provisions of ORS 317A.100 to 317A.158 applicable to unitary groups, unitary group taxpayers may elect to modify unitary group membership to exclude all foreign members with no commercial activity, or amounts realized but by definition excluded from commercial activity, that is sourced to Oregon. The department shall by rule adopt policies and procedures for elections made under this subsection, including:

- (a) The time and manner of making or terminating an election;
- (b) The allowed duration of an election;
- (c) The department's discretion to disallow an election in whole or in part;
- (d) The withdrawal before filing of an election by a taxpayer;
- (e) The treatment of property of the unitary group that is 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.

**SECTION 7.** ORS 317A.119, as amended by section 4, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.119. (1) A taxpayer shall subtract from commercial activity sourced to this state 35 percent of the greater of the following amounts paid or incurred by the taxpayer in the tax year:

- (a) The amount of cost inputs; or
  - (b) The taxpayer's labor costs.
- (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 8.** ORS 317A.125 is amended to read:

317A.125. (1) The corporate activity tax imposed under ORS 317A.116 for each *[calendar]* **tax** year shall equal \$250 plus the product of the taxpayer's taxable commercial activity in excess of \$1 million for the *[calendar]* **tax** year multiplied by 0.57 percent.

(2) A tax is not owed under this section if the person's taxable commercial activity does not exceed \$1 million.

**SECTION 9.** ORS 317A.131, as amended by section 7, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.131. (1)(a) Any person or unitary group with commercial activity in excess of \$750,000 in a tax year shall register with the Department of Revenue.

(b) Except as provided in paragraph (c) of this subsection, a person or unitary group shall be required to register only once and shall register in the year in which the person or unitary group first exceeds \$750,000 in commercial activity.

(c) If a person or unitary group that has registered under this section subsequently undergoes a merger or other reorganization, the department may require the person or unitary group, or any successor, to register at a later date.

(2) The department by rule may establish the information pertaining to the person or unitary group that must be submitted to the department accompanying the registration and the time and manner for issuance of registrations under this section.

(3) The department may impose a penalty for failing to register as required under this section, not to exceed \$100 per month that a person or unitary group has failed to register or a total of \$1,000 in a *[calendar]* **tax** year. The penalty under this subsection may be imposed not earlier than 30 days after the date on which the commercial activity of the person or unitary group exceeds \$750,000 for the tax year.

**SECTION 10.** ORS 317A.137 is amended to read:

317A.137. (1) For purposes of the corporate activity tax imposed under ORS 317A.116, every person doing business in this state with commercial activity for the tax year in excess of \$1 million shall file **an annual return** not later than *[April 15 of the following year an annual return]* **the 15th day of the fourth month following the end of the tax year**. The return must be filed with the Department of Revenue in a form prescribed by the department.

(2) The corporate activity tax imposed under ORS 317A.116 is due and estimated tax payments **for the previous quarter** are payable to the department on or before *[the last day of January, April,*

*July and October of each year for the previous calendar quarter.] the 4th, 7th and 10th months of the tax year and the first month immediately following the end of the tax year.*

(3) The department may by rule extend the time for making any return for good cause. If the time for filing a return is extended at the request of a taxpayer, interest on any unpaid tax at the rate established under ORS 305.220 from the time the return was originally required to be filed to the time of payment, shall be added and paid.

**SECTION 11.** ORS 317A.146 is amended to read:

317A.146. (1) For purposes of ORS 317A.100 to 317A.158, “successor” means any person to whom another person quitting, selling out, exchanging or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of business, a major part of the materials, supplies, merchandise, inventory, fixtures or equipment of the person. Any person obligated to fulfill the terms of a contract shall be considered a successor to any contractor defaulting in the performance of any contract as to which the person is a surety or guarantor.

(2) If any person quits business or sells out, exchanges or otherwise disposes of a business or stock of goods, any corporate activity tax imposed under ORS 317A.116 [*shall become immediately due and payable. The person shall, within 45 days after the sale, exchange or disposition, make a return and pay the tax due*] **is payable on the 15th day of the fourth month following the end of the tax year.**

(3) Notwithstanding ORS 314.835, the successor is liable for the full amount of the tax and may withhold from the purchase price a sum sufficient to pay any tax due until a receipt or evidence from the Department of Revenue showing payment in full of any tax due is presented to the successor. If a receipt or other evidence is not presented to the successor within 45 days, the successor may pay the tax and the amount paid shall, to the extent paid, be considered a payment of the purchase price. If the tax paid by the successor is greater than the purchase price, the amount of the difference is a debt due to the successor from the seller or transferor.

(4) A successor is not liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of the acquisition and the department does not assess a deficiency against the seller or transferor within 18 months of receipt of the notice of acquisition and mail or deliver a copy of the assessment to the successor.

**SECTION 12.** ORS 317A.161, as amended by section 9, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

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

(2) A taxpayer shall pay at least 80 percent of the balance due for any quarter or the department may impose, for any quarter that this threshold is not met, a penalty of five percent of the underpayment amount, except that the department may not impose a penalty under this subsection for any quarter for which the taxpayer has paid an amount at least equal to the taxpayer’s required installment for the corresponding quarter of the preceding tax year.

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

**SECTION 13.** ORS 317A.161, as amended by sections 9 and 10, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.161. *[(1)]* A taxpayer shall pay at least 90 percent of the balance due for any quarter or the Department of Revenue may impose, for any quarter that this threshold is not met, a penalty of five percent of the underpayment amount, except that the department may not impose a penalty under this subsection for any quarter for which the taxpayer has paid an amount at least equal to the taxpayer’s required installment for the corresponding quarter of the preceding tax year.

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

**SECTION 14.** Section 78, chapter 122, Oregon Laws 2019, as amended by section 11, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 78.** (1) The amendments to ORS 317A.161 by section 9, chapter 2, Oregon Laws 2020 (first special session), [of this 2020 special session Act] and section 12 of this 2021 Act apply to tax years beginning on or after January 1, 2020, and before January 1, 2022[, and to returns filed on or before April 15, 2022].

(2) The amendments to ORS 317A.161 by section 10, chapter 2, Oregon Laws 2020 (first special session), [of this 2020 special session Act] and section 13 of this 2021 Act apply to tax years beginning on or after January 1, 2022[, and to returns filed after April 15, 2022].

**SECTION 15.** Section 2 of this 2021 Act and the amendments to ORS 317A.100, 317A.103, 317A.106, 317A.116, 317A.119, 317A.125, 317A.131, 317A.137 and 317A.146 by sections 3 to 11 of this 2021 Act apply to tax years beginning on or after January 1, 2021.

**SECTION 16.** This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

**Passed by Senate June 8, 2021**

.....  
Lori L. Brocker, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House June 24, 2021**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

.....  
Shemia Fagan, Secretary of State