

Requested by Representative NOSSE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2674**

1 In line 2 of the printed bill, delete “and prescribing an effective date” and
2 insert “creating new provisions; amending ORS 307.870, 307.872, 307.875,
3 307.888, 317A.100, 319.010, 319.320, 319.410, 320.400, 320.435, 468A.795,
4 468A.801, 468A.803 and 468A.807; prescribing an effective date; and providing
5 for revenue raising that requires approval by a three-fifths majority”.

6 Delete lines 4 through 11 and insert:
7

8 **“CLEAN DIESEL ENGINE TAXES**

9
10 **“SECTION 1. Definitions. As used in sections 1 to 18 of this 2021**
11 **Act:**

12 **“(1) ‘Clean diesel engine taxes’ means the excise tax imposed under**
13 **section 2 of this 2021 Act, the privilege tax imposed under section 3 of**
14 **this 2021 Act and the use tax imposed under section 4 of this 2021 Act.**

15 **“(2) ‘Contractee’ means the purchaser or lessee of nonroad diesel**
16 **equipment in a transaction subject to the privilege tax imposed under**
17 **section 3 of this 2021 Act.**

18 **“(3) ‘Nonroad diesel engine’ has the meaning given that term in**
19 **ORS 468A.795.**

20 **“(4) ‘Nonroad diesel equipment’ means equipment powered by a**
21 **nonroad diesel engine.**

1 “(5) ‘Provider’ means a person that provides nonroad diesel equip-
2 ment.

3 “(6) ‘Providing nonroad diesel equipment’ means selling at retail
4 or leasing out nonroad diesel equipment.

5 “(7) ‘Seller’ means:

6 “(a) With respect to the excise tax imposed under section 2 of this
7 2021 Act, a person engaged in whole or in part in the business of selling
8 taxable tires at retail.

9 “(b) With respect to the privilege and use taxes imposed under
10 sections 3 and 4 of this 2021 Act, a person engaged in whole or in part
11 in the business of selling nonroad diesel equipment at retail.

12 “(8) ‘Taxable property’ means taxable tires and nonroad diesel
13 equipment.

14 “(9) ‘Taxable tire’ means a new or newly refurbished tire designed
15 for use on a motor vehicle for travel on public highways.

16 “(10) ‘Tax base transactions’ means retail sales of taxable tires and
17 nonroad diesel equipment and leasing out of nonroad diesel equipment.

18 “SECTION 2. Excise tax on retail sale of tires; tax as liability of
19 purchaser; collection at time of sale. (1)(a) An excise tax is imposed
20 on each sale of taxable tires at retail in this state and becomes due
21 upon the sale.

22 “(b) The excise tax shall be computed at the rate of three percent
23 of the retail sales price of the taxable tire. The tax may be rounded
24 to the nearest whole cent.

25 “(2) The excise tax is a liability of the purchaser of the taxable tire.

26 “(3) The amount of the excise tax shall be separately stated on an
27 invoice, receipt or other similar document that the seller provides to
28 the purchaser or shall be otherwise disclosed to the purchaser.

29 “(4) A seller shall collect the excise tax at the time of the taxable
30 sale.

1 “(5) A purchaser’s liability for the excise tax is satisfied by a valid
2 receipt given to the purchaser by the seller of the taxable tire showing
3 payment of the excise tax.

4 “SECTION 3. Tax for privilege of engaging in business of providing
5 nonroad diesel equipment; when tax due; collection of privilege tax
6 from purchaser. (1) A tax is imposed on each provider for the privilege
7 of engaging in the business of providing nonroad diesel equipment in
8 this state.

9 “(2)(a) The privilege tax shall be computed at the rate of 1.5 percent
10 of the retail sales price or total lease price of the nonroad diesel
11 equipment. The tax may be rounded to the nearest whole cent.

12 “(b) The privilege tax becomes due when the sale or lease contract
13 becomes enforceable.

14 “(3)(a) A provider may collect the amount of the privilege tax from
15 the contractee.

16 “(b) Notwithstanding paragraph (a) of this subsection, the
17 contractee from whom the privilege tax is collected is not considered
18 a taxpayer for purposes of the privilege tax imposed under this section.

19 “SECTION 4. Tax on use in Oregon of nonroad diesel equipment
20 purchased out of state at retail; tax as liability of purchaser; reduction
21 for other taxes paid. (1) A use tax is imposed on the storage, use or
22 other consumption in this state of nonroad diesel equipment purchased
23 at retail from any seller.

24 “(2) The use tax shall be computed at the rate of 1.5 percent of the
25 retail sales price of the nonroad diesel equipment.

26 “(3) The use tax is a liability of the purchaser of the nonroad diesel
27 equipment.

28 “(4) The use tax shall be reduced, but not below zero, by the amount
29 of any privilege, excise, sales or use tax imposed by any jurisdiction
30 on the sale, or on the storage, use or other consumption, of the non-

1 road diesel equipment. The reduction under this subsection shall be
2 made only upon a showing by the purchaser that a privilege, excise,
3 sales or use tax has been paid.

4 “(5) The amount of the use tax shall be separately stated on an in-
5 voice, receipt or other similar document that the seller provides to the
6 purchaser or shall be otherwise disclosed to the purchaser.

7 “(6) A purchaser’s liability for the use tax is satisfied by a valid
8 receipt given to the purchaser under section 5 of this 2021 Act by the
9 seller of the nonroad diesel equipment.

10 “SECTION 5. Collection of use tax; time of collection; presumptions
11 of use in this state. (1) A seller shall collect the use tax imposed under
12 section 4 of this 2021 Act from a purchaser of nonroad diesel equip-
13 ment and give the purchaser a receipt for the use tax in the manner
14 and form prescribed by the Department of Revenue if:

15 “(a) The seller is:

16 “(A) Engaged in business in this state;

17 “(B) Required to collect the use tax; or

18 “(C) Authorized by the department, under rules the department
19 adopts, to collect the use tax and, for purposes of the use tax, regarded
20 as a seller engaged in business in this state; and

21 “(b) The seller makes sales of nonroad diesel equipment for storage,
22 use or other consumption in this state that are subject to the use tax.

23 “(2) A seller required to collect the use tax under this section shall
24 collect the tax:

25 “(a) At the time of the taxable sale; or

26 “(b) If the storage, use or other consumption of the nonroad diesel
27 equipment is not taxable at the time of sale, at the time the storage,
28 use or other consumption becomes taxable.

29 “(3) To ensure the proper administration of section 4 of this 2021
30 Act, and to prevent evasion of the use tax, the following presumptions

1 are established:

2 “(a) Nonroad diesel equipment is stored, used or otherwise con-
3 sumed in this state if it is present in this state for private or public
4 display or storage.

5 “(b)(A) Nonroad diesel equipment sold by any seller for delivery in
6 this state was sold for storage, use or other consumption in this state
7 unless the contrary is proved.

8 “(B) The burden of proving the contrary is on the seller unless the
9 seller takes from the purchaser a resale certificate to the effect that
10 the nonroad diesel equipment was purchased for resale in the ordinary
11 course of the purchaser’s business.

12 “(c)(A) Nonroad diesel equipment delivered outside this state to a
13 purchaser known by the seller to be a resident of this state was pur-
14 chased from the seller for storage, use or other consumption in this
15 state and stored, used or otherwise consumed in this state unless the
16 contrary is proved.

17 “(B) The contrary may be proved by:

18 “(i) A statement in writing, signed by the purchaser or an author-
19 ized agent of the purchaser and retained by the seller, that the non-
20 road diesel equipment was purchased for storage, use or other
21 consumption exclusively at a designated point or points outside this
22 state; or

23 “(ii) Other evidence satisfactory to the department that the non-
24 road diesel equipment was not purchased for storage, use or other
25 consumption in this state.

26 “SECTION 6. Exempt sales; resale certificates. (1) Notwithstanding
27 section 3 of this 2021 Act, a seller is not liable for the privilege tax with
28 respect to nonroad diesel equipment that is sold to:

29 “(a) A purchaser who is not a resident of this state; or

30 “(b) A business if the storage, use or other consumption of the

1 nonroad diesel equipment will occur primarily outside this state.

2 “(2) Notwithstanding sections 2 to 5 of this 2021 Act, a resale cer-
3 tificate taken from a purchaser ordinarily engaged in the business of
4 selling taxable property relieves the seller from the obligation to col-
5 lect and remit clean diesel engine taxes. A resale certificate must be
6 substantially in the form prescribed by the Department of Revenue by
7 rule.

8 “SECTION 7. Clean diesel engine tax expenditures in continuous
9 effect. For purposes of ORS 315.037, any tax expenditure enacted with
10 respect to any or all clean diesel engine taxes shall remain in contin-
11 uous effect until the Legislative Assembly expressly provides other-
12 wise.

13 “SECTION 8. Refunds for excess payments; overpayment applied to
14 outstanding clean diesel engine taxes; refund upon return of vehicle.

15 (1)(a) If the amount of clean diesel engine taxes paid by a seller, pro-
16 vider or purchaser exceeds the amount of taxes due, the Department
17 of Revenue shall refund the amount of the excess.

18 “(b) Except as provided in paragraph (c) of this subsection, the pe-
19 riod prescribed for the department to allow or make a refund of any
20 overpayment of clean diesel engine taxes paid shall be as provided in
21 ORS 314.415.

22 “(c) The department shall apply any overpayment of tax first to any
23 amount of clean diesel engine taxes that is then outstanding.

24 “(2)(a) This subsection applies whenever nonroad diesel equipment
25 with respect to which the privilege tax imposed under section 3 of this
26 2021 Act has been paid by the seller is returned by or on behalf of the
27 purchaser to the seller.

28 “(b) The seller shall notify the department of the return of the
29 nonroad diesel equipment, and the department shall refund the
30 amount of the privilege tax collected with respect to the nonroad die-

1 sel equipment to the seller.

2 “(c) Upon receipt of the refund under this subsection, the seller
3 shall return to the purchaser any amount received under paragraph
4 (b) of this subsection that was collected by the seller from the pur-
5 chaser.

6 **“SECTION 9. Deposit of revenue from clean diesel engine taxes. (1)**
7 **The Department of Revenue shall deposit all revenue collected from**
8 **the clean diesel engine taxes in a suspense account established under**
9 **ORS 293.445 for the purpose of receiving the revenue. The department**
10 **may pay the actual expenses of the department for the administration**
11 **and enforcement of the clean diesel engine taxes out of moneys re-**
12 **ceived from the clean diesel engine taxes. Amounts necessary to pay**
13 **administrative and enforcement expenses are continuously appropri-**
14 **ated to the department from the suspense account.**

15 **“(2) After payment of administrative and enforcement expenses**
16 **under subsection (1) of this section and refunds or credits arising from**
17 **erroneous overpayments, the department shall transfer the balance**
18 **of the moneys received from the clean diesel engine taxes in the Clean**
19 **Diesel Engine Fund established under ORS 468A.801.**

20 **“SECTION 10. Collection at point of sale of excise tax and use tax;**
21 **returns and payment of clean diesel engine taxes. (1) Except as oth-**
22 **erwise provided in sections 1 to 18 of this 2021 Act, the excise tax im-**
23 **posed under section 2 of this 2021 Act and the use tax imposed under**
24 **section 4 of this 2021 Act shall be collected at the point of sale and**
25 **remitted by each seller that is liable for clean diesel engine taxes**
26 **computed on the basis of such sales. Each tax is considered a tax upon**
27 **the seller that is required to collect the tax, and the seller is consid-**
28 **ered a taxpayer.**

29 **“(2) Each seller or provider that is liable for clean diesel engine**
30 **taxes shall file a return with the Department of Revenue, in the form**

1 and manner prescribed by the department, on or before the last day
2 of January, April, July and October of each year for the previous cal-
3 endar quarter. The return shall show the amount of clean diesel en-
4 gine taxes due with respect to tax base transactions made during the
5 calendar quarter to which the return relates.

6 “(3) Each seller or provider shall pay the applicable clean diesel
7 engine taxes to the department in the form and manner prescribed by
8 the department, but not later than the date of submitting each quar-
9 terly return, without regard to extensions under subsection (5) of this
10 section.

11 “(4) Sellers and providers shall file the returns required under this
12 section with respect to the excise tax imposed under section 2 of this
13 2021 Act and the privilege tax imposed under section 3 of this 2021 Act
14 regardless of whether any clean diesel engine taxes are owed.

15 “(5) The department may extend the time for making any return
16 required under this section if a written request is filed with the de-
17 partment during or prior to the period for which the extension may
18 be granted. The department may not grant an extension of more than
19 30 days.

20 “(6) Interest shall be added to delinquent tax amounts at the rate
21 established under ORS 305.220 from the time the return to which the
22 delinquent tax amounts relate was originally required to be filed to the
23 time of payment.

24 **“SECTION 11. Liability for taxes; amounts held in trust; warrants**
25 **for collection; conference; appeal.** (1) Every seller and provider who
26 collects any amount of clean diesel engine taxes shall hold the amount
27 in trust for the State of Oregon and for payment to the Department
28 of Revenue in the manner and at the time provided under section 10
29 of this 2021 Act.

30 “(2) If a seller or provider that is liable for clean diesel engine taxes

1 fails to remit any amount of the taxes, whether collected or not, the
2 department may enforce collection by the issuance of a distraint war-
3 rant for the collection of the delinquent amount and all penalties, in-
4 terest and collection charges accrued on the delinquent amount. The
5 warrant shall be issued and proceeded upon in the same manner and
6 shall have the same force and effect as is prescribed with respect to
7 warrants for the collection of delinquent income taxes.

8 “(3)(a) In the case of a seller or provider that is assessed under the
9 provisions of ORS 305.265 (12) and 314.407 (1), the department may issue
10 a notice of liability to any officer, employee or member of the seller
11 or provider at any time within three years after the assessment.
12 Within 30 days after the date on which the notice of liability is mailed
13 to the officer, employee or member, the officer, employee or member
14 shall pay the assessment, plus penalties and interest, or advise the
15 department in writing of objections to the liability and, if desired, re-
16 quest a conference. A conference shall be governed by the provisions
17 of ORS 305.265 pertaining to a conference requested from a notice of
18 deficiency.

19 “(b) After a conference or, if no conference is requested, a deter-
20 mination of the issues raised in the written objections, the department
21 shall mail the officer, employee or member a conference letter af-
22 firming, canceling or adjusting the notice of liability. Within 90 days
23 after the date on which the conference letter is mailed to the officer,
24 employee or member, the officer, employee or member shall pay the
25 assessment, plus penalties and interest, or appeal to the tax court in
26 the manner provided for an appeal from a notice of assessment.

27 “(c) If the department does not receive payment or written ob-
28 jection to the notice of liability within 30 days after the notice of li-
29 ability was mailed, the notice of liability becomes final. The officer,
30 employee or member may appeal the notice of liability to the tax court

1 within 90 days after the notice became final in the manner provided
2 for an appeal from a notice of assessment.

3 “(4)(a) In the case of a seller or provider that fails to file a return
4 on the due date, in addition to any action described in the provisions
5 of ORS 305.265 (10) and 314.400, the department may issue a notice of
6 determination and assessment to any officer, employee or member of
7 the seller at any time within three years after the assessment. The
8 time of assessment against the officer, employee or member is 30 days
9 after the date on which the notice of determination and assessment
10 is mailed. Within 30 days after the date on which the notice of deter-
11 mination and assessment is mailed to the officer, employee or mem-
12 ber, the officer, employee or member shall pay the assessment, plus
13 penalties and interest, or advise the department in writing of ob-
14 jections to the assessment and, if desired, request a conference. A
15 conference shall be governed by the provisions of ORS 305.265 per-
16 taining to a conference requested from a notice of deficiency.

17 “(b) After a conference or, if no conference is requested, a deter-
18 mination of the issues raised in the written objections, the department
19 shall mail the officer, employee or member a conference letter af-
20 firming, canceling or adjusting the notice of determination and as-
21 sessment. Within 90 days after the date on which the conference letter
22 is mailed to the officer, employee or member, the officer, employee
23 or member shall pay the assessment, plus penalties and interest, or
24 appeal to the tax court in the manner provided for an appeal from a
25 notice of assessment.

26 “(c) If the department does not receive payment or written ob-
27 jection to the notice of determination and assessment within 30 days
28 after the notice of determination and assessment was mailed, the no-
29 tice of determination and assessment becomes final. The officer, em-
30 ployee or member may appeal the notice of determination and

1 assessment to the tax court within 90 days after the notice became
2 final in the manner provided for an appeal from a notice of assess-
3 ment.

4 “(5)(a) More than one officer or employee of a corporation may be
5 held jointly and severally liable for payment of clean diesel engine
6 taxes.

7 “(b) Notwithstanding the confidentiality provisions of section 16 of
8 this 2021 Act, if the department determines that more than one officer
9 or employee of a corporation may be held jointly and severally liable
10 for payment of the clean diesel engine taxes, the department may re-
11 quire any or all of the officers or employees to appear before the de-
12 partment for a joint determination of liability. The department shall
13 notify each officer or employee of the time and place set for the de-
14 termination of liability.

15 “(c) Each individual notified of a joint determination under this
16 subsection must appear and present such information as is necessary
17 to establish the individual’s liability or nonliability for payment of the
18 taxes to the department. If an individual who was notified fails to ap-
19 pear, the department shall make the determination on the basis of all
20 the information and evidence presented. The department’s determi-
21 nation is binding on all individuals notified and required to appear
22 under this subsection.

23 “(d)(A) If any individual determined to be liable for unpaid clean
24 diesel engine taxes under this subsection appeals the determination to
25 the Oregon Tax Court under section 15 of this 2021 Act, the individual
26 plaintiff shall implead all individuals required to appear with the
27 plaintiff before the department under this subsection. The department
28 may implead any officer or employee who may be held jointly and se-
29 verally liable for the payment of the clean diesel engine taxes. Each
30 individual impleaded under this paragraph shall be made a party to the

1 action before the tax court and shall make available to the tax court
2 the information that was presented before the department, as well as
3 other information that may be presented to the tax court.

4 “(B) The tax court may determine that one or more individuals
5 impleaded under this paragraph are liable for unpaid clean diesel en-
6 gine taxes without regard to any earlier determination by the depart-
7 ment that an impleaded individual was not liable for the unpaid taxes.

8 “(C) If an individual required to appear before the tax court under
9 this subsection fails or refuses to appear or bring such information in
10 part or in whole, or is outside the jurisdiction of the tax court, the tax
11 court shall make its determination on the basis of all the evidence
12 introduced. Notwithstanding section 16 of this 2021 Act, the evidence
13 introduced in the tax court constitutes a public record and shall be
14 available to the parties and the tax court. The determination of the
15 tax court is binding on all individuals made parties to the action under
16 this subsection.

17 “(e) This subsection may not be construed to preclude a determi-
18 nation by the department or the tax court that more than one officer
19 or employee is jointly and severally liable for unpaid clean diesel en-
20 gine taxes.

21 “SECTION 12. When purchasers required to remit excise tax and
22 use tax. Any purchaser liable for the excise tax imposed under section
23 2 of this 2021 Act or the use tax imposed under section 4 of this 2021
24 Act and from whom the tax has not been collected shall, on or before
25 the 30th day following the date on which the tax became due, file with
26 the Department of Revenue a report of the amount of tax due from
27 the purchaser in a form and manner prescribed by the department.
28 The purchaser shall remit the amount of tax due with the report.

29 “SECTION 13. Sellers and providers required to keep records; ex-
30 amination of records by Department of Revenue. (1)(a) A seller or

1 provider that is liable for clean diesel engine taxes shall keep receipts,
2 invoices and other pertinent records related to tax base transactions
3 in the form required by the Department of Revenue. Each record shall
4 be preserved for five years from the time to which the record relates,
5 or for as long as the seller or provider retains the taxable property to
6 which the record relates, whichever is later.

7 “(b) During the record retention period and at any time prior to the
8 destruction of records, the department may give written notice to the
9 seller or provider not to destroy records described in the notice with-
10 out written permission of the department.

11 “(c) Notwithstanding any other provision of law, the department
12 shall preserve reports and returns filed with the department for at
13 least five years.

14 “(2) ORS 314.425 applies to the authority of the department to ex-
15 amine, or cause to be examined by an agent or representative desig-
16 nated by the department for the purpose, any books, papers, records
17 or memoranda bearing upon the matter required to be included in any
18 return required under sections 1 to 18 of this 2021 Act for the purpose
19 of ascertaining the correctness of the return or for the purpose of
20 making an estimate of the tax base transactions of the taxpayer.

21 “SECTION 14. Subpoena authority of Department of Revenue;
22 enforcement; contempt of court. (1) The Department of Revenue may
23 require, by order or subpoena to be served with the same force and
24 effect and in the same manner as a subpoena is served in a civil action
25 in the circuit court or the Oregon Tax Court, the production, at any
26 time and place that the department designates, of any books, papers,
27 accounts or other information necessary to carry out sections 1 to 18
28 of this 2021 Act. The department may require the attendance of any
29 individual having knowledge in the premises, and may take testimony
30 and require proof material for the information, with power to admin-

1 **ister oaths to the individual.**

2 **“(2)(a) If an individual fails to comply with a subpoena or order of**
3 **the department or to produce or permit the examination or inspection**
4 **of any books, papers, records and equipment pertinent to an investi-**
5 **gation or inquiry under sections 1 to 18 of this 2021 Act, or to testify**
6 **to any matter regarding which the individual is lawfully interrogated,**
7 **the department may apply to the Oregon Tax Court or to the circuit**
8 **court of the county in which the individual resides or where the indi-**
9 **vidual is for an order to the individual to attend and testify or other-**
10 **wise comply with the demand or request of the department.**

11 **“(b) The department shall apply to the court by ex parte motion,**
12 **upon which the court shall make an order requiring the individual**
13 **against whom the motion is directed to comply with the request or**
14 **demand of the department within 10 days after the service of the or-**
15 **der, or within the additional time granted by the court, or to justify**
16 **the failure within that time. The order shall be served upon the indi-**
17 **vidual to whom it is directed in the manner required by this state for**
18 **service of process, which is required to confer jurisdiction upon the**
19 **court.**

20 **“(3) Failure to obey any order issued by the court under this section**
21 **is contempt of court.**

22 **“(4) The remedy provided by this section is in addition to other**
23 **remedies, civil or criminal, existing under the tax laws or other laws**
24 **of this state.**

25 **“SECTION 15. Appeal. Except as otherwise provided in sections 1**
26 **to 18 of this 2021 Act, a person aggrieved by an act or determination**
27 **of the Department of Revenue or its authorized agent under sections**
28 **1 to 18 of this 2021 Act may appeal, within 90 days after the act or**
29 **determination, to the Oregon Tax Court in the manner provided in**
30 **ORS 305.404 to 305.560. These appeal rights are the exclusive remedy**

1 available to determine the person’s liability for the clean diesel engine
2 taxes.

3 **“SECTION 16. Applicability of other provisions of tax law.** Except
4 as otherwise provided in sections 1 to 18 of this 2021 Act or where the
5 context requires otherwise, the provisions of ORS chapters 305 and 314
6 as to the audit and examination of returns, periods of limitation, de-
7 terminations of and notices of deficiencies, assessments, collections,
8 liens, delinquencies, claims for refund and refunds, conferences, ap-
9 peals to the Oregon Tax Court, stays of collection pending appeal,
10 confidentiality of returns and the related penalties, and the related
11 procedures, apply to the determinations of taxes, penalties and inter-
12 est under sections 1 to 18 of this 2021 Act.

13 **“SECTION 17. Department of Revenue to administer and enforce**
14 **clean diesel engine tax laws.** (1) The Department of Revenue shall ad-
15 minister and enforce sections 1 to 18 of this 2021 Act.

16 **“(2) The department may adopt or establish rules and procedures**
17 **that the department considers necessary or convenient for the imple-**
18 **mentation, administration and enforcement of sections 1 to 18 of this**
19 **2021 Act and that are consistent with sections 1 to 18 of this 2021 Act.**

20 **“SECTION 18. Local government clean diesel engine tax morato-**
21 **rium.** (1) A local government may not impose a tax described in sub-
22 section (2) of this section unless the tax is:

23 **“(a) Authorized by statute; or**

24 **“(b) Approved by the governing body of the local government and**
25 **in effect on or before the effective date of this 2021 Act.**

26 **“(2) This section applies to:**

27 **“(a) A tax imposed on the privilege of engaging in the business of**
28 **providing nonroad diesel equipment; and**

29 **“(b) Any privilege, excise, sales or use tax imposed on or with re-**
30 **spect to taxable property or tax base transactions.**

1 **“RENTAL TAX ON NONROAD DIESEL EQUIPMENT**

2
3 **“SECTION 19.** ORS 307.870 is amended to read:

4 “307.870. As used in ORS 307.870 to 307.890:

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

8 “(2) ‘Control,’ for purposes of the definition of ‘affiliate’ under this sec-
9 tion, means direct or indirect possession of the power to direct or cause the
10 direction of the management and policies of a person, whether through the
11 ownership of voting securities, by contract or otherwise.

12 “(3) ‘Heavy equipment rental tax’ means the tax imposed under ORS
13 307.872.

14 “(4) ‘Mobile’ means that qualified heavy equipment:

15 “(a) Is intended to be moved among worksites as needed; and

16 “(b) Is not intended to be permanently affixed to real property when put
17 to its intended use.

18 **“(5) ‘Nonroad diesel engine’ has the meaning given that term in**
19 **ORS 319.010.**

20 **“(6) ‘Nonroad diesel equipment’ means equipment powered by a**
21 **nonroad diesel engine.**

22 “~~[(5)]~~ (7) ‘Own,’ for purposes of the definition of ‘affiliate’ under this
23 section, means to have ownership of an equity interest, or the equivalent,
24 of 10 percent or more in a person.

25 “~~[(6)]~~ (8) ‘Qualified heavy equipment’ means any construction, mining,
26 earthmoving or industrial equipment, together with attachments and other
27 equipment and tools, including, but not limited to, towable trailers, *[and]*
28 fixed load vehicles **and nonroad diesel equipment**, that is:

29 “(a) Mobile;

30 “(b) Owned by a qualified heavy equipment provider; and

1 “(c) Held primarily for rental.

2 “[7](a) (9)(a) ‘Qualified heavy equipment provider’ means a person that
3 is primarily engaged in the business of renting qualified heavy equipment
4 without an operator.

5 “(b) ‘Qualified heavy equipment provider’ does not mean a person prima-
6 rily engaged in the business of renting qualified heavy equipment to one or
7 more of the person’s affiliates.

8 “[8] (10) ‘Rent,’ ‘rental’ and ‘renting’ mean entering into an agreement
9 for the use of property in exchange for consideration for a term of less than
10 365 consecutive days, an open-ended term or an undefined term.

11 “[9] (11) ‘Rental location’ means a qualified heavy equipment provider’s
12 store or other business location in this state from which qualified heavy
13 equipment is rented.

14 “[10] (12) ‘Rental price’ means the rental charge for qualified heavy
15 equipment, net of any invoice credits provided to the renter. ‘Rental price’
16 does not include delivery and pickup fees, damage waivers or environmental
17 mitigation fees.

18 **“SECTION 20.** ORS 307.872 is amended to read:

19 “307.872. (1)(a) A tax [*of two percent*] is imposed on the rental price re-
20 ceived for any qualified heavy equipment.

21 **“(b) The tax shall be imposed at the following rates:**

22 **“(A) 3.5 percent for rentals of nonroad diesel equipment; and**

23 **“(B) 2 percent for rentals of all other qualified heavy equipment.**

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

27 “(3) Qualified heavy equipment is exempt from any and all ad valorem
28 property taxes if rental of the qualified heavy equipment is subject to taxa-
29 tion under this section.

30 “(4) Notwithstanding ORS 315.037, the exemption granted under sub-

1 section (3) of this section does not have a maximum term.

2 “(5) The Department of Revenue may adopt rules necessary for the ad-
3 ministration and enforcement of the heavy equipment rental tax under ORS
4 307.870 to 307.890.

5 **“SECTION 21.** ORS 307.888 is amended to read:

6 “307.888. (1) All moneys received by the Department of Revenue pursuant
7 to ORS 307.870 to 307.890, and any interest on the moneys, shall be paid to
8 the State Treasurer to be held in a suspense account established under ORS
9 293.445.

10 “(2)(a) After the payment of refunds:

11 “(A) Moneys necessary to reimburse the department for the actual costs
12 incurred by the department in administering the heavy equipment rental tax,
13 not to exceed five percent of heavy equipment rental tax collections, are
14 continuously appropriated to the department; and

15 “(B) An amount equal to two percent of the gross moneys received shall
16 be transferred pro rata to counties that do not receive a transfer of moneys
17 under paragraph [(b)] **(b)(A)** of this subsection.

18 “(b) After deduction for the amounts described in paragraph (a) of this
19 subsection, the balance of the moneys received shall be transferred **as fol-**
20 **lows:**

21 **“(A) Moneys attributable to the tax on rentals of qualified heavy**
22 **equipment, including nonroad diesel equipment, that is computed at**
23 **the rate of two percent shall be transferred** to the treasurer of each
24 county according to the share of the moneys that are attributable to quali-
25 fied heavy equipment rented out from rental locations in the county[.]; **and**

26 **“(B) Moneys attributable to the tax on rentals of nonroad diesel**
27 **equipment that is computed at a rate in excess of two percent shall**
28 **be transferred to the Clean Diesel Engine Fund established under ORS**
29 **468A.801.**

30 “(3) Each county treasurer shall:

1 “(a) Deposit the moneys received from the department under subsection
2 [(2)] **(2)(a)(B) or (b)(A)** of this section in the unsegregated tax collections
3 account described in ORS 311.385; and

4 “(b) Distribute the moneys in accordance with ORS 311.390.

5 “(4) Provisions of law relating to the confidentiality of public records do
6 not apply to the extent that remittances made by the department pursuant
7 to this section disclose information derived from heavy equipment rental tax
8 returns.

9 **“SECTION 22.** ORS 307.875 is amended to read:

10 “307.875. (1) Every qualified heavy equipment provider shall register with
11 the Department of Revenue in the form and manner prescribed by the de-
12 partment no later than December 15 immediately preceding the beginning of
13 the next property tax year by certifying that the provider is engaged in the
14 line of business described in ORS 307.870 [(7)] **(9)**.

15 “(2) Every qualified heavy equipment provider shall keep records, render
16 statements and comply with rules adopted by the department with respect to
17 the heavy equipment rental tax. The records and statements required by this
18 section must be sufficient to show whether there is a tax liability under ORS
19 307.872.

20

21 **“PRIVILEGE TAX ON HEAVY-DUTY MOTOR VEHICLES**

22

23 **“SECTION 23.** ORS 320.400 is amended to read:

24 “320.400. As used in ORS 320.400 to 320.490 and 803.203:

25 “(1)(a) ‘Bicycle’ means:

26 “(A) A vehicle that is designed to be operated on the ground on wheels
27 and is propelled exclusively by human power; or

28 “(B) An electric assisted bicycle as defined in ORS 801.258.

29 “(b) ‘Bicycle’ does not include:

30 “(A) Carts;

1 “(B) Durable medical equipment;
2 “(C) In-line skates;
3 “(D) Roller skates;
4 “(E) Skateboards;
5 “(F) Stand-up scooters;
6 “(G) Strollers designed for the transportation of children;
7 “(H) Trailer cycles or other bicycle attachments; or
8 “(I) Wagons.
9 **“(2) ‘Heavy-duty taxable motor vehicle’ means a vehicle that:**
10 **“(a) Has a gross vehicle weight rating of greater than 26,000 pounds;**
11 **and**
12 **“(b)(A) If equipped with an odometer, has 7,500 miles or less on the**
13 **odometer; or**
14 **“(B) If not equipped with an odometer, has a manufacturer’s cer-**
15 **tificate of origin or a manufacturer’s statement of origin.**
16 **“(3) ‘Light-duty taxable motor vehicle’ means a vehicle that:**
17 **“(a) Has a gross vehicle weight rating of 26,000 pounds or less;**
18 **“(b)(A) If equipped with an odometer, has 7,500 miles or less on the**
19 **odometer; or**
20 **“(B) If not equipped with an odometer, has a manufacturer’s cer-**
21 **tificate of origin or a manufacturer’s statement of origin; and**
22 **“(c) Is:**
23 **“(A) A vehicle as defined in ORS 744.850, other than an all-terrain**
24 **vehicle or a trailer;**
25 **“(B) A camper as defined in ORS 801.180;**
26 **“(C) A commercial bus as defined in ORS 801.200;**
27 **“(D) A commercial motor vehicle as defined in ORS 801.208;**
28 **“(E) A commercial vehicle as defined in ORS 801.210;**
29 **“(F) A fixed load vehicle as defined in ORS 801.285;**
30 **“(G) A moped as defined in ORS 801.345;**

- 1 “(H) A motor home as defined in ORS 801.350;
2 “(I) A motor truck as defined in ORS 801.355;
3 “(J) A tank vehicle as defined in ORS 801.522;
4 “(K) A trailer as defined in ORS 801.560 that is required to be reg-
5 istered in this state;
6 “(L) A truck tractor as defined in ORS 801.575; or
7 “(M) A worker transport bus as defined in ORS 801.610.

8 “[(2)(a)] (4)(a) ‘Retail sales price’ means the total price paid at retail for
9 a taxable vehicle, exclusive of the amount of any excise, privilege or use tax,
10 to a seller by a purchaser of the taxable vehicle.

11 “(b) ‘Retail sales price’ does not include the retail value of:

12 “(A) Modifications to a taxable vehicle that are necessary for a person
13 with a disability to enter or drive or to otherwise operate or use the vehicle.

14 “(B) Customized industrial modifications to the chassis of a truck that
15 has a gross vehicle weight rating of at least 10,000 pounds and not more than
16 26,000 pounds.

17 “[(3)] (5) ‘Seller’ means:

18 “(a) With respect to the privilege tax imposed under ORS 320.405 and the
19 use tax imposed under ORS 320.410, a vehicle dealer.

20 “(b) With respect to the excise tax imposed under ORS 320.415, a person
21 engaged in whole or in part in the business of selling bicycles.

22 “[(4)] (6) ‘Taxable bicycle’ means a new bicycle that has a retail sales
23 price of \$200 or more.

24 “[(5)] (7) ‘Taxable motor vehicle’ means a [*vehicle that:*] **light-duty tax-**
25 **able motor vehicle and a heavy-duty taxable motor vehicle.**

26 “[(a) *Has a gross vehicle weight rating of 26,000 pounds or less;*]

27 “[(b)(A) *If equipped with an odometer, has 7,500 miles or less on the*
28 *odometer; or]*

29 “[(B) *If not equipped with an odometer, has a manufacturer’s certificate of*
30 *origin or a manufacturer’s statement of origin; and]*

1 “[(c) Is:]
2 “[(A) A vehicle as defined in ORS 744.850, other than an all-terrain vehicle
3 or a trailer;]
4 “[(B) A camper as defined in ORS 801.180;]
5 “[(C) A commercial bus as defined in ORS 801.200;]
6 “[(D) A commercial motor vehicle as defined in ORS 801.208;]
7 “[(E) A commercial vehicle as defined in ORS 801.210;]
8 “[(F) A fixed load vehicle as defined in ORS 801.285;]
9 “[(G) A moped as defined in ORS 801.345;]
10 “[(H) A motor home as defined in ORS 801.350;]
11 “[(I) A motor truck as defined in ORS 801.355;]
12 “[(J) A tank vehicle as defined in ORS 801.522;]
13 “[(K) A trailer as defined in ORS 801.560 that is required to be registered
14 in this state;]
15 “[(L) A truck tractor as defined in ORS 801.575; or]
16 “[(M) A worker transport bus as defined in ORS 801.610.]
17 “[(6)] **(8)** ‘Taxable vehicle’ means a taxable bicycle or a taxable motor
18 vehicle.
19 “[(7)] **(9)** ‘Transportation project taxes’ means the privilege tax imposed
20 under ORS 320.405, the use tax imposed under ORS 320.410 and the excise tax
21 imposed under ORS 320.415.
22 “[(8)(a)] **(10)(a)** ‘Vehicle dealer’ means:
23 “(A) A person engaged in business in this state that is required to obtain
24 a vehicle dealer certificate under ORS 822.005; and
25 “(B) A person engaged in business in another state that would be subject
26 to ORS 822.005 if the person engaged in business in this state.
27 “(b) Notwithstanding paragraph (a) of this subsection, a person is not a
28 vehicle dealer for purposes of ORS 320.400 to 320.490 and 803.203 to the ex-
29 tent the person:
30 “(A) Conducts an event that lasts less than seven consecutive days, for

1 which the public is charged admission and at which otherwise taxable motor
2 vehicles are sold at auction; or

3 “(B) Sells an otherwise taxable motor vehicle at auction at an event de-
4 scribed in this paragraph.

5 **“SECTION 24.** ORS 320.435 is amended to read:

6 “320.435. (1) The Department of Revenue shall deposit all revenue col-
7 lected from the privilege tax imposed under ORS 320.405 and the use tax
8 imposed under ORS 320.410 in a suspense account established under ORS
9 293.445 for the purpose of receiving the revenue. The department may pay
10 expenses for the administration and enforcement of the privilege and use
11 taxes out of moneys received from the privilege and use taxes. Amounts
12 necessary to pay administrative and enforcement expenses are continuously
13 appropriated to the department from the suspense account.

14 “(2) After payment of administrative and enforcement expenses under
15 subsection (1) of this section and refunds or credits arising from erroneous
16 overpayments, the department shall transfer the balance of the moneys re-
17 ceived from the privilege and use taxes as follows:

18 “(a) Moneys attributable to the privilege tax **imposed on light-duty**
19 **vehicles** shall be transferred as follows:

20 “(A) \$12 million shall be transferred annually to the Zero-Emission In-
21 centive Fund established under section 152, chapter 750, Oregon Laws 2017.

22 “(B) After the transfer required under subparagraph (A) of this paragraph,
23 the balance of the moneys shall be transferred to the Connect Oregon Fund
24 established under ORS 367.080.

25 “(b) **Moneys attributable to the privilege tax imposed on heavy-duty**
26 **vehicles shall be transferred to the Clean Diesel Engine Fund estab-**
27 **lished under ORS 468A.801.**

28 “[*b*] (c) Moneys attributable to the use tax shall be transferred to the
29 State Highway Fund.

30 **“SECTION 25.** ORS 320.435, as amended by section 96a, chapter 750,

1 Oregon Laws 2017, is amended to read:

2 “320.435. (1) The Department of Revenue shall deposit all revenue col-
3 lected from the privilege tax imposed under ORS 320.405 and the use tax
4 imposed under ORS 320.410 in a suspense account established under ORS
5 293.445 for the purpose of receiving the revenue. The department may pay
6 expenses for the administration and enforcement of the privilege and use
7 taxes out of moneys received from the privilege and use taxes. Amounts
8 necessary to pay administrative and enforcement expenses are continuously
9 appropriated to the department from the suspense account.

10 “(2) After payment of administrative and enforcement expenses under
11 subsection (1) of this section and refunds or credits arising from erroneous
12 overpayments, the department shall transfer the balance of the moneys re-
13 ceived from the privilege and use taxes as follows:

14 “(a) Moneys attributable to the privilege tax **imposed on light-duty**
15 **vehicles** shall be transferred to the Connect Oregon Fund established under
16 ORS 367.080.

17 “(b) **Moneys attributable to the privilege tax imposed on heavy-duty**
18 **vehicles shall be transferred to the Clean Diesel Engine Fund estab-**
19 **lished under ORS 468A.801.**

20 “[~~(b)~~] (c) Moneys attributable to the use tax shall be transferred to the
21 State Highway Fund.

22 “**SECTION 26.** ORS 317A.100, as amended by section 1, chapter 2, Oregon
23 Laws 2020 (first special session), is amended to read:

24 “317A.100. As used in ORS 317A.100 to 317A.158:

25 “(1)(a) ‘Commercial activity’ means:

26 “(A) The total amount realized by a person, arising from transactions and
27 activity in the regular course of the person’s trade or business, without de-
28 duction for expenses incurred by the trade or business;

29 “(B) If received by a financial institution:

30 “(i) If the reporting person for a financial institution is a holding com-

1 pany, all items of income reported on the FR Y-9 filed by the holding com-
2 pany;

3 “(ii) If the reporting person for a financial institution is a bank organ-
4 ization, all items of income reported on the call report filed by the bank or-
5 ganization; and

6 “(iii) If the reporting person for a financial institution is a nonbank fi-
7 nancial organization, all items of income reported in accordance with gen-
8 erally accepted accounting principles; and

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

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

17 “(b) ‘Commercial activity’ does not include:

18 “(A) Interest income except:

19 “(i) Interest on credit sales; or

20 “(ii) Interest income, including service charges, received by financial in-
21 stitutions;

22 “(B) Receipts from the sale, exchange or other disposition of an asset
23 described in section 1221 or 1231 of the Internal Revenue Code, without re-
24 gard to the length of time the person held the asset;

25 “(C) If received by an insurer, federally reinsured premiums or income
26 from transactions between a reciprocal insurer and its attorney in fact op-
27 erating under ORS 731.142;

28 “(D) Receipts from hedging transactions, to the extent that the trans-
29 actions are entered into primarily to protect a financial position, including
30 transactions intended to manage the risk of exposure to foreign currency

1 fluctuations that affect assets, liabilities, profits, losses, equity or invest-
2 ments in foreign operations, risk of exposure to interest rate fluctuations or
3 risk of commodity price fluctuations;

4 “(E) Proceeds received attributable to the repayment, maturity or re-
5 demption of the principal of a loan, bond, mutual fund, certificate of deposit
6 or marketable instrument;

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

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

13 “(H) Compensation, whether current or deferred, and whether in cash or
14 in kind, received or to be received by an employee, a former employee or the
15 employee’s legal successor for services rendered to or for an employer, in-
16 cluding reimbursements received by or for an individual for medical or edu-
17 cation expenses, health insurance premiums or employee expenses or on
18 account of a dependent care spending account, legal services plan, any cafe-
19 teria plan described in section 125 of the Internal Revenue Code or any
20 similar employee reimbursement;

21 “(I) Proceeds received from the issuance of the taxpayer’s own stock,
22 options, warrants, puts or calls, or from the sale of the taxpayer’s treasury
23 stock;

24 “(J) Proceeds received on the account of payments from insurance poli-
25 cies, including crop insurance policies, owned by the taxpayer, except those
26 proceeds received for the loss of commercial activity;

27 “(K) Gifts or charitable contributions received, membership dues received
28 by trade, professional, homeowners’ or condominium associations, payments
29 received for educational courses, meetings or meals, or similar payments to
30 a trade, professional or other similar association, and fundraising receipts

1 received by any person when any excess receipts are donated or used exclu-
2 sively for charitable purposes;

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

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

8 “(N) Tax refunds from any tax program, other tax benefit recoveries and
9 reimbursements for the tax imposed under ORS 317A.100 to 317A.158 made
10 by entities that are part of the same unitary group as provided under ORS
11 317A.106, and reimbursements made by entities that are not members of a
12 unitary group that are required to be made for economic parity among mul-
13 tiple owners of an entity whose tax obligation under ORS 317A.100 to
14 317A.158 is required to be reported and paid entirely by one owner, as pro-
15 vided in ORS 317A.106;

16 “(O) Pension reversions;

17 “(P) Contributions to capital;

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

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

26 “(S) In the case of receipts from the sale of malt beverages or wine, as
27 defined in ORS 471.001, cider, as defined in ORS 471.023 or distilled liquor,
28 as defined in ORS 471.001, by a person holding a license issued under ORS
29 chapter 471, an amount equal to the federal and state excise taxes paid by
30 any person on or for such malt beverages, wine or distilled liquor under

1 subtitle E of the Internal Revenue Code or ORS chapter 471 or 473, and any
2 amount paid to the Oregon Liquor Control Commission for sales of distilled
3 spirits by an agent appointed under ORS 471.750;

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

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

12 “(V) Tips or gratuities collected by a restaurant or other food establish-
13 ment and passed on to employees;

14 “(W) Receipts realized by a vehicle dealer certified under ORS 822.020 or
15 a person described in ORS 320.400 [(8)(a)(B)] **(10)(a)(B)** from the sale or other
16 transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle
17 dealer for the purpose of resale by the transferee vehicle dealer, but only if
18 the sale or other transfer was based upon the transferee’s need to meet a
19 specific customer’s preference for a motor vehicle;

20 “(X) Registration fees or taxes collected by a vehicle dealer certified un-
21 der ORS 822.020 or a person described in ORS 320.400 [(8)(a)(B)] **(10)(a)(B)**
22 at the sale or other transfer of a motor vehicle, as defined in ORS 801.360,
23 that are owed to a third party by the purchaser of the motor vehicle and
24 passed to the third party by the dealer;

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

1 “(Z) In the case of amounts retained as commissions by a holder of a li-
2 cense under ORS chapter 462, an amount equal to the amounts specified un-
3 der ORS chapter 462 that must be paid to or collected by the Department of
4 Revenue as a tax and the amounts specified under ORS chapter 462 to be
5 used as purse money;

6 “(AA) Net revenue of residential care facilities as defined in ORS 443.400
7 or in-home care agencies as defined in ORS 443.305, to the extent that the
8 revenue is derived from or received as compensation for providing services
9 to a medical assistance or Medicare recipient;

10 “(BB) Dividends received;

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

12 “(DD) Receipts from sales to a wholesaler in this state, if the seller re-
13 ceives certification at the time of sale from the wholesaler that the whole-
14 saler will sell the purchased property outside this state;

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

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

17 “(GG) Moneys, including public purpose charge moneys collected under
18 ORS 757.612 and costs of funding or implementing cost-effective energy con-
19 servation measures collected under ORS 757.689, that are collected from
20 customers, passed to a utility and approved by the Public Utility Commission
21 and that support energy conservation, renewable resource acquisition and
22 low-income assistance programs;

23 “(HH) Moneys collected by a utility from customers for the payment of
24 loans through on-bill financing;

25 “(II) Surcharges collected under ORS 757.736;

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

29 “(KK) Moneys collected or recovered, by entities listed in ORS 756.310,
30 cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers

1 as defined in 47 U.S.C. 153(51) and providers of information services as de-
2 fined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way
3 fees, franchise fees, privilege taxes, federal taxes and local taxes;

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

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

8 “(NN) Moneys collected for public purpose funding as described in ORS
9 759.430;

10 “(OO) Moneys collected or recovered and paid into the federal universal
11 service fund as determined by the Federal Communications Commission;

12 “(PP) In the case of a seller or provider of telecommunications services,
13 the amount of tax imposed under ORS 403.200 for access to the emergency
14 communications system that is collected from subscribers or consumers;

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

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

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

22 “(TT) Farmer sales to an agricultural cooperative in this state that is a
23 cooperative organization described in section 1381 of the Internal Revenue
24 Code;

25 “(UU) Revenue received by a business entity that is mandated by contract
26 or subcontract to be distributed to another person or entity if the revenue
27 constitutes sales commissions that are paid to a person who is not an em-
28 ployee of the business entity, including, without limitation, a split-fee real
29 estate commission; and

30 “(VV) Receipts from the sale of fluid milk by dairy farmers that are not

1 members of an agricultural cooperative.

2 “(2) ‘Cost inputs’ means:

3 “(a) The cost of goods sold as calculated in arriving at federal taxable
4 income under the Internal Revenue Code; or

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

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

12 “(4) ‘Excluded person’ means any of the following:

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

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

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

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

23 “(e) Charitable risk pools described in section 501(n) of the Internal Rev-
24 enue Code.

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

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

28 “(h) Foreign or alien insurance companies, but only with respect to the
29 underwriting profit derived from writing wet marine and transportation in-
30 surance subject to tax under ORS 731.824 and 731.828.

1 “(i) Governmental entities.

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

5 “(k) Hospitals subject to assessment under ORS 414.855, long term care
6 facilities subject to assessment under ORS 409.801 or any entity subject to
7 assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws
8 2017.

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

11 “(5) ‘Financial institution’ has the meaning given that term in ORS
12 314.610, except that ‘financial institution’ does not include a credit union.

13 “(6)(a) ‘FR Y-9’ means the consolidated or parent-only financial state-
14 ments that a holding company is required to file with the Federal Reserve
15 Board pursuant to 12 U.S.C. 1844.

16 “(b) In the case of a holding company required to file both consolidated
17 and parent-only financial statements, ‘FR Y-9’ means the consolidated finan-
18 cial statements that the holding company is required to file.

19 “(7) ‘Governmental entity’ means:

20 “(a) The United States and any of its unincorporated agencies and in-
21 strumentalities.

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

25 “(c) The State of Oregon and any of its unincorporated agencies and in-
26 strumentalities.

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

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

29 “(f) A federally recognized Indian tribe.

30 “(8) ‘Groceries’ means food as defined in 7 U.S.C. 2012(k), but does not

1 include cannabinoid edibles or marijuana seeds.

2 “(9)(a) ‘Hedging transaction’ means a hedging transaction as defined in
3 section 1221 of the Internal Revenue Code or a transaction accorded hedge
4 accounting treatment under Financial Accounting Standards Board State-
5 ment No. 133.

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

8 “(10) ‘Insurer’ has the meaning given that term in ORS 317.010.

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

12 “(12) ‘Labor costs’ means total compensation of all employees, not to in-
13 clude compensation paid to any single employee in excess of \$500,000.

14 “(13)(a) ‘Motor vehicle fuel or any other product used for the propulsion
15 of motor vehicles’ means:

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

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

19 “(b) ‘Motor vehicle fuel or any other product used for the propulsion of
20 motor vehicles’ does not mean:

21 “(A) Electricity; or

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

24 “(14) ‘Person’ includes individuals, combinations of individuals of any
25 form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-
26 stock companies, business trusts, estates, partnerships, limited liability
27 partnerships, limited liability companies, associations, joint ventures, clubs,
28 societies, entities organized as for-profit corporations under ORS chapter 60,
29 C corporations, S corporations, qualified subchapter S subsidiaries, qualified
30 subchapter S trusts, trusts, entities that are disregarded for federal income

1 tax purposes and any other entities.

2 “(15) ‘Retailer’ means a person doing business by selling tangible personal
3 property to a purchaser for a purpose other than:

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

6 “(b) Incorporation by the purchaser of the property in the course of reg-
7 ular business as an ingredient or component of real or personal property; or

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

10 “(16) ‘Taxable commercial activity’ means commercial activity sourced to
11 this state under ORS 317A.128, less any subtraction pursuant to ORS
12 317A.119.

13 “(17)(a) ‘Taxpayer’ means any person or unitary group required to regis-
14 ter, file or pay tax under ORS 317A.100 to 317A.158.

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

18 “(18)(a) ‘Unitary business’ means a business enterprise in which there
19 exists directly or indirectly between the members or parts of the enterprise
20 a sharing or exchange of value as demonstrated by:

21 “(A) Centralized management or a common executive force;

22 “(B) Centralized administrative services or functions resulting in econo-
23 mies of scale; or

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

26 “(b) ‘Unitary business’ may include a business enterprise the activities
27 of which:

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

30 “(B) Constitute steps in a vertically integrated process, such as the steps

1 involved in the production of natural resources, which might include explo-
2 ration, mining, refining and marketing.

3 “(19) ‘Unitary group’ means a group of persons with more than 50 percent
4 common ownership, either direct or indirect, that is engaged in business ac-
5 tivities that constitute a unitary business.

6 “(20) ‘Wholesaler’ means a person primarily doing business by merchant
7 distribution of tangible personal property to retailers or to other whole-
8 salers.

9

10 **“FUEL TAX ON DYED DIESEL USED IN NONROAD DIESEL**
11 **EQUIPMENT**

12

13 **“SECTION 27.** ORS 319.010 is amended to read:

14 “319.010. As used in ORS 319.010 to 319.430, unless the context requires
15 otherwise:

16 “(1) ‘Aircraft’ means every contrivance now known, or hereafter invented,
17 used or designed for navigation of or flight in the air, operated or propelled
18 by the use of aircraft fuel.

19 “(2)(a) ‘Aircraft fuel’ means [*any*] gasoline and any other inflammable or
20 combustible gas or liquid by whatever name [*such gasoline, gas or liquid is*]
21 known or sold, usable as fuel for the operation of aircraft[, *except*].

22 **“(b) ‘Aircraft fuel’ does not mean** gas or liquid, the chief use of which,
23 as determined by the Department of Transportation, is for purposes other
24 than the propulsion of aircraft.

25 “(3) ‘Airport’ means any area of land or water, except a restricted landing
26 area, which is designed for the landing and takeoff of aircraft.

27 “(4) ‘Broker’ means [*and includes*] every person other than a dealer en-
28 gaged in business as a broker, jobber or wholesale merchant dealing in motor
29 vehicle fuel or aircraft fuel.

30 “(5) ‘Bulk transfer’ means any change in ownership of motor vehicle fuel

1 or aircraft fuel contained in a terminal storage facility or any physical
2 movement of motor vehicle fuel or aircraft fuel between terminal storage
3 facilities by pipeline or marine transport.

4 “(6) ‘Dealer’ means any person who:

5 “(a) Imports or causes to be imported motor vehicle fuels or aircraft fuels
6 for sale, use or distribution in, and after the same reaches the State of
7 Oregon, but ‘dealer’ does not include any person who imports into this state
8 motor vehicle fuel in quantities of 500 gallons or less purchased from a
9 supplier who is licensed as a dealer under ORS 319.010 to 319.430 and who
10 assumes liability for the payment of the applicable license tax to this state;

11 “(b) Produces, refines, manufactures or compounds motor vehicle fuels or
12 aircraft fuels in the State of Oregon for use, distribution or sale in this state;

13 “(c) Acquires in this state for sale, use or distribution in this state motor
14 vehicle fuels or aircraft fuels with respect to which there has been no license
15 tax previously incurred; or

16 “(d) Acquires title to or possession of motor vehicle fuels or aircraft fuels
17 in this state and exports the product out of this state.

18 “(7) ‘Department’ means the Department of Transportation.

19 “(8) ‘Distribution’ means, in addition to its ordinary meaning, the delivery
20 of motor vehicle fuel or aircraft fuel by a dealer to any service station or
21 into any tank, storage facility or series of tanks or storage facilities con-
22 nected by pipelines, from which motor vehicle fuel or aircraft fuel is with-
23 drawn directly for sale or for delivery into the fuel tanks of motor vehicles
24 whether or not the service station, tank or storage facility is owned, oper-
25 ated or controlled by the dealer.

26 “(9) **‘Dyed diesel’ means diesel that is colored to identify it as fuel**
27 **used for purposes other than the operation or propulsion of motor**
28 **vehicles upon the highways of this state.**

29 “[9] (10) ‘First sale, use or distribution of motor vehicle fuel or aircraft
30 fuel’ means the first withdrawal, other than by bulk transfer, of motor ve-

1 hicle fuel or aircraft fuel from terminal storage facilities for sale, use or
2 distribution. ‘First sale, use or distribution of motor vehicle fuel or aircraft
3 fuel’ also means the first sale, use or distribution of motor vehicle fuel or
4 aircraft fuel after import into this state if the motor vehicle fuel or aircraft
5 fuel is delivered other than to the terminal storage facilities of a licensed
6 dealer.

7 “[~~(10)~~] **(11)** ‘Highway’ means every way, thoroughfare and place, of what-
8 ever nature, open for use of the public for the purpose of vehicular travel.

9 “[~~(11)~~] **(12)** ‘Motor vehicle’ means:

10 **“(a)** All vehicles, engines, [~~or~~] machines **or equipment**, movable or im-
11 movable, operated or propelled by the use of motor vehicle fuel.

12 **“(b) With respect to nonroad diesel equipment, equipment operated**
13 **by the use of dyed diesel for purposes other than the operation or**
14 **propulsion of motor vehicles upon the highways of this state.**

15 “[~~(12)~~] **(13)(a)** ‘Motor vehicle fuel’ means [~~and includes~~] gasoline, **clear**
16 **and dyed diesel** and any other inflammable or combustible gas or liquid, by
17 whatever name [~~such gasoline, gas or liquid is~~] known or sold, usable as fuel
18 for the operation of motor vehicles[, ~~except~~].

19 **“(b) ‘Motor vehicle fuel’ does not mean:**

20 **“(A)** Gas or liquid, **other than dyed diesel**, the chief use of which, as
21 determined by the department, is for purposes other than the propulsion of
22 motor vehicles upon the highways of this state[.]; **or**

23 **“(B) Any fuel subject to taxation under ORS 319.510 to 319.880.**

24 **“(14) ‘Nonroad diesel engine’ means a compression ignition engine**
25 **of 25 horsepower or more that is not designed primarily to operate or**
26 **propel a motor vehicle upon the highways of this state.**

27 **“(15) ‘Nonroad diesel equipment’ means equipment powered by a**
28 **nonroad diesel engine.**

29 “[~~(13)~~] **(16)** ‘Person’ [~~includes~~] **means** every natural person, association,
30 firm, partnership, corporation or the United States.

1 “[~~(14)~~] (17) ‘Restricted landing area’ means any area of land or water, or
2 both, which is used or made available for the landing and takeoff of aircraft,
3 the use of which, except in case of emergency, is provided from time to time
4 by the department.

5 “[~~(15)~~] (18) ‘Service station’ means [*and includes*] any place operated for
6 the purpose of retailing and delivering motor vehicle fuel into the fuel tanks
7 of motor vehicles or aircraft fuel into the fuel tanks of aircraft.

8 “[~~(16)~~] (19) ‘Terminal storage facility’ means any fuel storage facility that
9 has marine or pipeline access.

10 **“SECTION 28.** ORS 319.320 is amended to read:

11 “319.320. (1) Upon compliance with subsection (2) or (3) of this section the
12 Department of Transportation shall refund, in the manner provided in sub-
13 section (2) or (3) of this section, the tax on motor vehicle fuel that is used
14 in the operation of a motor vehicle **other than nonroad diesel**
15 **equipment:**

16 “(a) By any person on any road, thoroughfare or property in private
17 ownership.

18 “(b) By any person on any road, thoroughfare or property, other than a
19 state highway, county road or city street, for the removal of forest products,
20 as defined in ORS 321.005, or the products of such forest products converted
21 to a form other than logs at or near the harvesting site, or for the con-
22 struction or maintenance of the road, thoroughfare or property, pursuant to
23 a written agreement or permit authorizing the use, construction or mainte-
24 nance of the road, thoroughfare or property, with or by:

25 “(A) An agency of the United States;

26 “(B) The State Board of Forestry;

27 “(C) The State Forester; or

28 “(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this
29 paragraph.

30 “(c) By an agency of the United States or of this state or of any county,

1 city or port of this state on any road, thoroughfare or property, other than
2 a state highway, county road or city street.

3 “(d) By any person on any county road for the removal of forest products,
4 as defined in ORS 321.005, or the products of such forest products converted
5 to a form other than logs at or near the harvesting site, if:

6 “(A) The use of the county road is pursuant to a written agreement en-
7 tered into with, or to a permit issued by, the State Board of Forestry, the
8 State Forester or an agency of the United States, authorizing such person
9 to use such road and requiring such person to pay for or to perform the
10 construction or maintenance of the county road;

11 “(B) The board, officer or agency that entered into the agreement or
12 granted the permit, by contract with the county court or board of county
13 commissioners, has assumed the responsibility for the construction or main-
14 tenance of such county road; and

15 “(C) Copies of the agreements or permits required by subparagraphs (A)
16 and (B) of this paragraph are filed with the department.

17 “(2) Except for a farmer subject to subsection (3) of this section, the
18 person or agency, as the case may be, who has paid any tax on such motor
19 vehicle fuels levied or directed to be paid, as provided by ORS 319.010 to
20 319.430, is entitled to claim a refund of the tax so paid on such fuels or for
21 the proportionate part of tax paid on fuels used in the operation of such
22 vehicles, when part of the operations are over such roads, thoroughfares or
23 property. The proportionate part shall be based upon the number of miles
24 traveled by any such vehicle over such roads, thoroughfares or property as
25 compared to the total number of miles traveled by such vehicle. To be eligi-
26 ble to claim such refund the person or agency, as the case may be, shall first
27 establish and maintain a complete record of the operations, miles traveled,
28 gallons of fuel used and other information, in such form and in such detail
29 as the department may prescribe and require, the source of supply of all fuels
30 purchased or used, and the particular vehicles or equipment in which used.

1 Whenever any such claim is received and approved by the department, it
2 shall cause the refund of tax to be paid to the claimant in like manner as
3 provided for paying of other refund claims.

4 “(3) A farmer who has paid any tax on motor vehicle fuels levied or di-
5 rected to be paid, as provided in ORS 319.010 to 319.430, is entitled to claim
6 a refund of the tax paid on such fuels used in farming operations in the op-
7 eration of any motor vehicle, **other than nonroad diesel equipment**, on
8 any road, thoroughfare or property in private ownership. To be eligible to
9 claim such refund a farmer shall maintain in such form and in such detail
10 as the department may prescribe and require, a record, supported by purchase
11 invoices, of all such motor vehicle fuel purchased, [(including fuel purchased
12 to operate any motor vehicle on the highway,)] and, for each and every
13 motor vehicle operated on the highway, a record of all fuel used and of all
14 miles traveled on the highway. Whenever any such claim is received and
15 approved by the department, it shall cause the refund of tax to be paid to
16 the claimant in like manner as provided for paying of other refund claims.

17 “(4) As used in subsections (2) and (3) of this section, ‘farmer’ [*includes*]
18 **means** any person who manages or conducts a farm for the production of
19 livestock or crops but does not include a person who manages or conducts
20 a farm for the production of forest products, as defined in ORS 321.005, or
21 the products of such forest products converted to a form other than logs at
22 or near the harvesting site, or of forest trees unless the production of such
23 forest products or forest trees is only incidental to the primary purpose of
24 the farming operation.

25 **“SECTION 29.** ORS 319.410 is amended to read:

26 “319.410. (1) The Department of Transportation shall promptly turn over
27 the license tax to the State Treasurer to be disposed of **as follows:**

28 **“(a) Moneys attributable to the license tax imposed on dyed diesel**
29 **shall be transferred to the Clean Diesel Engine Fund established under**
30 **ORS 468A.801; and**

1 **“(b) The balance of the moneys from the license tax shall be dis-**
2 **posed of** as provided in ORS 802.110.

3 “(2) The revenue from the license tax collected from the use, sale or dis-
4 tribution of aircraft fuel as imposed [by] **under** ORS 319.020 (2) shall be
5 transferred upon certification of the department to the State Treasurer, who
6 shall credit the certified amount to the State Aviation Account for the pur-
7 pose of carrying out the provisions of the state aviation laws.

8
9 **“CLEAN DIESEL ENGINE FUND**

10
11 **“SECTION 30.** ORS 468A.801 is amended to read:

12 “468A.801. (1) The Clean Diesel Engine Fund is established in the State
13 Treasury separate and distinct from the General Fund. Interest earned by
14 the Clean Diesel Engine Fund shall be credited to the fund. The moneys in
15 the fund are continuously appropriated to the Department of Environmental
16 Quality to be used for the purposes described in ORS 468A.803.

17 “(2) The Clean Diesel Engine Fund consists of:

18 “(a) Funds appropriated by the Legislative Assembly;

19 “(b) Grants provided by the federal government pursuant to the federal
20 Clean Air Act, 42 U.S.C. 7401 et seq., or other federal laws;

21 “(c) Moneys paid to the State of Oregon pursuant to the Environmental
22 Mitigation Trust Agreement;

23 **“(d) Moneys from the clean diesel engine taxes imposed under**
24 **sections 1 to 18 of this 2021 Act and transferred to the fund under**
25 **section 9 of this 2021 Act;**

26 **“(e) Moneys attributable to the heavy equipment rental tax imposed**
27 **under ORS 307.872 on rentals of nonroad diesel equipment transferred**
28 **to the fund under ORS 307.888 (2)(b)(B);**

29 **“(f) Moneys attributable to the privilege tax imposed on heavy-duty**
30 **vehicles under ORS 320.405 and transferred to the fund under ORS**

1 **320.435;**

2 **“(g) Moneys attributable to the license tax imposed under ORS**
3 **319.020 on dyed diesel and transferred to the fund under ORS 319.410;**

4 **“[(d)] (h) Any other moneys received by the state for the purpose of pro-**
5 **viding financial and technical assistance to owners or operators of diesel**
6 **engines for the purpose of reducing emissions from diesel engines; and**

7 **“[(e)] (i) Any moneys deposited in the fund from any other public or pri-**
8 **vate source.**

9 **“SECTION 31. ORS 468A.795 is amended to read:**

10 **“468A.795. As used in ORS 468A.795 to 468A.807:**

11 **“(1) ‘Alternative fuel’ means biofuels, biogas, natural gas, liquefied pe-**
12 **troleum gas, hydrogen and electricity.**

13 **“(2) ‘Best available exhaust control technology’ means the most effective**
14 **exhaust controls to reduce diesel particulate that rely on passively regener-**
15 **ated diesel particulate control technology supported in a vehicle’s normal**
16 **duty cycle.**

17 **“(3) ‘Cost-effectiveness threshold’ means the cost, in dollars, per ton of**
18 **diesel particulate matter reduced, as established by rule of the Environ-**
19 **mental Quality Commission.**

20 **“(4) ‘Diesel engine’ means a compression ignition engine.**

21 **“(5) ‘Environmental Mitigation Trust Agreement’ means the fully exe-**
22 **cuted Environmental Mitigation Trust Agreement for State Beneficiaries ef-**
23 **fective October 2, 2017, and issued pursuant to Paragraph 17 of the**
24 **Volkswagen ‘Clean Diesel’ Marketing, Sales Practices and Products Liability**
25 **Litigation partial consent decree dated October 25, 2016.**

26 **“(6) ‘Equivalent equipment’ means a piece of equipment that performs the**
27 **same function and has the equivalent horsepower to a piece of equipment**
28 **subject to a replacement.**

29 **“(7) ‘Equivalent motor vehicle’ means a motor vehicle that performs the**
30 **same function and is in the same weight class as a motor vehicle subject to**

1 a replacement.

2 “(8) ‘Gross vehicle weight rating’ means the value specified by the man-
3 ufacturer as the maximum loaded weight of a single or a combination vehi-
4 cle.

5 “(9) ‘Heavy-duty truck’ means a motor vehicle or combination of vehicles
6 operated as a unit that has a gross vehicle weight rating that is greater than
7 26,000 pounds.

8 “(10) ‘Incremental cost’ means the cost of a qualifying repower or retrofit
9 less a baseline cost that would otherwise be incurred in the normal course
10 of business.

11 “(11) ‘Medium-duty truck’ means a motor vehicle or combination of vehi-
12 cles operated as a unit that has a gross vehicle weight rating that is greater
13 than 14,000 pounds but less than or equal to 26,000 pounds.

14 “(12) ‘Motor vehicle’ has the meaning given that term in ORS 825.005.

15 “(13) ‘Nonroad diesel engine’ means a diesel engine of 25 horsepower or
16 more that is not designed primarily to propel a motor vehicle on public
17 highways.

18 “(14) ‘Oregon diesel truck engine’ means a diesel engine in a truck at
19 least 50 percent of the use of which, as measured by miles driven or hours
20 operated, has occurred in Oregon for the two years preceding the scrapping
21 of the engine.

22 “(15) ‘Public highway’ has the meaning given that term in ORS 825.005.

23 “(16)(a) ‘Replacement’ means:

24 “(A) To scrap a motor vehicle powered by a diesel engine and replace the
25 motor vehicle with an equivalent motor vehicle, **whether or not the**
26 **equivalent motor vehicle is capable of being powered by alternative**
27 **fuel;** or

28 “(B) To scrap a piece of equipment powered by a nonroad diesel engine
29 and replace the equipment with equivalent equipment.

30 “(b) ‘Replacement’ does not mean ordinary maintenance, repair or re-

1 placement of a diesel engine.

2 “(17) ‘Repower’ means to scrap an old diesel engine and substitute it with
3 a new engine, a used engine or a remanufactured engine, or with electric
4 motors, drives or fuel cells, with a minimum useful life of seven years.

5 “(18) ‘Retrofit’ means to equip a diesel engine with new emissions-
6 reducing parts or technology after the manufacture of the original engine
7 or to convert the diesel engine into an engine capable of being powered by
8 alternative fuel. A retrofit must use the greatest degree of emissions re-
9 duction available for the particular application of the equipment retrofitted
10 that meets the cost-effectiveness threshold.

11 “(19) ‘Scrap’ means to destroy, render inoperable and recycle.

12 “(20) ‘Truck’ means a motor vehicle or combination of vehicles operated
13 as a unit that has a gross vehicle weight rating that is greater than 14,000
14 pounds.

15 **“SECTION 32.** ORS 468A.803 is amended to read:

16 “468A.803. (1) The Department of Environmental Quality shall use the
17 moneys in the Clean Diesel Engine Fund to award:

18 “(a) Grants and loans to the owners and operators of motor vehicles
19 powered by diesel engines, and equipment powered by nonroad diesel engines,
20 for up to 25 percent of the certified costs of qualifying replacements as de-
21 scribed in ORS 468A.797 and 468A.799;

22 “(b) Grants and loans to the owners and operators of diesel engines for
23 up to 100 percent of the certified costs of qualifying retrofits as described in
24 ORS 468A.797 and 468A.799;

25 “(c) Grants and loans to the owners and operators of nonroad diesel en-
26 gines for up to [25] **50** percent of the certified costs of qualifying repowers
27 as described in ORS 468A.797 and 468A.799; and

28 “(d) Grants to the owners of Oregon diesel truck engines to scrap those
29 engines.

30 “(2) The Environmental Quality Commission by rule may set grant or loan

1 award rates at a percentage that is greater than a percentage allowed under
2 subsection (1) of this section, provided that the grant or loan assistance will
3 not exceed the cost-effectiveness threshold, if the higher percentage award
4 rate would:

5 “(a) Benefit sensitive populations or areas with elevated concentrations
6 of diesel particulate matter; or

7 “(b) Otherwise increase participation by those categories of owners or
8 operators.

9 “(3) In determining the amount of a grant or loan under this section, the
10 department must reduce the incremental cost of a qualifying replacement,
11 repower or retrofit by the value of any existing financial incentive that di-
12 rectly reduces the cost of the qualifying replacement, repower or retrofit,
13 including tax credits, other grants or loans, or any other public financial
14 assistance.

15 “(4) The department may certify third parties to perform qualifying re-
16 placements, repowers and retrofits and may contract with third parties to
17 perform such services for the certified costs of qualifying replacements, re-
18 powers and retrofits. The department may also contract with institutions of
19 higher education or other public bodies as defined by ORS 174.109 to train
20 and certify third parties to perform qualifying replacements, repowers and
21 retrofits.

22 “(5) The department may not award a grant or loan for a replacement,
23 repower or retrofit under subsection (1) of this section unless the grant or
24 loan applicant demonstrates to the department’s satisfaction that the result-
25 ing equivalent motor vehicle, equivalent equipment, repowered nonroad die-
26 sel engine or retrofitted diesel engine will undergo at least 50 percent of its
27 use in Oregon, as measured by miles driven or hours operated, for the three
28 years following the replacement, repower or retrofit.

29 “(6) The department may not award a grant to scrap an Oregon diesel
30 truck engine under subsection (1)(d) of this section unless the engine was

1 manufactured prior to 1994 and the engine is in operating condition at the
2 time of the grant application or, if repairs are needed, the owner demon-
3 strates to the department's satisfaction that the engine can be repaired to
4 an operating condition for less than its commercial scrap value. The com-
5 mission shall adopt rules for a maximum grant awarded under subsection
6 (1)(d) of this section for an engine in a heavy-duty truck and for an engine
7 in a medium-duty truck. A grant awarded under subsection (1)(d) of this
8 section may not be combined with any other tax credits, grants or loans, or
9 any other public financial assistance, to scrap an Oregon diesel truck engine.

10 “(7) Subject to and consistent with federal law, any moneys received from
11 the federal government that are deposited in the Clean Diesel Engine Fund
12 under ORS 468A.801 (2)(b) must be used for initiatives to reduce emissions
13 from diesel engines. Subsections (1) to (6) of this section and ORS 468A.797
14 and 468A.799 do not apply to use of moneys in the fund received from the
15 federal government.

16 “(8) Any moneys received by the State of Oregon pursuant to a voluntary
17 written agreement or a settlement approved in an administrative or judicial
18 proceeding that are deposited in the Clean Diesel Engine Fund must be used
19 by the department for activities consistent with the terms and conditions of
20 the agreement or settlement. Subsections (1) to (6) of this section and ORS
21 468A.797 and 468A.799 do not apply to the use of moneys in the fund received
22 pursuant to this subsection.

23 “(9) Except as provided in subsection (8) of this section, the department
24 may use the moneys in the Clean Diesel Engine Fund to pay expenses of the
25 department in administering the program described in ORS 468A.795 to
26 468A.807.

27 **“SECTION 33.** ORS 468A.807 is amended to read:

28 “468A.807. (1) The Environmental Quality Commission shall adopt rules
29 necessary to implement ORS 468A.795 to 468A.807.

30 “(2) Rules adopted under this section must include, but need not be lim-

1 ited to, rules that establish preferences for awarding grants and loans under
2 ORS 468A.803 (1) based upon:

3 “(a) A percentage of diesel engine use in Oregon;

4 “(b) Whether a grant or loan applicant will provide matching funds;

5 “(c) Whether scrapping, replacement, repowering or retrofitting an engine
6 will benefit sensitive populations or areas with elevated concentrations of
7 diesel particulate matter; [*or*]

8 **“(d) Whether the replacement, repowering or retrofitting of a motor
9 vehicle is necessary to satisfy the requirements of ORS 803.591; or**

10 **“[(d)] (e) Other criteria as the commission may establish.**

11 “(3) Rules adopted by the commission under this section must reserve a
12 portion of the financial assistance available each year for applicants that
13 own or operate a small number of diesel engines or Oregon diesel truck en-
14 gines and must provide for simplified access to financial assistance for those
15 applicants.

16 “(4) The Department of Environmental Quality may perform activities
17 necessary to ensure that recipients of grants and loans from the Clean Diesel
18 Engine Fund comply with applicable requirements. If the department deter-
19 mines that a recipient has not complied with applicable requirements, the
20 department may order the recipient to refund all grant or loan moneys and
21 may impose penalties pursuant to ORS 468.140.

22

23 **“APPLICABILITY, OPERATIVE DATES**

24

25 **“SECTION 34. Sections 1 to 18 of this 2021 Act apply to tax base
26 transactions that occur on or after January 1, 2023.**

27 **“SECTION 35. The amendments to ORS 307.870, 307.872, 307.875 and
28 307.888 by sections 19 to 22 of this 2021 Act apply to rentals of nonroad
29 diesel equipment made on or after January 1, 2023.**

30 **“SECTION 36. The amendments to ORS 317A.100, 320.400 and 320.435**

1 by sections 23 to 26 of this 2021 Act apply to sales of heavy-duty taxable
2 motor vehicles that occur on or after January 1, 2023.

3 **“SECTION 37.** The amendments to ORS 319.010, 319.320 and 319.410
4 by sections 27 to 29 of this 2021 Act become operative on January 1,
5 2023.

6 **“SECTION 38.** The amendments to ORS 468A.801 by section 30 of
7 this 2021 Act become operative on January 1, 2023.

8

9 **“UNIT AND SECTION CAPTIONS**

10

11 **“SECTION 39.** The unit and section captions used in this 2021 Act
12 are provided only for the convenience of the reader and do not become
13 part of the statutory law of this state or express any legislative intent
14 in the enactment of this 2021 Act.

15

16 **“EFFECTIVE DATE**

17

18 **“SECTION 40.** This 2021 Act takes effect on the 91st day after the
19 date on which the 2021 regular session of the Eighty-first Legislative
20 Assembly adjourns sine die.”

21
