

Oregon Corporate Activity Tax (CAT): Technical amendment bill passes and permanent rules finalized

Overview

The Oregon Corporate Activity Tax (Oregon CAT) is applicable for years beginning on or after January 1, 2020.¹ During its special legislative session, the Oregon legislature passed a H.B. 4202, which provides a number of technical amendments to the Oregon CAT statutes under Or. Stat. 317A. Additionally, the Oregon Department of Revenue ("Department") finalized 17 permanent rules for the Oregon CAT. This alert summarizes the provisions of H.B. 4202 and the finalized permanent rules.

Brief Overview of the CAT

The Oregon CAT is imposed on "taxable commercial activity" in excess of \$1 million at the rate of 0.57 percent, plus a flat tax of \$250 for the first \$1 million of taxable commercial activity.² Taxpayers whose taxable commercial activity does not exceed \$1 million are exempt from the Oregon CAT.³ The tax is imposed on the person receiving the commercial activity and is not imposed directly on the purchaser.⁴ Generally, "taxable commercial activity" means the "total amounts realized" by the taxpayer arising from transactions and activity in the regular course of the taxpayer's trade or business that are sourced to Oregon,⁵ reduced by the applicable subtraction for either cost inputs or labor costs.⁶ The CAT provides a number of specific exclusions from the definition of commercial activity.⁷ For additional details on the general provisions of the Oregon CAT, see Deloitte Multistate Tax Alerts, [Oregon enacts Corporate Activity Tax \(CAT\), imposed on modified gross receipts](#) and [Oregon "Corporate Activity Tax" now effective law, applies to tax years beginning on or after January 1, 2020](#).

The Oregon CAT is a separate and distinct tax that will not directly affect Oregon's corporate excise/income tax systems. The Oregon corporate excise tax, codified in Chapter 317, is a net income tax imposed on C corporations doing business in Oregon. Whereas the Oregon corporate income tax, codified in Chapter 318, is imposed on C corporations that are not doing business in Oregon but that have income sourced to Oregon. Oregon has codified the CAT legislation in a new Chapter 317A of the Oregon Revised Statutes.⁸ As such the Oregon CAT will apply in addition to the Oregon corporate excise tax and Oregon corporate income tax.

Oregon Passes Oregon CAT Technical Corrections Bill

During its brief special session, the Oregon legislature passes H.B. 4202, which provides a number of technical amendments to the Oregon CAT. While the bill is currently enacted⁹, the bill is not effective until 91 days after the adjournment sine die of the 2020 Oregon Legislature (i.e., the effective date will be September 25, 2020).¹⁰ Some of the significant technical amendments include:

- **Modified Filing Group Election:** Or. Rev. Stat. § 317A.106, which provides that unitary groups must file and pay the Oregon CAT as a single taxpayer on a worldwide basis, was amended to include an election to exclude certain foreign affiliates. The election provides that taxpayers can modify the unitary group to exclude "all foreign members with no commercial activity, or amounts realized but by definition excluded from commercial activity, that is sourced to Oregon".¹¹ The bill text, however, left the policy

¹ Or. Rev. Stat. § 317A et seq., available [here](#).

² Or. Rev. Stat. § 317A.125(1).

³ Or. Rev. Stat. § 317A.125(2).

⁴ Rev. Stat. § 317A.116.

⁵ Rev. Stat. §§ 317A.100(1)(a); 317A.128.

⁶ Ore. Rev. Stat. §§ 317A.100(1)(b); 317A.119.

⁷ Or. Rev. Stat. § 317A.100(1)(b).

⁸ See Or. Rev. Stat. § 317A et seq., available [here](#).

⁹ As of June 30, 2020, H.B. 4202 has been enacted as H.B. 4202, Chapter 2 (Laws 2020). <https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4202>.

¹⁰ H.B. 4202, Section 12, Laws 2020.

¹¹ H.B. 4202, Section 2, Laws 2020.

and procedures for making this election up to the Department (which the Department implemented with Or. Admin. R 150-317-1025).

- **Returns and Allowances Offset Commercial Activity:** Taxpayers may offset commercial activity with returns and allowances (as applicable to Internal Revenue Code section 448) in the calendar year in which the returns and allowances are made.¹²
- **One-Time CAT Registration:** As originally drafted, Or. Rev. Stat. § 317A.131 arguably required CAT taxpayers to register annually with the Department. The statute was amended to clarify that a taxpayer only needs to register once and only upon exceeding \$750,000 in commercial activity (a “taxpayer” still includes a unitary group and is not limited to a single entity). The statute was further amended to provide that upon a merger or reorganization, the Department may require the taxpayer, or the taxpayer’s successor, to register at a later date.
- **Estimated Tax Penalties:** Or. Rev. Stat. § 317A.161, which outlines underpayment and filing penalties, was amended to institute a safe-harbor rule for quarterly underpayments if the taxpayer “has paid an amount at least equal to the taxpayer’s required installment for the corresponding quarter of the preceding tax year.”¹³ The state however, does not provide the safe-harbor for taxpayers that fail to file or pay their annual OR CAT obligations. This amendment applies for tax years beginning on or after January 1, 2022 (OR CAT returns due after April 15, 2022).¹⁴
- **Clarification of Agricultural and Farming Commercial Activity Provisions:** H.B.4202 made a number of amendments to the Oregon CAT statute to address and/or clarify treatment for agricultural and farming commercial activity.¹⁵
- **Fiscal Year Election for Purposes of Subtraction Calculation:** While the CAT is a mandatory calendar year return for all taxpayers, H.B. 4202 provides for an annual election allowing taxpayers to use their most recent fiscal year information for purposes of calculating the subtraction under Or. Rev. Stat. § 317A.119.¹⁶

Unless specifically noted above, the amendments outlined apply to tax years beginning on or after January 1, 2020.¹⁷

Order for Permanent Administrative Rules

On June 24, 2020, the Department issued a Permanent Administrative Order finalizing 17 temporary administrative rules with the Oregon Secretary of State, which have an effective date of June 28, 2020.¹⁸ The permanent rules are:

- **Or. Admin. R. 150-317-1000:** Definition of Commercial Activity
- **Or. Admin. R. 150-317-1010:** Substantial Nexus Guidelines for the Corporate Activity Tax
- **Or. Admin. R. 150-317-1020:** Corporate Activity Tax Unitary Business Factors, Common Ownership and Filing Requirements for Unitary Groups
- **Or. Admin. R. 150-317-1025:** Corporate Activity Tax: Unitary Groups with Non-U.S. Members - Reporting Requirements
- **Or. Admin. R. 150-317-1030:** Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property
- **Or. Admin. R. 150-317-1040:** Sourcing Commercial Activity of Other than Sales of Tangible Personal Property
- **Or. Admin. R. 150-317-1100:** Agent Exclusion
- **Or. Admin. R. 150-317-1120:** Exclusion for subcontracting payments
- **Or. Admin. R. 150-317-1130:** Property Brought into Oregon
- **Or. Admin. R. 150-317-1150:** Retail Sale of Groceries Exclusion
- **Or. Admin. R. 150-317-1200:** Cost Input or Labor Cost Subtraction
- **Or. Admin. R. 150-317-1220:** Employee Compensation: Labor Cost Subtraction

¹² H.B. 4202, Section 3, Laws 2020.

¹³ H.B. 4202, Section 9, Laws 2020.

¹⁴ H.B. 4202, Section 11, Laws 2020.

¹⁵ See H.B. 4202, Sections 1; 6, Laws 2020.

¹⁶ See H.B. 4202, Section 4, Laws 2020.

¹⁷ H.B. 4202, Sections 8,11, Laws 2020.

¹⁸ Or. Rev. Perm. Admin. Order Rev 11-2020, Or. Dept. of Rev, (6/24/2020).

- **Or. Admin. R. 150-317-1300:** Estimated Tax: When Estimated Payments Are Required
- **Or. Admin. R. 150-317-1310:** Estimated Tax Payments: Delinquent or Underestimated Payment or Both, Constitutes Underpayment
- **Or. Admin. R. 150-317-1320:** Estimated Tax: Unitary Groups and Apportioned Returns
- **Or. Admin. R. 150-317-1330:** Extension of Time to File
- **Or. Admin. R. 150-317-1410:** Motor Vehicle Resale Certificate - Documentation Required

Considerations

While there were a number of amendments to the Oregon CAT within the most recent special session, many of the proposed amendments to the OR CAT statutes were not adopted. The Department may try to address some nuances within the administrative rules process (the rulemaking process is generally anticipated to continue through October and November, 2020, but the precise rulemaking schedule has not yet been published). Deloitte is continuing to monitor the release of additional temporary administrative rules and/or additional finalization of permanent rules.

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