

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

Overview

The Oregon Corporate Activity Tax (Oregon CAT) became effective on September 29, 2019 and is applicable for years beginning on or after January 1, 2020.¹ The Oregon Department of Revenue (“Department”) issued a Notice of Proposed Rulemaking which indicates the four additional 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. 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. C corporations subject to Oregon income tax therefore pay either the excise tax or the income tax. 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 filed a total of 22 temporary administrative rules with the Oregon Secretary of State, which have an effective date of January 1, 2020 through June 28, 2020.⁹ Seventeen administrative rules were included in a previously issued Notice of Proposed Rulemaking.¹⁰ On May 28, 2020 the Department filed a Notice for Proposed Rulemaking for the following four Oregon CAT administrative rules.¹¹ The following rules are included within the Notice:

- [Or. Admin. R. 150-317-1050](#): Sourcing of Commercial Activity for Financial Institutions in This State
- [Or. Admin. R. 150-317-1140](#): Wholesale Sale of Groceries Exclusion
- [Or. Admin. R. 150-317-1160](#): Farmers Sales to Agricultural Cooperatives
- [Or. Admin. R. 150-317-1400](#): Determining Property Resold Out of State, and Methods of Determining (provides guidance regarding exclusions for property purchased for resale outside or Oregon)

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 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. Rev. Notice of Proposed Rulemaking, Or. Dept. of Rev. (5/28/2020), available [here](#).

Each of these rules have previously been released as temporary rules.¹² The proposed permanent rules are generally consistent with the previously released temporary versions of the above listed rules.

The Department has scheduled a public hearing regarding these rules on June 23, 2020.¹³ The CAT administrative rules are open for input from the public until the hearing date of June 23, 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:

Scott Schiefelbein
Managing Director

Deloitte Tax LLP, Washington
National Tax (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

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¹² *Id*

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. (5/28/2020), available [here](#).

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