

Oregon issues a draft Corporate Activity Tax (CAT) administrative rule regarding financial institutions

Overview

The Oregon Corporate Activity Tax (Oregon CAT) became effective in late September 2019 and is applicable for years beginning on or after January 1, 2020.¹ The Oregon Department of Revenue (“Department”) previously released eighteen temporary administrative rules and issued Notice of Proposed Rulemaking specifying seventeen rules that the Department intends to finalize and provides a public hearing date. In continuing its guidance on the Oregon CAT, the Department released another temporary rule applicable to financial institutions. This alert summarizes this recently released temporary rule.

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 imposed by the state, which 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.

Overview of Temporary Rule for Financial Institutions

The Department previously filed eighteen temporary administrative rules with the Oregon Secretary of State, which have an effective date of January 1, 2020 through June 28, 2020.⁹ On April 26, 2020 the Department issued a Notice for Proposed Rulemaking for seventeen of these rules, announcing a public hearing for the purpose of making these rules permanent.¹⁰ Recently, the Department released another draft temporary rule, Or. Admin. R. 150-317-1050: Sourcing of Commercial Activity for Financial Institutions in This State.¹¹

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

² Or. Rev. Stat. § 317A.125(1).

³ Or. Rev. Stat. § 317A.125(2).

⁴ Or. Rev. Stat. § 317A.116).

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

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

⁷ The full list of exclusions is found in Or. Rev. Stat. § 317A.100(1)(b).

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

⁹ See Or. Rev. Temporary Admin. Order Rev 15-2019, Or. Dept. of Rev. (12/30/2019), available [here](#); Or. Rev. Temporary Admin. Order Rev 2-2020, Or. Dept. of Rev. (2/1/2020), available [here](#); and Or. Rev. Temporary Admin. Order Rev 3-2020, Or. Dept. of Rev. (3/6/2020), available [here](#).

¹⁰ See Or. Rev. Notice of Proposed Rulemaking, Or. Dept. of Rev. (4/26/2020), available [here](#).

¹¹ See Or. Admin. R. 150-317-1050, Or. Dept. of Rev. (04/23/2020), available [here](#).

The statutory guidance provided for the sourcing of commercial activity by Or. Rev. Stat. § 317A.128 is very highlevel; therefore, this temporary rule provides guidance for sourcing for numerous types of receipts earned by financial institutions, including::

- Receipts from the sale, rental, lease, or license of real property;
- Receipts from the lease of tangible personal property;
- Interest, fees, and penalties imposed in connection with loans secured by real property;
- Interest, fees, and penalties imposed in connection with loans not secured by real property;
- Net gains from the sale of loans;
- Receipts from fees, interest, and penalties charged to card holders;
- Net gains from the sale of credit card receivables;
- Card issuer's reimbursement fees;
- Receipts from merchant discount;
- Receipts from ATM fees;
- Loan servicing fees;
- Receipts from services not otherwise sourced under this rule;
 - Services Delivered to Individual Customers;
 - Services Delivered to Business Customers;
 - Safe Harbor; Large Volume of Transactions;
 - Related Party Transactions;
- Receipts from the financial institution's investment assets and activities and trading assets and activities; and
- All other receipts.¹²

The Oregon CAT provides a general rule for most taxpayers that interest income except for interest on credit sales must be excluded from commercial activity,¹³ Financial institutions, however, must generally include interest income in commercial activity..¹⁴ The temporary rule provides that interest income included in commercial activity must be sourced as follows:

- Interest income receipts on credit sales are sourced to Oregon if the billing address of the credit card holder is in Oregon.¹⁵
- For financial institutions, receipts from interest income are sourced depending upon the type of property securing the loan.
 - Interest income from a loan secured by real property is sourced to Oregon if the property is located within Oregon, but if not more than 50% of the real property is not located in one state then the interest income receipts are sourced to the location of the borrower.¹⁶
 - Receipts from interest income from loans not secured by real property are sourced to Oregon if the borrower is in Oregon.¹⁷

Additional sourcing rules are included in this temporary rule (e.g., sourcing commercial activity from the sale of loans, etc.). This temporary rule is generally consistent with the sourcing rules provided for the special apportionment rule for financial institutions for Oregon's corporate excise tax (Or. Admin. R. 150-314-0088).

To provide input to the Department regarding these administrative rules, taxpayers are instructed to email Cat.rules.dor@oregon.gov.

Considerations

The Oregon CAT administrative rules, while temporary, are binding on taxpayers;¹⁸ therefore, it is advised that taxpayers review each of these rules in their entirety in order to understand how these rules may impact their business. Deloitte is continuing to monitor the release of additional temporary administrative rules by the Department.

¹² Or. Admin. R. 150-317-1050(4)(a)-(o).

¹³ Or. Rev. Stat. § 317A.100(1)(b)(A)(i).

¹⁴ Or. Rev. Stat. § 317A.100(1)(b)(A)(ii).

¹⁵ Or. Admin. R. 150-317-1050(4)(g).

¹⁶ Or. Admin. R. 150-317-1050(4)(d).

¹⁷ Or. Admin. R. 150-317-1050(4)(e).

¹⁸ Or. Rev. Temporary Admin. Order Rev 3-2020, Or. Dept. of Rev. (3/4/2020), available [here](#).

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