

Oregon “Corporate Activity Tax” now effective law, applies to tax years beginning on or after January 1, 2020

Overview

On May 16, 2019, Oregon Governor Kate Brown (D) signed House Bill 3427 (H.B. 3427), legislation that creates the “Corporate Activity Tax” (Oregon CAT).¹ Intended to raise approximately \$1 billion in new annual revenue,² the Oregon CAT will go into effect for tax years beginning on or after January 1, 2020³ and will apply **in addition** to Oregon’s existing taxes.⁴ On July 23rd, Governor Brown signed House Bill 2164 (H.B. 2164), which included several technical amendments to the Oregon CAT.⁵

Despite the Governor’s signature, neither H.B. 3427 nor H.B. 2164 became effective until September 29, 2019, the 91st day after the date of adjournment *sine die* of the Oregon legislative session due to the potential for Oregon voters to reject bills through their referendum power.⁶ However, sufficient support was not gathered to trigger a vote on H.B. 3427, so the Oregon CAT legislation is now effective. As noted above, this tax will go into effect for tax years beginning on or after January 1, 2020.

This tax alert highlights the significant technical amendments made to the Oregon CAT by H.B. 2164 and discusses next steps for the guidance related to the Oregon CAT, as well as considerations for taxpayers. For additional details on H.B. 3427 and a general discussion of the Oregon CAT, see Deloitte Multistate Tax Alert, [Oregon enacts Corporate Activity Tax \(CAT\), imposed on modified gross receipts](#).

New definitions and limitation for subtraction from commercial activity

The Oregon CAT is generally imposed on a taxpayer’s gross receipts sourced to Oregon, referred to as “taxable commercial activity.”⁷ The Oregon CAT provides taxpayers with a subtraction from taxable commercial activity of 35 percent of the greater of the taxpayer’s annual:

- Cost inputs; or
- Labor costs.⁸

H.B. 3427 defined “cost inputs” as “the cost of goods sold as calculated under” IRC Section 471.⁹ H.B. 2164 amended this definition to define “cost inputs” as “the cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code.”¹⁰ H.B. 3427 defined “labor costs” as the “total compensation of all employees, not to include compensation paid to any single employee in excess of \$500,000.”¹¹ H.B. 2164 did not amend this definition.

¹ H.B. 3427-A, at Section 63.

² See Revenue Impact of HB 3427-A, 80th Oregon Legislative Assembly, 2019 Regular Session, prepared by Chris Allanach, state economist (April 29, 2019).

³ *Id.* at Sections 79 – 80.

⁴ *Id.* at Section 56.

⁵ H.B. 2164.

⁶ Or. Const. art. IV, Section 1(3); H.B. 3427, at Section 84; H.B. 2164, at Section 62. This date was set at June 30, 2019 (<https://www.oregonlegislature.gov/calendar/Lists/Session%20Deadlines/DispForm.aspx?ID=51>).

⁷ H.B. 3427, at Section 58(17). For additional details, see Deloitte Multistate Tax Alert, [Oregon enacts Corporate Activity Tax \(CAT\), imposed on modified gross receipts](#).

⁸ *Id.* at Section 64(1).

⁹ *Id.* at Section 58(4).

¹⁰ H.B. 2164, at Section 50.

¹¹ H.B. 3427, at Section 58(13).

H.B. 2164 imposed a new limitation on the Oregon CAT subtraction by providing that a subtraction is not allowed for expenses related to intercompany transactions between members of a unitary group or for cost inputs or labor costs attributable to a person's receipts that are not commercial activity.¹² The provisions in H.B. 3427 had provided that intercompany transactions between members of a unitary group are not commercial activity, so there is some overlap between these two provisions.¹³

Reduced commercial activity threshold for definition of "excluded person"

While the Oregon CAT is broadly applicable to most types of business entities,¹⁴ H.B. 3427 carved out "excluded persons" to whom the Oregon CAT did not apply.¹⁵ One such "excluded person" is any person with commercial activity of \$1 million or less for the year (unless the person is a member of a unitary group with commercial activity in excess of \$1 million for the year).¹⁶ The Oregon CAT is imposed on a unitary group and in that instance, the members are jointly and severally liable for the Oregon CAT.¹⁷

H.B. 2164 reduces this threshold to \$750,000, thus limiting this exception.¹⁸ H.B. 2164 also amended the definition of "taxpayer" to provide that "excluded persons" are not taxpayers "except to the extent that a tax-exempt entity has unrelated business income that is taxable under the Internal Revenue Code."¹⁹

Financial institutions and insurers

H.B. 3427 provided limited guidance for the imposition of the CAT on taxpayers qualifying as either financial institutions or insurers. H.B. 2164 provided additional clarifying provisions for these taxpayers, including:

- Defining "commercial activity" for a financial institution as:
 - If the reporting person for a financial institution is a holding company, all items of income reporting on the FR Y-9 filed by the holding company;
 - If the reporting person for a financial institution is a bank organization, all items of income reported on the call report filed by the bank organization; and
 - If the reporting person for a financial institution is a nonbank financial organization, all items of income reporting with generally accepted accounting principles.²⁰
- Defining "commercial activity" for an insurer as:
 - Amounts reported on the statement of premiums accompanying the annual statement filed with the Oregon Department of Consumer and Business Services;
 - Gross direct life insurance premiums;
 - Gross direct accident and health insurance premiums;
 - Gross direct property and casualty insurance premiums; and
 - Gross amount of surplus lines premiums received on Oregon home state risks and shown in the report required by Oregon law.²¹

¹² H.B. 2164, at Section 53.

¹³ H.B. 3427, at Section 58(1)(b)(BB).

¹⁴ *Id.* at Section 58(15) (broad definition of "person" subject to Oregon CAT includes individuals, pass-through entities, corporations, disregarded entities, and many other types of taxpayers).

¹⁵ *Id.* at Section 58(6).

¹⁶ *Id.* at Section 58(6)(j).

¹⁷ H.B. 3427, at Section 62. For Oregon CAT purposes, a unitary business may include a variety of persons, not just C corporations.

¹⁸ H.B. 2164, at Section 50.

¹⁹ H.B. 2164, at Section 50.

²⁰ *Id.*

²¹ *Id.*

External Multistate Tax Alert

- Excluding interest income, including service charges, and receipts from hedging transactions (to the extent they are entered into primarily to protect a financial position) from “commercial activity” for financial institutions;²²
- Excluding federally insured premiums or income from transactions between a reciprocal insurer and its attorney in fact operating under Oregon law from “commercial activity” for insurers;²³ and
- For both financial institutions and insurers, commercial activity is generally to be sourced to Oregon “if it is from business conducted” in Oregon.²⁴

Other provisions

The Oregon CAT is generally imposed on the taxpayer with sales creating the commercial activity subject to tax and not on the purchaser.²⁵ H.B. 2164, however, amended these rules slightly to provide that notwithstanding this general rule, “a vehicle dealer may collect from the purchaser of a motor vehicle the estimated portion of the tax imposed . . . that is attributable to commercial activity from the sale of the vehicle.”²⁶

The Oregon CAT was initially created to be an annual tax filing (due on April 15th of the following year) with quarterly tax payments due on the last day of January, April, July and October during the year for the previous calendar quarter.²⁷ H.B. 2164 provides that these payments are estimated tax payments.²⁸ Neither H.B. 3427 nor H.B. 2164 includes any provisions for filing the Oregon CAT return on a fiscal year or for obtaining extensions of the period for filing the annual return beyond April 15th.

There had been some debate during the 2019 legislative session that the Oregon CAT would increase the cost of housing in Oregon.²⁹ To help address this concern, H.B. 2164 created a new exclusion from taxable commercial activity for subcontractors working on single-family residential construction in Oregon: these contractors may now exclude payments for labor costs made by a general contractor to a subcontractor.³⁰ However, this exclusion:

- Is not allowed for payments for materials, land or permits;
- Is not allowed for payments between subcontractors; and
- Is limited to 15% of payments for labor by the general contractor.³¹

Neither H.B. 3427 nor H.B. 2164 includes any provision that incorporates, by reference or otherwise, Oregon’s market-sourcing rules for the calculation of the Oregon sales factor for corporate income tax purposes.

Next steps

The Oregon Department of Revenue (Department) is currently working on drafting administrative rules to implement the Oregon CAT and is hosting open stakeholder meetings across the state at published dates, times and locations through Friday, October 4, 2019.³² At a meeting with the Oregon State Bar Taxation Section Laws Committee (Committee) on Friday, September 20th, at the Department’s Salem offices, the Department stated that it was considering allowing out-of-state stakeholders to dial into some of the scheduled meetings or to schedule additional meetings for that purpose.

Furthermore, at that meeting the Department informed the Committee that the Department planned on releasing temporary administrative rules for the Oregon CAT in early January, February, and March 2020, with permanent administrative rules to be released in the subsequent quarter. The Department also informed the Committee that it was working on such key items as drafting forms, implementing a registration process, and other such administrative aspects of the Oregon CAT.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at Section 54.

²⁵ H.B. 3427, at Section 63(1).

²⁶ H.B. 2164, at Section 52.

²⁷ H.B. 3427, at Section 70(1)-(2).

²⁸ H.B. 2164, at Section 56.

²⁹ See Oregon State Legislature, 2019 Regular Session, HB 2164 Enrolled, Measure History, public hearings available here: <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2164>.

³⁰ *Id.* at Section 58.

³¹ *Id.*

³² The Department has made the outreach meeting schedule and other information available here: <https://www.oregon.gov/DOR/programs/businesses/Pages/corporate-activity-tax.aspx>.

External Multistate Tax Alert

The next session of the Oregon Legislature is only scheduled to run from February 3, 2020 through March 8, 2020. It is widely expected that a number of bills regarding the Oregon CAT will be submitted for consideration during that short time. However, the Legislature will have far fewer days during this session to consider any proposed legislation than it had during the 2019 session. Stakeholders who are considering working through the legislative process to implement changes to the Oregon CAT should bear that time frame in mind.

Considerations

Taxpayers who may be subject to the Oregon CAT should carefully review the new tax to determine if and to the extent they will be subject to this tax. As currently drafted, affected taxpayers will need to make their first estimated tax payment on or before April 30, 2020. Taxpayers may also want to consider implementing a process to stay current on key future developments, including but not limited to the Department's release of temporary administrative rules or guidance, such as forms and instructions for registration.

Contacts:

If you have questions regarding the Oregon CAT or other Oregon tax matters, please contact any of the following Deloitte professionals:

Doug Andersen

Partner

Deloitte Tax LLP, Seattle

+1 206 716 7430

douandersen@deloitte.com

Scott Schiefelbein

Managing Director, Washington National Tax

Deloitte Tax LLP, Portland

+1 503 727 5382

sschiefelbein@deloitte.com

Robert Wood

Senior Manager

Deloitte Tax LLP, Seattle

+1 206 716 7076

robwood@deloitte.com

For further information, visit our website at www.deloitte.com/us/multistatetax

Follow [@DeloitteTax](https://twitter.com/DeloitteTax)

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

About Deloitte

As used in this document, "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2019 Deloitte Development LLC. All rights reserved.