



MULTISTATE TAX

Oregon Department of Revenue issues various administrative rules

Tax Alert

Overview

On December 15, 2021, the Oregon Department of Revenue (“Department”) issued Permanent Administrative Orders enacting new and amended Administrative Rules for the state’s commercial activity tax (“CAT”) and on December 16, 2021, the Department adopted special industry rules for broadcasters for income tax apportionment purposes.

This Tax Alert summarizes some of these rules, which are generally effective January 1, 2022.

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Administrative rules concerning the Oregon CAT

The Department issued administrative rules providing guidance regarding [S.B. 164](#), which was enacted in 2021. A previously issued [Tax Alert](#) summarizes that legislation. S.B. 164 modified provisions of the Oregon CAT regarding fiscal year taxpayers, insurance companies, and other exemptions and definitions.

- [OAR 150-317-1015: Short tax period requirement.](#) This new rule provides guidance for fiscal year taxpayers who are required to file a short period return including what portion of the calendar year the short period must cover, the due date of the short period return, and requisite estimated payments based on the length of the short period.
- [OAR 150-317-1022: Unitary group tax year.](#) This new rule provides guidance that the annual accounting period for CAT purposes should be the same as the group’s federal annual accounting period. If group members have differing annual accounting periods and two or more members file a federal consolidated return, then the annual accounting period will be that of the federal consolidated group. In all other instances, the annual accounting period will be that of the designated filing entity.

- If members have different annual accounting periods from the CAT unitary group, those members must calculate and provide a separate statement detailing that member's portion of Oregon commercial activity as calculated under the annual accounting period of the CAT group.
- [OAR 150-317-1023: Unitary group designated reporting entity.](#) This new rule provides guidance on a unitary group's designated reporting entity. This rule now requires that the CAT designated entity must have substantial nexus with the state. If the designated entity no longer has substantial nexus with Oregon, the group must change its designated reporting entity to one that has substantial nexus.
- [OAR 150-317-1060: Definition of insurers' gross premiums receipts.](#) This rule was amended to provide that foreign or alien insurers that are subject to Oregon's retaliatory tax under ORS 731.854 and 731.859 are excluded persons for purposes of the Oregon CAT for tax years beginning on or after January 1, 2021.
- [OAR 150-317-1150: Retail sale of groceries exclusion.](#) This rule was amended to provide guidance regarding the added exclusion of grocery consignment sale receipts, fees, and commissions from commercial activity.
- [OAR 150-317-1200: Cost input or labor cost subtraction.](#) This rule is amended to remove the fiscal year election for calculating the subtraction for fiscal year filers for tax years beginning on or after January 1, 2021, due to the adoption of a fiscal year filing requirement for the CAT that also went into effect for tax years beginning on or after January 1, 2021.
- [OAR 150-317-1300: Estimated tax: When estimated payments are required.](#) This rule is amended to reflect guidance on the due dates for estimated payments and the frequency and amount of estimated payments for short period CAT returns. Estimated payments are due on the last day of the 4th, 7th, and 10th months of the tax year and the 1st month following the close of the tax year.
- [OAR 150-317-1410: Motor vehicle resale certification - Documentation required.](#) This rule is amended to provide that no documentation is required for transfer of new vehicles between franchised car dealerships (documentation is required for other specified transfers of vehicles).

In addition, the Department issued administrative rules regarding sourcing for sea and river transportation services.

- [OAR 150-317-1090: Sourcing of sea transportation services.](#) This new rule provides guidance on what constitutes sea transportation services and how taxpayers engaged in sea transportation services should be sourced for purposes of the CAT.
- [OAR 150-317-1095: Sourcing of river transportation services.](#) This new rule provides guidance on what constitutes river transportation services and how taxpayers engaged in river transportation services should be sourced for purposes of the CAT.

Administrative rule concerning the special industry apportionment rules for broadcasters

In 2021, the Oregon legislature enacted [S.B. 136](#), which instituted special industry apportionment rules for interstate broadcasters requiring these taxpayers to calculate their sales factor numerator for broadcasting sales by

utilizing a sourcing method based on audience and/or subscriber location. A previously issued [Tax Alert](#) discusses S.B. 136 in more detail.

- [OAR 150-314-0466: Definition of programming and subscription services](#). This new income tax rule defines programming and subscription services for purposes of the special industry rules for interstate broadcasters. Programming is defined as performance, event, or production; or segments thereof that are distributed for visual and/or auditory perception. Subscription services are defined as services provided by a cable service provider, direct broadcast satellite system, internet content distributor or other such distributor that charges viewers for access to programming.
 - Additionally, the rule provides that the election to use special industry broadcasting rules to apportion all gross receipts is available to any taxpayer with any broadcasting sales.

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[Scott Schiefelbein](#)

[Sara Clear](#)



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30 Rockefeller Plaza
New York, NY 10112-0015
United States

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