

CHAPTER 64

AN ACT

HB 4139

Relating to the taxation of certain heavy equipment; and prescribing an effective date.

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

SECTION 1. As used in sections 1 to 10 of this 2018 Act:

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

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

(3) "Heavy equipment rental tax" means the tax imposed under section 2 of this 2018 Act.

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

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

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

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

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

(a) Mobile;

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

(c) Held primarily for rental.

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

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

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

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

(10) "Rental price" means the rental charge for qualified heavy equipment, net of any invoice

credits provided to the renter. "Rental price" does not include delivery and pickup fees, damage waivers or environmental mitigation fees.

SECTION 2. (1) A tax of two percent is imposed on the rental price received for any 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.

SECTION 3. (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 section 1 (7) of this 2018 Act.

(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 section 2 of this 2018 Act.

SECTION 4. (1) Every qualified heavy equipment provider that rents out qualified heavy equipment is responsible for collecting the heavy equipment rental tax and shall file a return with the Department of Revenue, on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter. The department shall prescribe the form and manner of the return required by this section, provided that the form shall require the qualified heavy equipment provider to report, for each county in the state, the aggregate rental prices and taxes collected for qualified heavy equipment rented out from each of its rental locations in the county during the applicable calendar quarter. The rules of the department shall require that returns be made under penalties for false swearing.

(2) When a return is required under subsection (1) of this section, the qualified heavy equipment provider required to make the return shall remit the tax due to the department at the time fixed for filing the return.

SECTION 5. If the amount paid by a qualified heavy equipment provider to the Department of Revenue under section 4 of this 2018 Act exceeds the amount of tax payable, the depart-

ment shall refund the amount of the excess. A refund may not be made to a qualified heavy equipment provider that fails to claim the refund within two years after the due date for filing the return to which the claim for refund relates.

SECTION 6. (1) Every qualified heavy equipment provider is deemed to hold the amount of heavy equipment rental taxes collected in trust for the State of Oregon and for payment to the Department of Revenue in the manner and at the time provided under section 4 of this 2018 Act.

(2) At any time the qualified heavy equipment provider fails to remit any amount of heavy equipment rental taxes deemed to be held in trust for the State of Oregon, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued on the delinquent amount. The warrant shall be issued, docketed and proceeded upon in the same manner and shall have the same force and effect as warrants for the collection of delinquent income taxes.

SECTION 7. (1) Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and 316 governing the audit and examination of reports and returns, confidentiality of reports and returns, determination of deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax Court, and related procedures, apply to sections 1 to 10 of this 2018 Act as if the heavy equipment rental tax were a tax imposed upon or measured by net income. The provisions apply to the taxpayer liable for the tax and to any qualified heavy equipment provider required to collect the tax.

(2) Any amount collected and required to be remitted to the Department of Revenue is considered a tax upon the qualified heavy equipment provider required to collect the tax and the qualified heavy equipment provider is considered a taxpayer.

SECTION 8. (1) All moneys received by the Department of Revenue pursuant to sections 1 to 10 of this 2018 Act, 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) 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 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.

(3) Each county treasurer shall:

(a) Deposit the moneys received from the department under subsection (2) 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 9. (1) Public records of heavy equipment rental tax moneys collected by the Department of Revenue pursuant to sections 1 to 10 of this 2018 Act are exempt from disclosure under ORS 192.311 to 192.478. Nothing in this section shall limit the use that can be made of such information for regulatory purposes or its use and admissibility in any enforcement proceedings.

(2) If a conflict is found to exist between subsection (1) of this section and ORS 314.835, ORS 314.835 controls.

SECTION 10. The Department of Revenue may adopt rules necessary for the administration and enforcement of the heavy equipment rental tax under sections 1 to 10 of this 2018 Act.

SECTION 11. (1) Sections 1 to 10 of this 2018 Act apply to rentals of qualified heavy equipment occurring on or after January 1, 2019.

(2) For purposes of complying with section 3 (1) of this 2018 Act for the property tax year beginning on July 1, 2018, a qualified heavy equipment provider shall register with the Department of Revenue no later than December 31, 2018.

SECTION 12. (1)(a) On or before March 31, 2019, each qualified heavy equipment provider shall file with the Department of Revenue a complete report on forms provided by the department, made under penalties for false swearing, that lists the qualified heavy equipment that is assigned to each rental location and that is:

(A) In this state on January 1, 2019, at 1:00 a.m.; and

(B) Subject to the heavy equipment rental tax imposed under section 2 of this 2018 Act.

(b) The report required under this subsection shall provide the cost, acquisition date, description and rental location of each piece of qualified heavy equipment.

(c) The department shall use the report required under this subsection and the 14 years personal property valuation factors found in Table 2 of the department's Personal Property Valuation Guidelines 2017, as revised effective December 2016, to determine a real market value for the qualified heavy equipment for purposes of this section.

(d) For purposes of this section, the department shall determine the maximum assessed value and assessed value for the qualified heavy equipment under ORS 308.153, treating the qualified heavy equipment as new property within the meaning of ORS 308.149 (6)(a)(C).

(e) The department shall use the values determined under this section to estimate the amount of ad valorem property taxes that would be due for the property tax year beginning on July 1, 2019, if the qualified heavy equipment were subject to ad valorem property taxation.

(2) On or before March 31, 2020, for each rental location, the department shall compare:

(a) The total amount of tax reported under section 4 of this 2018 Act, after any adjustment or amended returns, that is attributable to qualified heavy equipment rented out from the rental location during the 2019 calendar year; and

(b) The total estimated ad valorem property tax amount determined under subsection (1) of this section.

(3)(a) If the total amount determined under subsection (2)(a) of this section is less than the total amount determined under subsection (2)(b) of this section, the department shall collect the amount of the difference from the applicable qualified heavy equipment provider as a supplemental amount of the heavy equipment rental tax imposed under section 2 of this 2018 Act.

(b) The supplemental tax amount shall be payable on or before the later of June 30, 2020, or within 60 days after the date of the notice from the department.

(c) After retaining moneys necessary to reimburse the department for the actual costs incurred by the department in administering this section, not to exceed five percent of the supplemental tax amount, the department shall remit each net supplemental tax amount collected under this subsection to the treasurer of the county in which the applicable rental location is located and the county treasurer shall deposit all such amounts in the county's unsegregated tax collections account.

(4) If the amount determined under subsection (2)(a) of this section is greater than the amount determined under subsection (2)(b) of this section, the department shall, in the department's sole discretion, refund the amount of the difference to the qualified heavy equipment provider without interest or issue the amount of the difference without interest as a credit against future heavy equipment rental tax liabilities of the qualified heavy equipment provider.

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

SECTION 13. (1)(a) On or before March 31, 2020, each qualified heavy equipment provider shall file with the Department of Revenue a complete report on forms provided by the department, made under penalties for false swearing, that lists the qualified heavy equipment that is assigned to each rental location and that is:

(A) In this state on January 1, 2020, at 1:00 a.m.; and

(B) Subject to the heavy equipment rental tax imposed under section 2 of this 2018 Act.

(b) The report required under this subsection shall provide the cost, acquisition date, description and rental location of each piece of qualified heavy equipment.

(c) The department shall use the report required under this subsection and the 14 years personal property valuation factors found in Table 2 of the department's Personal Property Valuation Guidelines 2017, as revised effective December 2016, to determine a real market value for the qualified heavy equipment for purposes of this section.

(d) For purposes of this section, the department shall determine the maximum assessed value and assessed value for the qualified heavy equipment under ORS 308.153, treating the qualified heavy equipment as new property within the meaning of ORS 308.149 (6)(a)(C).

(e) The department shall use the values determined under this section to estimate the amount of ad valorem property taxes that would be due for the property tax year beginning on July 1, 2020, if the qualified heavy equipment were subject to ad valorem property taxation.

(2) On or before March 31, 2021, for each rental location, the department shall compare:

(a) The total amount of tax reported under section 4 of this 2018 Act, after any adjustment or amended returns, that is attributable to qualified heavy equipment rented out from the rental location during the 2020 calendar year; and

(b) The total estimated ad valorem property tax amount determined under subsection (1) of this section.

(3)(a) If the total amount determined under subsection (2)(a) of this section is less than the total amount determined under subsection (2)(b) of this section, the department shall collect the amount of the difference from the applicable qualified heavy equipment provider as a supplemental amount of the heavy equipment rental tax imposed under section 2 of this 2018 Act.

(b) The supplemental tax amount shall be payable on or before the later of June 30, 2021, or within 60 days after the date of the notice from the department.

(c) After retaining moneys necessary to reimburse the department for the actual costs incurred by the department in administering this section, not to exceed five percent of the supplemental tax amount, the department shall remit each net supplemental tax amount collected under this subsection to the treasurer of the county in which the applicable rental location is located and the county treasurer shall deposit all such amounts in the county's unsegregated tax collections account.

(4) If the amount determined under subsection (2)(a) of this section is greater than the amount determined under subsection (2)(b) of this section, the department shall, in the department's sole discretion, refund the amount of the difference to the qualified heavy equipment provider without interest or issue the amount of the difference without interest as a credit against future heavy equipment rental tax liabilities of the qualified heavy equipment provider.

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

SECTION 14. Sections 7, 9 and 10 of this 2018 Act and the definitions provided by section 1 of

this 2018 Act apply to sections 12 and 13 of this 2018 Act.

SECTION 15. Sections 12 and 13 of this 2018 Act are repealed on January 2, 2022.

SECTION 16. (1) Not later than July 1, 2022, the Department of Revenue, after consulting with the Legislative Revenue Officer as necessary, shall submit a report in the manner provided in ORS 192.245 to the interim committees of the Legislative Assembly related to revenue regarding the heavy equipment rental tax imposed under section 2 of this 2018 Act.

(2) For tax years with valuation dates of January 1, 2019, and January 1, 2020, the report shall set forth:

(a) The revenue collected under sections 12 (3)(a) and 13 (3)(a) of this 2018 Act, after payment of refunds, for all taxpayers registered as qualified heavy equipment providers; and

(b) The amount of ad valorem property taxes that would have been due for the property tax years beginning on July 1, 2019, and July 1, 2020, respectively, if the qualified heavy equipment had been subject to ad valorem property taxation.

(3) In the report the Legislative Revenue Officer shall propose a tax rate for section 2 of this 2018 Act that, based on the experience of the heavy equipment rental tax to date, will maintain revenue neutrality with respect to the replacement of the ad valorem property tax by the heavy equipment rental tax.

SECTION 17. Section 16 of this 2018 Act is repealed on January 2, 2023.

SECTION 18. This 2018 Act takes effect on the 91st day after the date on which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor April 3, 2018

Filed in the office of Secretary of State April 3, 2018

Effective date June 2, 2018