

Summary of Corporate Activity Tax stakeholder input tour discussion topics

The Oregon Department of Revenue recently hosted a series of town hall meetings across the state soliciting input from stakeholders on the administrative rules for the Corporate Activity Tax (CAT). Additionally, the agency hosted video conferences and conference calls for in-state and out-of-state stakeholders who were unable to attend any of the meetings.

Below is a sample of the questions asked and suggestions made during meetings and calls. It is a summary and does not include every question asked. The information is organized by topic for those who were unable to participate and would like to offer comments and suggestions on the administrative rules for the CAT.

Staff is continuing to address many of the questions asked during the tour through a list of frequently asked questions, forms and instructions, administrative rules, and other communications. If you have additional questions or suggestions about the Corporate Activity Tax, you can email them to the CAT team at cat.help.dor@oregon.gov.

Commercial activity

- Participants asked for a clearer definition of commercial activity.
- Are taxes/fees collected by customers taxed even though they are passed onto a government agency? They offered the example of a plumbing contractor paying city inspection fees for customers.
- Are discounts removed from commercial activity?

Subtractions

- Cost inputs
 - Are cost inputs equal to Cost of Goods Sold (COGS) for CAT purposes? Participants said it would be easiest if they could tie to whatever is on the federal Form 1125-A for COGS.
 - COGS may include labor costs. Can labor costs be included in a CAT subtraction for cost inputs for the CAT?
- Labor costs
 - Who is defined as an employee for this subtraction?
 - Can payments to subcontractors be included in the cost?
 - Are fringe benefits and 401(k) expenses included?
 - How do you apportion the subtraction? Is there an easier way to calculate the costs other than a direct method? Could there be some type of percentage method, particularly for businesses with costs for commercial activity sourced outside of Oregon or exclusions from commercial activity?
 - What if the business being taxed doesn't have costs to subtract? They offered the example of commercial landlords who don't have COGS or employees.
 - Are product rebates a reduction of cost?
 - Taxpayers cannot claim expenses related to non-commercial activity. Is this limitation computed at the Oregon level or the everywhere level?

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Wholesale certificate

- Participants said sellers don't always know what is going to be sold outside of Oregon.
- Sometimes a wholesaler disclosing the end location for products can involve sharing trade secrets.
- How does the wholesaler determine the amount of goods being shipped outside of Oregon?
- What if the wholesaler is unwilling to provide certification?
- Will the department have a wholesaler certificate available for taxpayers to utilize?

Supply chain

- When is the tax imposed on different points of the supply chain?
- Can the department adopt the rules for IC-DISC's? This method is already used by exporting entities and would be easy for them to follow.
- When products are delivered to a company in Oregon, but the invoice of the sale is outside of Oregon, how is it taxed under CAT?
- Products purchased and then enhanced or combined prior to another sale within Oregon. Is the tax imposed on each sale?
- What happens when a producer sells a product to a broker in Oregon, who then sells the products to locations outside of Oregon? Because the broker is in Oregon, is the producer subject to the tax?

Groceries

- Dairy farmers said they can't sell raw milk out of state and must sell to a company to have the milk pasteurized.
- Some producers may not know the final destination.
- A producer won't know if its products are ultimately sold to a grocery store, a restaurant, or out of state.
- When do agriculture products become groceries? What about agricultural products with multiple uses? For example, corn can be used as cattle feed, food, or as an ingredient in motor vehicle fuel.
- Participants asked for the definition of groceries to be expanded, if possible. Can the grocery exclusion apply at each level in the supply chain?
- Can farmers tie the cost of goods sold from previous years to a crop sold in the current year?

Certification

- What elements need to be present to show destination is outside of Oregon?

Sourcing

- When do you consider a product or service delivered for CAT purposes? Does ownership begin upon delivery or destination? How do you treat a product picked up in Oregon but delivered out of state?
- How do trucking or freight businesses source their receipts for interstate shipments?

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- How are insurance premiums taxed? Are they sourced based on the location of the beneficiary or owner?

Property transferred into the state

- When does this provision apply?
- Participants said tax avoidance needs to be clearly defined. Also, they said, it needs to be clarified how this section works with exclusions from commercial activity. For example, is motor vehicle fuel transferred into the state of Oregon subject to the CAT?

Auto dealers

- How are they supposed to calculate the amount of the CAT to pass along to each customer?
- When do auto dealers start collecting the tax?
- What if the dealers collect too much tax, who do they refund the tax to?

Who pays the tax?

- Can businesses outside of the auto dealers pass the tax along as a line item? (This question was asked at every session.)
- When bidding a construction project, or preparing a lease agreement, can the tax be listed as one of the costs?

Agent

- In the case of a money order purchased in a store, is the fee or the gross amount subject to CAT? Does it make any difference if the seller of the money order is obligated to honor the money order?
- Cell phones: A retailer buys a phone from a manufacturer and sells it to a customer. The retailer doesn't realize a gain from the manufacturer but makes a fee off the cellphone service provided. Is this an agent relationship?
- Pharmacies: Do they act as an agent of Medicare or the insurance company? A pharmacy representative said he has no control over the price, and the majority of the cost is billed to the insurance company. Is the CAT paid on the amount after insurance reimbursement or the total sales price?
- There were questions about holding a product and taking liability for it when it will be resold at a later date. Is the fee to hold the product the only taxable event, or the gross value of the purchased product?

Estimated tax payments

- How do those subject to the CAT estimate their quarterly payments?
- May a taxpayer use their prior-year apportionment figure to estimate their quarterly payments?
- How does the penalty for the first year work?
- Will the department have tools available on Revenue Online or its website to help business owners determine their quarterly payments?

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Unitary groups

- Do direct family members fall under common control?
- Is the CAT unitary group the same as the unitary group for corporate excise tax?
- How do you determine which members are included in a CAT unitary group?
- Are transactions between members of a unitary group subject to the CAT?
- How are joint ventures or entities with less than 50% common ownership reported?

Apportionment

- How is the expense subtraction supposed to be calculated? Specifically, in what order are the various limitations in the statute applied?
- Is Oregon commercial activity the same as Oregon sales for purposes of income taxes?

Bad debt

- When is bad debt realized?

Financial institution

- Will the department follow Multistate Tax Commission guidelines?
- Will the department reference specific lines on a taxpayer's quarterly call report for the FDIC?

Joint venture projects

- Who is required to pay the tax?

Registration

- Is registration required every year?
- Is the department looking at easier ways for taxpayers to reregister?
- Will there be a reminder for registration?

Other questions

- Will the department consider issuing declaratory rulings in connection with the CAT?
- What entities are included in the term government entities? Specifically, are water districts government entities?