

Oregon issues Notice of Proposed Rulemaking for Corporate Activity Tax (CAT) administrative rules

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 relating to various provisions of the Oregon CAT. This tax alert summarizes its Notice of Proposed Rulemaking which indicates the rules that the Department intends to finalize and provides a public hearing date.

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.

Notice of Proposed Rulemaking

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 the following seventeen Oregon CAT administrative rules.¹⁰ The following rules are included within the Notice:

- [Or. Admin. R. 150-317-1000](#): Definition of Commercial Activity
- [Or. Admin. R. 150-317-1010](#): Substantial Nexus Guidelines for Corporate Activity Tax
- [Or. Admin. R. 150-317-1020](#): Factors Used in Determining Whether a Group of Persons Forms a Unitary Group (Guidance on who is included in a unitary group; CAT unitary group is not tied to a

¹ H.B. 3427-A, Sections 63; 79-80. Oregon CAT established under Ore. Laws 2019, ch. 122, sections 58 to 76 (enrolled H.B. 3427) as amended by Oregon Laws 2019, ch. 579, sections 50 to 60 (enrolled H.B. 2164) (codified under Or. Rev. Stat. § 317A et.seq.), available [here](#).

² H.B. 3427, at Section 65(1) (codified as Or. Rev. Stat. § 317A.125(1)).

³ *Id.*, at Section 65(2) (codified as Or. Rev. Stat. § 317A.125(2)).

⁴ *Id.*, at Section 63(1) (codified as Or. Rev. Stat. § 317A.116).

⁵ *Id.*, Section 58(1)(a), (17) (codified as Ore. Rev. Stat. §§ 317A.100(1)(a); 317A.128).

⁶ *Id.*, at Section 64(1) (codified as Ore. Rev. Stat. §§ 317A.100(1)(b); 317A.119).

⁷ The full list of exclusions is found in H.B. 3427, Section 58(1)(b) (codified as 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](#).

taxpayer's Oregon Corporate Income (Excise) Tax unitary group (e.g., CAT unitary group can include pass-through entities))

- [Or. Admin. R. 150-317-1025](#): Corporate Activity Tax: Unitary Groups with Non-U.S. Members - Reporting Requirements (*Note: this is a new proposed administrative rules and the rule language is included with the Notice of Proposed Rulemaking*)
- [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 Other Than Sales of Tangible Personal Property in This State
- [Or. Admin. R. 150-317-1100](#): Agent Exclusion (Guidance to determine if a taxpayer meets the definition of an agent and is excluded from the Oregon CAT)
- [Or. Admin. R. 150-317-1120](#): Definition of single-family residential construction
- [Or. Admin. R. 150-317-1130](#): Property Brought into Oregon (Guidance on whether property brought into Oregon is includable as taxable commercial activity)
- [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
- [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 (6-month extension available)
- [Or. Admin. R. 150-317-1410](#): Motor Vehicle Resale Certificate Documentation Required

Of the rules listed above all but Or. Admin. R. 150-317-1025 have previously been released as temporary rules.¹¹ Additionally, there have been some notable changes to the previously released temporary versions of the following rules: Or. Admin R. 150-317-1120; 150-317-1200; and 150-317-1310.

Further, on April 27th the Department issued a second Notice of Proposed Rulemaking that would amend Or. Admin. R. 150-314-1300 (Estimated Tax When Estimated Payments are Required) that provides that for 2020, taxpayers are only required to make quarterly estimated payments if they expect their 2020 CAT liability to exceed \$10,000 (\$5,000 for subsequent years).¹²

The Department has scheduled a public hearing regarding these rules on May 26, 2020.¹³ The CAT administrative rules are open for input from the public until the hearing date of May 26, 2020. 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;¹⁴ 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 and/or any issuance of additional Notices of proposed rulemaking by the Department.

Contacts:

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

¹¹ *Id*

¹² Insert citation.

¹³ Details regarding the hearing and how to attend the Remote Hearing – Conference Call can be found within the Notice of Proposed Rulemaking, Or. Dept. of Rev. (4/26/2020), available [here](#).

¹⁴ Or. Rev. Temporary Admin. Order Rev 3-2020, Or. Dept. of Rev. (3/4/2020), available [here](#).

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