

House Bill 3158

Sponsored by Representative NOSSE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes excise tax on retail sale of tires, privilege tax for engaging in business of providing nonroad diesel equipment, tax on use in Oregon of nonroad diesel equipment purchased out of state at retail, heavy equipment rental tax on rentals of nonroad diesel equipment, privilege tax on heavy-duty vehicles and license tax on dyed diesel for transfer to Clean Diesel Engine Fund.

Increases cap on grants or loans awarded from Clean Diesel Engine Fund for repower of nonroad diesel engine to 50 percent of certified costs. Directs Environmental Quality Commission to establish preference for grants and loans from fund for replacements, repowers or retrofits necessary to satisfy certain title and registration requirements for heavy- or medium-duty trucks powered by diesel engines.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to engine emissions; creating new provisions; amending ORS 307.870, 307.872, 307.875, 307.888, 317A.100, 319.010, 319.320, 319.410, 320.400, 320.435, 468A.795, 468A.801, 468A.803 and 468A.807; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

CLEAN DIESEL ENGINE TAXES

SECTION 1. Definitions. As used in sections 1 to 18 of this 2023 Act:

(1) **“Clean diesel engine taxes” means the excise tax imposed under section 2 of this 2023 Act, the privilege tax imposed under section 3 of this 2023 Act and the use tax imposed under section 4 of this 2023 Act.**

(2) **“Contractee” means the purchaser or lessee of nonroad diesel equipment in a transaction subject to the privilege tax imposed under section 3 of this 2023 Act.**

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

(4) **“Nonroad diesel equipment” means equipment powered by a nonroad diesel engine.**

(5) **“Provider” means a person that provides nonroad diesel equipment.**

(6) **“Providing nonroad diesel equipment” means selling at retail or leasing out nonroad diesel equipment.**

(7) **“Seller” means:**

(a) **With respect to the excise tax imposed under section 2 of this 2023 Act, a person engaged in whole or in part in the business of selling taxable tires at retail.**

(b) **With respect to the privilege and use taxes imposed under sections 3 and 4 of this 2023 Act, a person engaged in whole or in part in the business of selling nonroad diesel equipment at retail.**

(8) **“Taxable property” means taxable tires and nonroad diesel equipment.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (9) “Taxable tire” means a new or newly refurbished tire designed for use on a motor
2 vehicle for travel on public highways.

3 (10) “Tax base transactions” means retail sales of taxable tires and nonroad diesel
4 equipment and leasing out of nonroad diesel equipment.

5 **SECTION 2. Excise tax on retail sale of tires; tax as liability of purchaser; collection at**
6 **time of sale.** (1)(a) An excise tax is imposed on each sale of taxable tires at retail in this state
7 and becomes due upon the sale.

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

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

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

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

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

17 **SECTION 3. Tax for privilege of engaging in business of providing nonroad diesel equip-**
18 **ment; when tax due; collection of privilege tax from purchaser.** (1) A tax is imposed on each
19 provider for the privilege of engaging in the business of providing nonroad diesel equipment
20 in this state.

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

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

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

26 (b) Notwithstanding paragraph (a) of this subsection, the contractee from whom the
27 privilege tax is collected is not considered a taxpayer for purposes of the privilege tax im-
28 posed under this section.

29 **SECTION 4. Tax on use in Oregon of nonroad diesel equipment purchased out of state**
30 **at retail; tax as liability of purchaser; reduction for other taxes paid.** (1) A use tax is imposed
31 on the storage, use or other consumption in this state of nonroad diesel equipment pur-
32 chased at retail from any seller.

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

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

36 (4) The use tax shall be reduced, but not below zero, by the amount of any privilege, ex-
37 cise, sales or use tax imposed by any jurisdiction on the sale, or on the storage, use or other
38 consumption, of the nonroad diesel equipment. The reduction under this subsection shall be
39 made only upon a showing by the purchaser that a privilege, excise, sales or use tax has been
40 paid.

41 (5) The amount of the use tax shall be separately stated on an invoice, receipt or other
42 similar document that the seller provides to the purchaser or shall be otherwise disclosed
43 to the purchaser.

44 (6) A purchaser’s liability for the use tax is satisfied by a valid receipt given to the pur-
45 chaser under section 5 of this 2023 Act by the seller of the nonroad diesel equipment.

SECTION 5. Collection of use tax; time of collection; presumptions of use in this state.

(1) A seller shall collect the use tax imposed under section 4 of this 2023 Act from a purchaser of nonroad diesel equipment and give the purchaser a receipt for the use tax in the manner and form prescribed by the Department of Revenue if:

(a) The seller is:

(A) Engaged in business in this state;

(B) Required to collect the use tax; or

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

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

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

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

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

(3) To ensure the proper administration of section 4 of this 2023 Act, and to prevent evasion of the use tax, the following presumptions are established:

(a) Nonroad diesel equipment is stored, used or otherwise consumed in this state if it is present in this state for private or public display or storage.

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

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

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

(B) The contrary may be proved by:

(i) A statement in writing, signed by the purchaser or an authorized agent of the purchaser and retained by the seller, that the nonroad diesel equipment was purchased for storage, use or other consumption exclusively at a designated point or points outside this state; or

(ii) Other evidence satisfactory to the department that the nonroad diesel equipment was not purchased for storage, use or other consumption in this state.

SECTION 6. Exempt sales; resale certificates. (1) Notwithstanding section 3 of this 2023 Act, a seller is not liable for the privilege tax with respect to nonroad diesel equipment that is sold to:

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

(b) A business if the storage, use or other consumption of the nonroad diesel equipment will occur primarily outside this state.

(2) Notwithstanding sections 2 to 5 of this 2023 Act, a resale certificate taken from a purchaser ordinarily engaged in the business of selling taxable property relieves the seller from the obligation to collect and remit clean diesel engine taxes. A resale certificate must

1 be substantially in the form prescribed by the Department of Revenue by rule.

2 **SECTION 7. Clean diesel engine tax expenditures in continuous effect.** For purposes of
 3 ORS 315.037, any tax expenditure enacted with respect to any or all clean diesel engine taxes
 4 shall remain in continuous effect until the Legislative Assembly expressly provides other-
 5 wise.

6 **SECTION 8. Refunds for excess payments; overpayment applied to outstanding clean**
 7 **diesel engine taxes; refund upon return of vehicle.** (1)(a) If the amount of clean diesel engine
 8 taxes paid by a seller, provider or purchaser exceeds the amount of taxes due, the Depart-
 9 ment of Revenue shall refund the amount of the excess.

10 (b) Except as provided in paragraph (c) of this subsection, the period prescribed for the
 11 department to allow or make a refund of any overpayment of clean diesel engine taxes paid
 12 shall be as provided in ORS 314.415.

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

15 (2)(a) This subsection applies whenever nonroad diesel equipment with respect to which
 16 the privilege tax imposed under section 3 of this 2023 Act has been paid by the seller is re-
 17 turned by or on behalf of the purchaser to the seller.

18 (b) The seller shall notify the department of the return of the nonroad diesel equipment,
 19 and the department shall refund the amount of the privilege tax collected with respect to the
 20 nonroad diesel equipment to the seller.

21 (c) Upon receipt of the refund under this subsection, the seller shall return to the pur-
 22 chaser any amount received under paragraph (b) of this subsection that was collected by the
 23 seller from the purchaser.

24 **SECTION 9. Deposit of revenue from clean diesel engine taxes.** (1) The Department of
 25 Revenue shall deposit all revenue collected from the clean diesel engine taxes in a suspense
 26 account established under ORS 293.445 for the purpose of receiving the revenue. The de-
 27 partment may pay the actual expenses of the department for the administration and
 28 enforcement of the clean diesel engine taxes out of moneys received from the clean diesel
 29 engine taxes. Amounts necessary to pay administrative and enforcement expenses are con-
 30 tinuously appropriated to the department from the suspense account.

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

35 **SECTION 10. Collection at point of sale of excise tax and use tax; returns and payment**
 36 **of clean diesel engine taxes.** (1) Except as otherwise provided in sections 1 to 18 of this 2023
 37 Act, the excise tax imposed under section 2 of this 2023 Act and the use tax imposed under
 38 section 4 of this 2023 Act shall be collected at the point of sale and remitted by each seller
 39 that is liable for clean diesel engine taxes computed on the basis of such sales. Each tax is
 40 considered a tax upon the seller that is required to collect the tax, and the seller is consid-
 41 ered a taxpayer.

42 (2) Each seller or provider that is liable for clean diesel engine taxes shall file a return
 43 with the Department of Revenue, in the form and manner prescribed by the department, on
 44 or before the last day of January, April, July and October of each year for the previous cal-
 45 endar quarter. The return shall show the amount of clean diesel engine taxes due with re-

1 spect to tax base transactions made during the calendar quarter to which the return relates.

2 (3) Each seller or provider shall pay the applicable clean diesel engine taxes to the de-
 3 partment in the form and manner prescribed by the department, but not later than the date
 4 of submitting each quarterly return, without regard to extensions under subsection (5) of
 5 this section.

6 (4) Sellers and providers shall file the returns required under this section with respect
 7 to the excise tax imposed under section 2 of this 2023 Act and the privilege tax imposed under
 8 section 3 of this 2023 Act regardless of whether any clean diesel engine taxes are owed.

9 (5) The department may extend the time for making any return required under this
 10 section if a written request is filed with the department during or prior to the period for
 11 which the extension may be granted. The department may not grant an extension of more
 12 than 30 days.

13 (6) Interest shall be added to delinquent tax amounts at the rate established under ORS
 14 305.220 from the time the return to which the delinquent tax amounts relate was originally
 15 required to be filed to the time of payment.

16 SECTION 11. Liability for taxes; amounts held in trust; warrants for collection; confer-
 17 ence; appeal. (1) Every seller and provider who collects any amount of clean diesel engine
 18 taxes shall hold the amount in trust for the State of Oregon and for payment to the De-
 19 partment of Revenue in the manner and at the time provided under section 10 of this 2023
 20 Act.

21 (2) If a seller or provider that is liable for clean diesel engine taxes fails to remit any
 22 amount of the taxes, whether collected or not, the department may enforce collection by the
 23 issuance of a distraint warrant for the collection of the delinquent amount and all penalties,
 24 interest and collection charges accrued on the delinquent amount. The warrant shall be is-
 25 sued and proceeded upon in the same manner and shall have the same force and effect as is
 26 prescribed with respect to warrants for the collection of delinquent income taxes.

27 (3)(a) In the case of a seller or provider that is assessed under the provisions of ORS
 28 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer,
 29 employee or member of the seller or provider at any time within three years after the as-
 30 sessment. Within 30 days after the date on which the notice of liability is mailed to the of-
 31 ficer, employee or member, the officer, employee or member shall pay the assessment, plus
 32 penalties and interest, or advise the department in writing of objections to the liability and,
 33 if desired, request a conference. A conference shall be governed by the provisions of ORS
 34 305.265 pertaining to a conference requested from a notice of deficiency.

35 (b) After a conference or, if no conference is requested, a determination of the issues
 36 raised in the written objections, the department shall mail the officer, employee or member
 37 a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days
 38 after the date on which the conference letter is mailed to the officer, employee or member,
 39 the officer, employee or member shall pay the assessment, plus penalties and interest, or
 40 appeal to the tax court in the manner provided for an appeal from a notice of assessment.

41 (c) If the department does not receive payment or written objection to the notice of li-
 42 ability within 30 days after the notice of liability was mailed, the notice of liability becomes
 43 final. The officer, employee or member may appeal the notice of liability to the tax court
 44 within 90 days after the notice became final in the manner provided for an appeal from a
 45 notice of assessment.

1 (4)(a) In the case of a seller or provider that fails to file a return on the due date, in
2 addition to any action described in the provisions of ORS 305.265 (10) and 314.400, the de-
3 partment may issue a notice of determination and assessment to any officer, employee or
4 member of the seller at any time within three years after the assessment. The time of as-
5 sessment against the officer, employee or member is 30 days after the date on which the
6 notice of determination and assessment is mailed. Within 30 days after the date on which the
7 notice of determination and assessment is mailed to the officer, employee or member, the
8 officer, employee or member shall pay the assessment, plus penalties and interest, or advise
9 the department in writing of objections to the assessment and, if desired, request a confer-
10 ence. A conference shall be governed by the provisions of ORS 305.265 pertaining to a con-
11 ference requested from a notice of deficiency.

12 (b) After a conference or, if no conference is requested, a determination of the issues
13 raised in the written objections, the department shall mail the officer, employee or member
14 a conference letter affirming, canceling or adjusting the notice of determination and assess-
15 ment. Within 90 days after the date on which the conference letter is mailed to the officer,
16 employee or member, the officer, employee or member shall pay the assessment, plus pen-
17 alties and interest, or appeal to the tax court in the manner provided for an appeal from a
18 notice of assessment.

19 (c) If the department does not receive payment or written objection to the notice of de-
20 termination and assessment within 30 days after the notice of determination and assessment
21 was mailed, the notice of determination and assessment becomes final. The officer, employee
22 or member may appeal the notice of determination and assessment to the tax court within
23 90 days after the notice became final in the manner provided for an appeal from a notice of
24 assessment.

25 (5)(a) More than one officer or employee of a corporation may be held jointly and se-
26 verally liable for payment of clean diesel engine taxes.

27 (b) Notwithstanding the confidentiality provisions of section 16 of this 2023 Act, if the
28 department determines that more than one officer or employee of a corporation may be held
29 jointly and severally liable for payment of the clean diesel engine taxes, the department may
30 require any or all of the officers or employees to appear before the department for a joint
31 determination of liability. The department shall notify each officer or employee of the time
32 and place set for the determination of liability.

33 (c) Each individual notified of a joint determination under this subsection must appear
34 and present such information as is necessary to establish the individual's liability or nonli-
35 ability for payment of the taxes to the department. If an individual who was notified fails to
36 appear, the department shall make the determination on the basis of all the information and
37 evidence presented. The department's determination is binding on all individuals notified and
38 required to appear under this subsection.

39 (d)(A) If any individual determined to be liable for unpaid clean diesel engine taxes under
40 this subsection appeals the determination to the Oregon Tax Court under section 15 of this
41 2023 Act, the individual plaintiff shall implead all individuals required to appear with the
42 plaintiff before the department under this subsection. The department may implead any of-
43 ficer or employee who may be held jointly and severally liable for the payment of the clean
44 diesel engine taxes. Each individual impleaded under this paragraph shall be made a party
45 to the action before the tax court and shall make available to the tax court the information

1 that was presented before the department, as well as other information that may be pre-
 2 sented to the tax court.

3 (B) The tax court may determine that one or more individuals impleaded under this
 4 paragraph are liable for unpaid clean diesel engine taxes without regard to any earlier de-
 5 termination by the department that an impleaded individual was not liable for the unpaid
 6 taxes.

7 (C) If an individual required to appear before the tax court under this subsection fails
 8 or refuses to appear or bring such information in part or in whole, or is outside the juris-
 9 diction of the tax court, the tax court shall make its determination on the basis of all the
 10 evidence introduced. Notwithstanding section 16 of this 2023 Act, the evidence introduced in
 11 the tax court constitutes a public record and shall be available to the parties and the tax
 12 court. The determination of the tax court is binding on all individuals made parties to the
 13 action under this subsection.

14 (e) This subsection may not be construed to preclude a determination by the department
 15 or the tax court that more than one officer or employee is jointly and severally liable for
 16 unpaid clean diesel engine taxes.

17 SECTION 12. When purchasers required to remit excise tax and use tax. Any purchaser
 18 liable for the excise tax imposed under section 2 of this 2023 Act or the use tax imposed
 19 under section 4 of this 2023 Act and from whom the tax has not been collected shall, on or
 20 before the 30th day following the date on which the tax became due, file with the Department
 21 of Revenue a report of the amount of tax due from the purchaser in a form and manner
 22 prescribed by the department. The purchaser shall remit the amount of tax due with the
 23 report.

24 SECTION 13. Sellers and providers required to keep records; examination of records by
 25 Department of Revenue. (1)(a) A seller or provider that is liable for clean diesel engine taxes
 26 shall keep receipts, invoices and other pertinent records related to tax base transactions in
 27 the form required by the Department of Revenue. Each record shall be preserved for five
 28 years from the time to which the record relates, or for as long as the seller or provider re-
 29 tains the taxable property to which the record relates, whichever is later.

30 (b) During the record retention period and at any time prior to the destruction of re-
 31 cords, the department may give written notice to the seller or provider not to destroy re-
 32 cords described in the notice without written permission of the department.

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

35 (2) ORS 314.425 applies to the authority of the department to examine, or cause to be
 36 examined by an agent or representative designated by the department for the purpose, any
 37 books, papers, records or memoranda bearing upon the matter required to be included in any
 38 return required under sections 1 to 18 of this 2023 Act for the purpose of ascertaining the
 39 correctness of the return or for the purpose of making an estimate of the tax base trans-
 40 actions of the taxpayer.

41 SECTION 14. Subpoena authority of Department of Revenue; enforcement; contempt of
 42 court. (1) The Department of Revenue may require, by order or subpoena to be served with
 43 the same force and effect and in the same manner as a subpoena is served in a civil action
 44 in the circuit court or the Oregon Tax Court, the production, at any time and place that the
 45 department designates, of any books, papers, accounts or other information necessary to

1 carry out sections 1 to 18 of this 2023 Act. The department may require the attendance of
 2 any individual having knowledge in the premises, and may take testimony and require proof
 3 material for the information, with power to administer oaths to the individual.

4 (2)(a) If an individual fails to comply with a subpoena or order of the department or to
 5 produce or permit the examination or inspection of any books, papers, records and equip-
 6 ment pertinent to an investigation or inquiry under sections 1 to 18 of this 2023 Act, or to
 7 testify to any matter regarding which the individual is lawfully interrogated, the department
 8 may apply to the Oregon Tax Court or to the circuit court of the county in which the indi-
 9 vidual resides or where the individual is for an order to the individual to attend and testify
 10 or otherwise comply with the demand or request of the department.

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

17 (3) Failure to obey any order issued by the court under this section is contempt of court.

18 (4) The remedy provided by this section is in addition to other remedies, civil or criminal,
 19 existing under the tax laws or other laws of this state.

20 **SECTION 15. Appeal.** Except as otherwise provided in sections 1 to 18 of this 2023 Act,
 21 a person aggrieved by an act or determination of the Department of Revenue or its author-
 22 ized agent under sections 1 to 18 of this 2023 Act may appeal, within 90 days after the act
 23 or determination, to the Oregon Tax Court in the manner provided in ORS 305.404 to 305.560.
 24 These appeal rights are the exclusive remedy available to determine the person's liability for
 25 the clean diesel engine taxes.

26 **SECTION 16. Applicability of other provisions of tax law.** Except as otherwise provided
 27 in sections 1 to 18 of this 2023 Act or where the context requires otherwise, the provisions
 28 of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation,
 29 determinations of and notices of deficiencies, assessments, collections, liens, delinquencies,
 30 claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of col-
 31 lection pending appeal, confidentiality of returns and the related penalties, and the related
 32 procedures, apply to the determinations of taxes, penalties and interest under sections 1 to
 33 18 of this 2023 Act.

34 **SECTION 17. Department of Revenue to administer and enforce clean diesel engine tax**
 35 **laws.** (1) The Department of Revenue shall administer and enforce sections 1 to 18 of this
 36 2023 Act.

37 (2) The department may adopt or establish rules and procedures that the department
 38 considers necessary or convenient for the implementation, administration and enforcement
 39 of sections 1 to 18 of this 2023 Act and that are consistent with sections 1 to 18 of this 2023
 40 Act.

41 **SECTION 18. Local government clean diesel engine tax moratorium.** (1) A local govern-
 42 ment may not impose a tax described in subsection (2) of this section unless the tax is:

43 (a) Authorized by statute; or

44 (b) Approved by the governing body of the local government and in effect on or before
 45 the effective date of this 2023 Act.

1 (2) This section applies to:

2 (a) A tax imposed on the privilege of engaging in the business of providing nonroad diesel
3 equipment; and

4 (b) Any privilege, excise, sales or use tax imposed on or with respect to taxable property
5 or tax base transactions.

6
7 RENTAL TAX ON NONROAD DIESEL EQUIPMENT

8
9 SECTION 19. ORS 307.870 is amended to read:

10 307.870. As used in ORS 307.870 to 307.890:

11 (1) "Affiliate" means a person that directly or indirectly owns or controls, is owned or con-
12 trolled by, or is under common ownership or control with, another person.

13 (2) "Control," for purposes of the definition of "affiliate" under this section, means direct or
14 indirect possession of the power to direct or cause the direction of the management and policies of
15 a person, whether through the ownership of voting securities, by contract or otherwise.

16 (3) "Heavy equipment rental tax" means the tax imposed under ORS 307.872.

17 (4) "Mobile" means that qualified heavy equipment:

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

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

20 (5) "Nonroad diesel engine" has the meaning given that term in ORS 319.010.

21 (6) "Nonroad diesel equipment" means equipment powered by a nonroad diesel engine.

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

24 [(6)] (8) "Qualified heavy equipment" means any construction, mining, earthmoving or industrial
25 equipment, together with attachments and other equipment and tools, including, but not limited to,
26 towable trailers, [and] fixed load vehicles and nonroad diesel equipment, that is:

27 (a) Mobile;

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

29 (c) Held primarily for rental.

30 [(7)(a)] (9)(a) "Qualified heavy equipment provider" means a person that is primarily engaged in
31 the business of renting qualified heavy equipment without an operator.

32 (b) "Qualified heavy equipment provider" does not mean a person primarily engaged in the
33 business of renting qualified heavy equipment to one or more of the person's affiliates.

34 [(8)] (10) "Rent," "rental" and "renting" mean entering into an agreement for the use of property
35 in exchange for consideration for a term of less than 365 consecutive days, an open-ended term or
36 an undefined term.

37 [(9)] (11) "Rental location" means a qualified heavy equipment provider's store or other business
38 location in this state from which qualified heavy equipment is rented.

39 [(10)] (12) "Rental price" means the rental charge for qualified heavy equipment, net of any in-
40 voice credits provided to the renter. "Rental price" does not include delivery and pickup fees, dam-
41 age waivers or environmental mitigation fees.

42 SECTION 20. ORS 307.872 is amended to read:

43 307.872. (1) A tax [of two percent] is imposed on the rental price received for any qualified heavy
44 equipment[,] at the following rates:

45 (a) 3.5 percent for rentals of nonroad diesel equipment; and

(b) 2 percent for rentals of all other qualified heavy equipment.

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

(3) Qualified heavy equipment is exempt from any and all ad valorem property taxes if rental of the qualified heavy equipment is subject to taxation under this section.

(4) Notwithstanding ORS 315.037, the exemption granted under subsection (3) of this section does not have a maximum term.

(5) The Department of Revenue may adopt rules necessary for the administration and enforcement of the heavy equipment rental tax under ORS 307.870 to 307.890.

SECTION 21. ORS 307.888 is amended to read:

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

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

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

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

(b) After deduction for the amounts described in paragraph (a) of this subsection, the balance of the moneys received shall be transferred **as follows:**

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

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

(3) Each county treasurer shall:

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

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

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

SECTION 22. ORS 307.875 is amended to read:

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

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

PRIVILEGE TAX ON HEAVY-DUTY MOTOR VEHICLES

SECTION 23. ORS 320.400 is amended to read:

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

(1)(a) "Bicycle" means:

(A) A vehicle that is designed to be operated on the ground on wheels for the transportation of humans and is propelled exclusively by human power; or

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

(b) "Bicycle" does not include:

(A) Carts;

(B) Durable medical equipment;

(C) In-line skates;

(D) Roller skates;

(E) Skateboards;

(F) Stand-up scooters;

(G) Strollers designed for the transportation of children;

(H) Trailer cycles or other bicycle attachments; or

(I) Wagons.

(2) "Heavy-duty taxable motor vehicle" means a vehicle that:

(a) Has a gross vehicle weight rating of greater than 26,000 pounds; and

(b)(A) If equipped with an odometer, has 7,500 miles or less on the odometer; or

(B) If not equipped with an odometer, has a manufacturer's certificate of origin or a manufacturer's statement of origin.

(3) "Light-duty taxable motor vehicle" means a vehicle that:

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

(b)(A) If equipped with an odometer, has 7,500 miles or less on the odometer; or

(B) If not equipped with an odometer, has a manufacturer's certificate of origin or a manufacturer's statement of origin; and

(c) Is:

(A) A vehicle as defined in ORS 744.850, other than an all-terrain vehicle or a trailer;

(B) A camper as defined in ORS 801.180;

(C) A commercial bus as defined in ORS 801.200;

(D) A commercial motor vehicle as defined in ORS 801.208;

(E) A commercial vehicle as defined in ORS 801.210;

(F) A fixed load vehicle as defined in ORS 801.285;

(G) A moped as defined in ORS 801.345;

(H) A motor home as defined in ORS 801.350;

(I) A motor truck as defined in ORS 801.355;

(J) A tank vehicle as defined in ORS 801.522;

(K) A trailer as defined in ORS 801.560 that is required to be registered in this state;

(L) A truck tractor as defined in ORS 801.575; or

(M) A worker transport bus as defined in ORS 801.610.

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

(b) “Retail sales price” does not include the retail value of:

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

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

[(3)] (5) “Seller” means:

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

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

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

[(5)] (7) “Taxable motor vehicle” means a [*vehicle that:*] **light-duty taxable motor vehicle and a heavy-duty taxable motor vehicle.**

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

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

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

[(c) *Is:*]

[(A) *A vehicle as defined in ORS 744.850, other than an all-terrain vehicle or a trailer;*]

[(B) *A camper as defined in ORS 801.180;*]

[(C) *A commercial bus as defined in ORS 801.200;*]

[(D) *A commercial motor vehicle as defined in ORS 801.208;*]

[(E) *A commercial vehicle as defined in ORS 801.210;*]

[(F) *A fixed load vehicle as defined in ORS 801.285;*]

[(G) *A moped as defined in ORS 801.345;*]

[(H) *A motor home as defined in ORS 801.350;*]

[(I) *A motor truck as defined in ORS 801.355;*]

[(J) *A tank vehicle as defined in ORS 801.522;*]

[(K) *A trailer as defined in ORS 801.560 that is required to be registered in this state;*]

[(L) *A truck tractor as defined in ORS 801.575; or*]

[(M) *A worker transport bus as defined in ORS 801.610.*]

[(6)] (8) “Taxable vehicle” means a taxable bicycle or a taxable motor vehicle.

[(7)] (9) “Transportation project taxes” means the privilege tax imposed under ORS 320.405, the use tax imposed under ORS 320.410 and the excise tax imposed under ORS 320.415.

[(8)(a)] (10)(a) “Vehicle dealer” means:

(A) A person engaged in business in this state that is required to obtain a vehicle dealer certificate under ORS 822.005; and

(B) A person engaged in business in another state that would be subject to ORS 822.005 if the person engaged in business in this state.

(b) Notwithstanding paragraph (a) of this subsection, a person is not a vehicle dealer for purposes of ORS 320.400 to 320.490 and 803.203 to the extent the person:

(A) Conducts an event that lasts less than seven consecutive days, for which the public is charged admission and at which otherwise taxable motor vehicles are sold at auction; or

(B) Sells an otherwise taxable motor vehicle at auction at an event described in this paragraph.

SECTION 24. ORS 320.435, as amended by section 5, chapter 25, Oregon Laws 2022, is amended

1 to read:

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

8 (2) After payment of administrative and enforcement expenses under subsection (1) of this sec-
 9 tion and refunds or credits arising from erroneous overpayments, the department shall transfer the
 10 balance of the moneys received from the privilege and use taxes as follows:

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

13 (A) The greater of \$12 million or 45 percent of the gross amount of the moneys received from
 14 the privilege tax shall be transferred annually to the Zero-Emission Incentive Fund established un-
 15 der ORS 468.449.

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

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

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

21 **SECTION 25.** ORS 317A.100, as amended by section 5, chapter 82, Oregon Laws 2022, and sec-
 22 tion 26, chapter 83, Oregon Laws 2022, is amended to read:

23 317A.100. As used in ORS 317A.100 to 317A.158:

24 (1)(a) “Commercial activity” means:

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

28 (B) If received by a financial institution:

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

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

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

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

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

41 (b) “Commercial activity” does not include:

42 (A) Interest income except:

43 (i) Interest on credit sales; or

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

45 (B) Receipts from the sale, exchange or other disposition of an asset described in section 1221

1 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset;

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

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

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

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

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

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

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

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

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

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

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

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

42 (O) Pension reversions;

43 (P) Contributions to capital;

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

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

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

11 (T) In the case of receipts from the sale of marijuana items, as defined in ORS 475C.009, by a
12 person holding a license issued under ORS 475C.005 to 475C.525, an amount equal to the federal and
13 state excise taxes paid by any person on or for such marijuana items under subtitle E of the Internal
14 Revenue Code or ORS 475C.670 to 475C.734 and any local retail taxes authorized under ORS
15 475C.453;

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

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

20 (W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in
21 ORS 320.400 [(8)(a)(B)] **(10)(a)(B)** from the sale or other transfer of a motor vehicle, as defined in
22 ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer,
23 but only if the sale or other transfer was based upon the transferee's need to meet a specific
24 customer's preference for a motor vehicle or is an exchange of new vehicles between franchised
25 motor vehicle dealerships;

26 (X) Registration fees or taxes collected by a vehicle dealer certified under ORS 822.020 or a
27 person described in ORS 320.400 [(8)(a)(B)] **(10)(a)(B)** at the sale or other transfer of a motor vehi-
28 cle, as defined in ORS 801.360, that are owed to a third party by the purchaser of the motor vehicle
29 and passed to the third party by the dealer;

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

35 (Z) In the case of amounts retained as commissions by a holder of a license under ORS chapter
36 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or col-
37 lected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to
38 be used as purse money;

39 (AA) Receipts of residential care facilities as defined in ORS 443.400 or in-home care agencies
40 as defined in ORS 443.305, to the extent that the receipts are derived from or received as compen-
41 sation for providing services to a medical assistance or Medicare recipient;

42 (BB) Dividends received;

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

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

- 1 state;
- 2 (EE) Receipts from the wholesale or retail sale of groceries, including receipts of a person that
3 owns groceries at the time of sale and compensation of any consignee engaged in effecting the sale
4 of groceries on behalf the owner of the groceries, but only to the extent that the compensation re-
5 lates to grocery sales;
- 6 (FF) Receipts from transactions among members of a unitary group;
- 7 (GG) Moneys, including public purpose charge moneys collected under ORS 757.612 and moneys
8 collected to plan for and pursue cost-effective energy efficiency resources under ORS 757.054, that
9 are collected from customers, passed to a utility and approved by the Public Utility Commission and
10 that support energy conservation, renewable resource acquisition and low-income assistance pro-
11 grams;
- 12 (HH) Moneys collected by a utility from customers for the payment of loans through on-bill fi-
13 nancing;
- 14 (II) Surcharges collected under ORS 757.736;
- 15 (JJ) Moneys passed to a utility by the Bonneville Power Administration for the purpose of
16 effectuating the Regional Power Act Exchange credits or pursuant to any settlement associated with
17 the exchange credit;
- 18 (KK) Moneys collected or recovered, by entities listed in ORS 756.310, cable operators as de-
19 fined in 47 U.S.C. 522(5), telecommunications carriers as defined in 47 U.S.C. 153(51) and providers
20 of information services as defined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-
21 way fees, franchise fees, privilege taxes, federal taxes and local taxes;
- 22 (LL) Charges paid to the Residential Service Protection Fund required by chapter 290, Oregon
23 Laws 1987;
- 24 (MM) Universal service surcharge moneys collected or recovered and paid into the universal
25 service fund established in ORS 759.425;
- 26 (NN) Moneys collected for public purpose funding as described in ORS 759.430;
- 27 (OO) Moneys collected or recovered and paid into the federal universal service fund as deter-
28 mined by the Federal Communications Commission;
- 29 (PP) In the case of a seller or provider of telecommunications services, the amount of tax im-
30 posed under ORS 403.200 for access to the emergency communications system that is collected from
31 subscribers or consumers;
- 32 (QQ) In the case of a transient lodging tax collector, the amount of tax imposed under ORS
33 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;
- 34 (RR) In the case of a seller of bicycles, the amount of tax imposed under ORS 320.415 upon retail
35 sales of bicycles;
- 36 (SS) In the case of a qualified heavy equipment provider, the amount of tax imposed under ORS
37 307.872 upon the rental price of heavy equipment;
- 38 (TT) Farmer sales to an agricultural cooperative in this state that is a cooperative organization
39 described in section 1381 of the Internal Revenue Code;
- 40 (UU) Revenue received by a business entity that is mandated by contract or subcontract to be
41 distributed to another person or entity if the revenue constitutes sales commissions that are paid
42 to a person who is not an employee of the business entity, including, without limitation, a split-fee
43 real estate commission; and
- 44 (VV) Receipts from the sale of fluid milk by dairy farmers that are not members of an agricul-
45 tural cooperative.

- 1 (2) “Cost inputs” means:
- 2 (a) The cost of goods sold as calculated in arriving at federal taxable income under the Internal
3 Revenue Code; or
- 4 (b) In the case of a taxpayer that is engaged in a farming operation, as defined in ORS 317A.102,
5 and that does not report cost of goods sold for federal tax purposes, the taxpayer’s operating ex-
6 penses excluding labor costs.
- 7 (3) “Doing business” means engaging in any activity, whether legal or illegal, that is conducted
8 for, or results in, the receipt of commercial activity at any time during a calendar year.
- 9 (4) “Excluded person” means any of the following:
- 10 (a) Organizations described in sections 501(c) and 501(j) of the Internal Revenue Code, unless the
11 exemption is denied under section 501(h), (i) or (m) or under section 502, 503 or 505 of the Internal
12 Revenue Code.
- 13 (b) Organizations described in section 501(d) of the Internal Revenue Code, unless the exemption
14 is denied under section 502 or 503 of the Internal Revenue Code.
- 15 (c) Organizations described in section 501(e) of the Internal Revenue Code.
- 16 (d) Organizations described in section 501(f) of the Internal Revenue Code.
- 17 (e) Charitable risk pools described in section 501(n) of the Internal Revenue Code.
- 18 (f) Organizations described in section 521 of the Internal Revenue Code.
- 19 (g) Qualified state tuition programs described in section 529 of the Internal Revenue Code.
- 20 (h) Foreign or alien insurance companies, but only with respect to the underwriting profit de-
21 rived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and
22 731.828 or if an insurance company is subject to the retaliatory tax under ORS 731.854 and 731.859.
- 23 (i) Governmental entities.
- 24 (j) Any person with commercial activity that does not exceed \$750,000 for the tax year, other
25 than a person that is part of a unitary group as provided in ORS 317A.106 with commercial activity
26 in excess of \$750,000.
- 27 (k) Hospitals subject to assessment under ORS 414.855, long term care facilities subject to as-
28 sessment under ORS 409.801 or any entity subject to assessment under ORS 414.880 or section 3 or
29 5, chapter 538, Oregon Laws 2017.
- 30 (L) Manufactured dwelling park nonprofit cooperatives organized under ORS chapter 62.
- 31 (5) “Financial institution” has the meaning given that term in ORS 314.610, except that “finan-
32 cial institution” does not include a credit union.
- 33 (6)(a) “FR Y-9” means the consolidated or parent-only financial statements that a holding com-
34 pany is required to file with the Federal Reserve Board pursuant to 12 U.S.C. 1844.
- 35 (b) In the case of a holding company required to file both consolidated and parent-only financial
36 statements, “FR Y-9” means the consolidated financial statements that the holding company is re-
37 quired to file.
- 38 (7) “Governmental entity” means:
- 39 (a) The United States and any of its unincorporated agencies and instrumentalities.
- 40 (b) Any incorporated agency or instrumentality of the United States wholly owned by the United
41 States or by a corporation wholly owned by the United States.
- 42 (c) The State of Oregon and any of its unincorporated agencies and instrumentalities.
- 43 (d) Any county, city, district or other political subdivision of the state.
- 44 (e) A special government body as defined in ORS 174.117.
- 45 (f) A federally recognized Indian tribe.

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

3 (9)(a) “Hedging transaction” means a hedging transaction as defined in section 1221 of the
4 Internal Revenue Code or a transaction accorded hedge accounting treatment under Financial Ac-
5 counting Standards Board Statement No. 133.

6 (b) “Hedging transaction” does not include a transaction in which an actual transfer of title of
7 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 provided otherwise,
10 refers to the laws of the United States or to the Internal Revenue Code as they are amended and
11 in effect on December 31, 2021.

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

14 (13)(a) “Motor vehicle fuel or any other product used for the propulsion of motor vehicles”
15 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 ORS 319.530.

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

20 (A) Electricity; or

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

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

29 (15) “Retailer” means a person doing business by selling tangible personal property to a pur-
30 chaser for a purpose other than:

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

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

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

37 (16) “Taxable commercial activity” means commercial activity sourced to this state under ORS
38 317A.128, less any subtraction pursuant to ORS 317A.119.

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

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

43 (18) “Tax year” means, except as otherwise provided in ORS 317A.103, a taxpayer’s annual ac-
44 counting period used for federal income tax purposes under section 441 of the Internal Revenue
45 Code.

1 (19)(a) "Unitary business" means a business enterprise in which there exists directly or indi-
 2 rectly between the members or parts of the enterprise a sharing or exchange of value as demon-
 3 strated by:

- 4 (A) Centralized management or a common executive force;
- 5 (B) Centralized administrative services or functions resulting in economies of scale; or
- 6 (C) Flow of goods, capital resources or services demonstrating functional integration.

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

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

9 or

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

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

14 (21) "Wholesaler" means a person primarily doing business by merchant distribution of tangible
 15 personal property to retailers or to other wholesalers.

16
 17 **FUEL TAX ON DYED DIESEL USED IN**
 18 **NONROAD DIESEL EQUIPMENT**
 19

20 **SECTION 26.** ORS 319.010 is amended to read:

21 319.010. As used in ORS 319.010 to 319.430, unless the context requires otherwise:

22 (1) "Aircraft" means every contrivance now known, or hereafter invented, used or designed for
 23 navigation of or flight in the air, operated or propelled by the use of aircraft fuel.

24 (2)(a) "Aircraft fuel" means [*any*] gasoline and any other inflammable or combustible gas or
 25 liquid by whatever name [*such gasoline, gas or liquid is*] known or sold, usable as fuel for the op-
 26 eration of aircraft[, *except*].

27 (b) "Aircraft fuel" **does not mean** gas or liquid, the chief use of which, as determined by the
 28 Department of Transportation, is for purposes other than the propulsion of aircraft.

29 (3) "Airport" means any area of land or water, except a restricted landing area, which is de-
 30 signed for the landing and takeoff of aircraft.

31 (4) "Broker" means [*and includes*] every person other than a dealer engaged in business as a
 32 broker, jobber or wholesale merchant dealing in motor vehicle fuel or aircraft fuel.

33 (5) "Bulk transfer" means any change in ownership of motor vehicle fuel or aircraft fuel con-
 34 tained in a terminal storage facility or any physical movement of motor vehicle fuel or aircraft fuel
 35 between terminal storage facilities by pipeline or marine transport.

36 (6) "Dealer" means any person who:

37 (a) Imports or causes to be imported motor vehicle fuels or aircraft fuels for sale, use or dis-
 38 tribution in, and after the same reaches the State of Oregon, but "dealer" does not include any
 39 person who imports into this state motor vehicle fuel in quantities of 500 gallons or less purchased
 40 from a supplier who is licensed as a dealer under ORS 319.010 to 319.430 and who assumes liability
 41 for the payment of the applicable license tax to this state;

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

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

1 (d) Acquires title to or possession of motor vehicle fuels or aircraft fuels in this state and ex-
2 ports the product out of this state.

3 (7) "Department" means the Department of Transportation.

4 (8) "Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel
5 or aircraft fuel by a dealer to any service station or into any tank, storage facility or series of tanks
6 or storage facilities connected by pipelines, from which motor vehicle fuel or aircraft fuel is with-
7 drawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the
8 service station, tank or storage facility is owned, operated or controlled by the dealer.

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

11 [(9)] **(10)** "First sale, use or distribution of motor vehicle fuel or aircraft fuel" means the first
12 withdrawal, other than by bulk transfer, of motor vehicle fuel or aircraft fuel from terminal storage
13 facilities for sale, use or distribution. "First sale, use or distribution of motor vehicle fuel or aircraft
14 fuel" also means the first sale, use or distribution of motor vehicle fuel or aircraft fuel after import
15 into this state if the motor vehicle fuel or aircraft fuel is delivered other than to the terminal stor-
16 age facilities of a licensed dealer.

17 [(10)] **(11)** "Highway" means every way, thoroughfare and place, of whatever nature, open for
18 use of the public for the purpose of vehicular travel.

19 [(11)] **(12)** "Motor vehicle" means:

20 (a) All vehicles, engines, [or] machines **or equipment**, movable or immovable, operated or pro-
21 pelled by the use of motor vehicle fuel.

22 (b) **With respect to nonroad diesel equipment, equipment operated by the use of dyed
23 diesel for purposes other than the operation or propulsion of motor vehicles upon the high-
24 ways of this state.**

25 [(12)] **(13)(a)** "Motor vehicle fuel" means [and includes] gasoline, **clear and dyed diesel** and any
26 other inflammable or combustible gas or liquid, by whatever name [such gasoline, gas or liquid is]
27 known or sold, usable as fuel for the operation of motor vehicles[, except].

28 (b) **"Motor vehicle fuel" does not mean:**

29 (A) Gas or liquid, **other than dyed diesel**, the chief use of which, as determined by the de-
30 partment, is for purposes other than the propulsion of motor vehicles upon the highways of this
31 state[.]; or

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

33 (14) **"Nonroad diesel engine" means a compression ignition engine of 25 horsepower or
34 more that is not designed primarily to operate or propel a motor vehicle upon the highways
35 of this state.**

36 (15) **"Nonroad diesel equipment" means equipment powered by a nonroad diesel engine.**

37 [(13)] **(16)** "Person" [includes] **means** every natural person, association, firm, partnership, cor-
38 poration or the United States.

39 [(14)] **(17)** "Restricted landing area" means any area of land or water, or both, which is used
40 or made available for the landing and takeoff of aircraft, the use of which, except in case of emer-
41 gency, is provided from time to time by the department.

42 [(15)] **(18)** "Service station" means [and includes] any place operated for the purpose of retailing
43 and delivering motor vehicle fuel into the fuel tanks of motor vehicles or aircraft fuel into the fuel
44 tanks of aircraft.

45 [(16)] **(19)** "Terminal storage facility" means any fuel storage facility that has marine or pipeline

1 access.

2 **SECTION 27.** ORS 319.320 is amended to read:

3 319.320. (1) Upon compliance with subsection (2) or (3) of this section the Department of
 4 Transportation shall refund, in the manner provided in subsection (2) or (3) of this section, the tax
 5 on motor vehicle fuel that is used in the operation of a motor vehicle **other than nonroad diesel**
 6 **equipment:**

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

8 (b) By any person on any road, thoroughfare or property, other than a state highway, county
 9 road or city street, for the removal of forest products, as defined in ORS 321.005, or the products
 10 of such forest products converted to a form other than logs at or near the harvesting site, or for the
 11 construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement
 12 or permit authorizing the use, construction or maintenance of the road, thoroughfare or property,
 13 with or by:

14 (A) An agency of the United States;

15 (B) The State Board of Forestry;

16 (C) The State Forester; or

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

18 (c) By an agency of the United States or of this state or of any county, city or port of this state
 19 on any road, thoroughfare or property, other than a state highway, county road or city street.

20 (d) By any person on any county road for the removal of forest products, as defined in ORS
 21 321.005, or the products of such forest products converted to a form other than logs at or near the
 22 harvesting site, if:

23 (A) The use of the county road is pursuant to a written agreement entered into with, or to a
 24 permit issued by, the State Board of Forestry, the State Forester or an agency of the United States,
 25 authorizing such person to use such road and requiring such person to pay for or to perform the
 26 construction or maintenance of the county road;

27 (B) The board, officer or agency that entered into the agreement or granted the permit, by
 28 contract with the county court or board of county commissioners, has assumed the responsibility for
 29 the construction or maintenance of such county road; and

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

32 (2) Except for a farmer subject to subsection (3) of this section, the person or agency, as the
 33 case may be, who has paid any tax on such motor vehicle fuels levied or directed to be paid, as
 34 provided by ORS 319.010 to 319.430, is entitled to claim a refund of the tax so paid on such fuels
 35 or for the proportionate part of tax paid on fuels used in the operation of such vehicles, when part
 36 of the operations are over such roads, thoroughfares or property. The proportionate part shall be
 37 based upon the number of miles traveled by any such vehicle over such roads, thoroughfares or
 38 property as compared to the total number of miles traveled by such vehicle. To be eligible to claim
 39 such refund the person or agency, as the case may be, shall first establish and maintain a complete
 40 record of the operations, miles traveled, gallons of fuel used and other information, in such form and
 41 in such detail as the department may prescribe and require, the source of supply of all fuels pur-
 42 chased or used, and the particular vehicles or equipment in which used. Whenever any such claim
 43 is received and approved by the department, it shall cause the refund of tax to be paid to the
 44 claimant in like manner as provided for paying of other refund claims.

45 (3) A farmer who has paid any tax on motor vehicle fuels levied or directed to be paid, as pro-

1 vided in ORS 319.010 to 319.430, is entitled to claim a refund of the tax paid on such fuels used in
 2 farming operations in the operation of any motor vehicle, **other than nonroad diesel equipment**,
 3 on any road, thoroughfare or property in private ownership. To be eligible to claim such refund a
 4 farmer shall maintain in such form and in such detail as the department may prescribe and require,
 5 a record, supported by purchase invoices, of all such motor vehicle fuel purchased, [(including fuel
 6 purchased to operate any motor vehicle on the highway,)] and, for each and every motor vehicle
 7 operated on the highway, a record of all fuel used and of all miles traveled on the highway. When-
 8 ever any such claim is received and approved by the department, it shall cause the refund of tax to
 9 be paid to the claimant in like manner as provided for paying of other refund claims.

10 (4) As used in subsections (2) and (3) of this section, “farmer” [includes] **means** any person who
 11 manages or conducts a farm for the production of livestock or crops but does not include a person
 12 who manages or conducts a farm for the production of forest products, as defined in ORS 321.005,
 13 or the products of such forest products converted to a form other than logs at or near the harvesting
 14 site, or of forest trees unless the production of such forest products or forest trees is only incidental
 15 to the primary purpose of the farming operation.

16 **SECTION 28.** ORS 319.410 is amended to read:

17 319.410. (1) The Department of Transportation shall promptly turn over the license tax to the
 18 State Treasurer to be disposed of **as follows:**

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

21 **(b) The balance of the moneys from the license tax shall be disposed of** as provided in ORS
 22 802.110.

23 (2) The revenue from the license tax collected from the use, sale or distribution of aircraft fuel
 24 as imposed [by] **under** ORS 319.020 (2) shall be transferred upon certification of the department to
 25 the State Treasurer, who shall credit the certified amount to the State Aviation Account for the
 26 purpose of carrying out the provisions of the state aviation laws.

27
 28 **CLEAN DIESEL ENGINE FUND**
 29

30 **SECTION 29.** ORS 468A.801 is amended to read:

31 468A.801. (1) The Clean Diesel Engine Fund is established in the State Treasury separate and
 32 distinct from the General Fund. Interest earned by the Clean Diesel Engine Fund shall be credited
 33 to the fund. The moneys in the fund are continuously appropriated to the Department of Environ-
 34 mental Quality to be used for the purposes described in ORS 468A.803.

35 (2) The Clean Diesel Engine Fund consists of:

36 (a) Funds appropriated by the Legislative Assembly;

37 (b) Grants provided by the federal government pursuant to the federal Clean Air Act, 42 U.S.C.
 38 7401 et seq., or other federal laws;

39 (c) Moneys paid to the State of Oregon pursuant to the Environmental Mitigation Trust Agree-
 40 ment;

41 **(d) Moneys from the clean diesel engine taxes imposed under sections 1 to 18 of this 2023**
 42 **Act and transferred to the fund under section 9 of this 2023 Act;**

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

45 **(f) Moneys attributable to the privilege tax imposed on heavy-duty vehicles under ORS**

1 **320.405 and transferred to the fund under ORS 320.435;**

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

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

7 [(e)] **(i)** Any moneys deposited in the fund from any other public or private source.

8 **SECTION 30.** ORS 468A.795 is amended to read:

9 468A.795. As used in ORS 468A.795 to 468A.807:

10 (1) “Alternative fuel” means biofuels, biogas, natural gas, liquefied petroleum gas, hydrogen and
 11 electricity.

12 (2) “Best available exhaust control technology” means the most effective exhaust controls to
 13 reduce diesel particulate that rely on passively regenerated diesel particulate control technology
 14 supported in a vehicle’s normal duty cycle.

15 (3) “Cost-effectiveness threshold” means the cost, in dollars, per ton of diesel particulate matter
 16 reduced, as established by rule of the Environmental Quality Commission.

17 (4) “Diesel engine” means a compression ignition engine.

18 (5) “Environmental Mitigation Trust Agreement” means the fully executed Environmental Miti-
 19 gation Trust Agreement for State Beneficiaries effective October 2, 2017, and issued pursuant to
 20 Paragraph 17 of the Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability
 21 Litigation partial consent decree dated October 25, 2016.

22 (6) “Equivalent equipment” means a piece of equipment that performs the same function and has
 23 the equivalent horsepower to a piece of equipment subject to a replacement.

24 (7) “Equivalent motor vehicle” means a motor vehicle that performs the same function and is in
 25 the same weight class as a motor vehicle subject to a replacement.

26 (8) “Gross vehicle weight rating” means the value specified by the manufacturer as the maxi-
 27 mum loaded weight of a single or a combination vehicle.

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

30 (10) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline cost
 31 that would otherwise be incurred in the normal course of business.

32 (11) “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a unit
 33 that has a gross vehicle weight rating that is greater than 14,000 pounds but less than or equal to
 34 26,000 pounds.

35 (12) “Motor vehicle” has the meaning given that term in ORS 825.005.

36 (13) “Nonroad diesel engine” means a diesel engine of 25 horsepower or more that is not de-
 37 signed primarily to propel a motor vehicle on public highways.

38 (14) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of the
 39 use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two
 40 years preceding the scrapping of the engine.

41 (15) “Public highway” has the meaning given that term in ORS 825.005.

42 (16)(a) “Replacement” means:

43 (A) To scrap a motor vehicle powered by a diesel engine and replace the motor vehicle with an
 44 equivalent motor vehicle, **whether or not the equivalent motor vehicle is capable of being**
 45 **powered by alternative fuel;** or

1 (B) To scrap a piece of equipment powered by a nonroad diesel engine and replace the equip-
 2 ment with equivalent equipment.

3 (b) "Replacement" does not mean ordinary maintenance, repair or replacement of a diesel en-
 4 gine.

5 (17) "Repower" means to scrap an old diesel engine and substitute it with a new engine, a used
 6 engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum
 7 useful life of seven years.

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

13 (19) "Scrap" means to destroy, render inoperable and recycle.

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

16 **SECTION 31.** ORS 468A.803 is amended to read:

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

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

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

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

26 (d) Grants to the owners of Oregon diesel truck engines to scrap those engines.

27 (2) The Environmental Quality Commission by rule may set grant or loan award rates at a per-
 28 centage that is greater than a percentage allowed under subsection (1) of this section, provided that
 29 the grant or loan assistance will not exceed the cost-effectiveness threshold, if the higher percentage
 30 award rate would:

31 (a) Benefit sensitive populations or areas with elevated concentrations of diesel particulate
 32 matter; or

33 (b) Otherwise increase participation by those categories of owners or operators.

34 (3) In determining the amount of a grant or loan under this section, the department must reduce
 35 the incremental cost of a qualifying replacement, repower or retrofit by the value of any existing
 36 financial incentive that directly reduces the cost of the qualifying replacement, repower or retrofit,
 37 including tax credits, other grants or loans, or any other public financial assistance.

38 (4) The department may certify third parties to perform qualifying replacements, repowers and
 39 retrofits and may contract with third parties to perform such services for the certified costs of
 40 qualifying replacements, repowers and retrofits. The department may also contract with institutions
 41 of higher education or other public bodies as defined by ORS 174.109 to train and certify third par-
 42 ties to perform qualifying replacements, repowers and retrofits.

43 (5) The department may not award a grant or loan for a replacement, repower or retrofit under
 44 subsection (1) of this section unless the grant or loan applicant demonstrates to the department's
 45 satisfaction that the resulting equivalent motor vehicle, equivalent equipment, repowered nonroad

1 diesel engine or retrofitted diesel engine will undergo at least 50 percent of its use in Oregon, as
 2 measured by miles driven or hours operated, for the three years following the replacement, repower
 3 or retrofit.

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

13 (7) Subject to and consistent with federal law, any moneys received from the federal government
 14 that are deposited in the Clean Diesel Engine Fund under ORS 468A.801 (2)(b) must be used for in-
 15 itiatives to reduce emissions from diesel engines. Subsections (1) to (6) of this section and ORS
 16 468A.797 and 468A.799 do not apply to use of moneys in the fund received from the federal govern-
 17 ment.

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

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

26 **SECTION 32.** ORS 468A.807 is amended to read:

27 468A.807. (1) The Environmental Quality Commission shall adopt rules necessary to implement
 28 ORS 468A.795 to 468A.807.

29 (2) Rules adopted under this section must include, but need not be limited to, rules that establish
 30 preferences for awarding grants and loans under ORS 468A.803 (1) based upon:

- 31 (a) A percentage of diesel engine use in Oregon;
- 32 (b) Whether a grant or loan applicant will provide matching funds;
- 33 (c) Whether scrapping, replacement, repowering or retrofitting an engine will benefit sensitive
 34 populations or areas with elevated concentrations of diesel particulate matter; *[or]*

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

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

38 (3) Rules adopted by the commission under this section must reserve a portion of the financial
 39 assistance available each year for applicants that own or operate a small number of diesel engines
 40 or Oregon diesel truck engines and must provide for simplified access to financial assistance for
 41 those applicants.

42 (4) The Department of Environmental Quality may perform activities necessary to ensure that
 43 recipients of grants and loans from the Clean Diesel Engine Fund comply with applicable require-
 44 ments. If the department determines that a recipient has not complied with applicable requirements,
 45 the department may order the recipient to refund all grant or loan moneys and may impose penalties

1 pursuant to ORS 468.140.

2

3

APPLICABILITY, OPERATIVE DATES

4

5 **SECTION 33.** Sections 1 to 18 of this 2023 Act apply to tax base transactions that occur
6 on or after January 1, 2025.

7 **SECTION 34.** The amendments to ORS 307.870, 307.872, 307.875 and 307.888 by sections 19
8 to 22 of this 2023 Act apply to rentals of nonroad diesel equipment made on or after January
9 1, 2025.

10 **SECTION 35.** The amendments to ORS 317A.100, 320.400 and 320.435 by sections 23 to 25
11 of this 2023 Act apply to sales of heavy-duty taxable motor vehicles that occur on or after
12 January 1, 2025.

13 **SECTION 36.** The amendments to ORS 319.010, 319.320 and 319.410 by sections 26 to 28
14 of this 2023 Act become operative on January 1, 2025.

15 **SECTION 37.** The amendments to ORS 468A.801 by section 29 of this 2023 Act become
16 operative on January 1, 2025.

17

18

UNIT AND SECTION CAPTIONS

19

20 **SECTION 38.** The unit and section captions used in this 2023 Act are provided only for
21 the convenience of the reader and do not become part of the statutory law of this state or
22 express any legislative intent in the enactment of this 2023 Act.

23

24

EFFECTIVE DATE

25

26 **SECTION 39.** This 2023 Act takes effect on the 91st day after the date on which the 2023
27 regular session of the Eighty-second Legislative Assembly adjourns sine die.

28