ADMINISTRATIVE RULE REVIEW	Rule No. 150-317-1010	
New Rule Temporary Rule - DRAFT	Page: Page 1 of 3	Last Revised Date: December 6, 2019
	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE: Establish guidance to assist taxpayers in determining whether they have substantial nexus with Oregon for purposes of the Oregon Corporate Activity Tax (CAT).

150-317-1010

Substantial Nexus Guidelines for the Corporate Activity Tax (CAT)

(1) For purposes of Oregon Laws 2019, chapter 122, section 63, as amended by Oregon Laws 2019, chapter 579, section 52, substantial nexus exists if a connection between the person and Oregon is sufficient to establish nexus under the U.S. Constitution.

(2) "Substantial nexus" for corporate activity tax jurisdiction purposes, under the Commerce Clause of the U.S. Constitution, does not require a person to have a physical presence in Oregon. Substantial nexus exists where a person regularly takes advantage of Oregon's economy to realize commercial activity for the person and may be established through the significant economic presence of the person in the state.

(3) When determining whether a person has substantial nexus with Oregon, the department may consider whether the person:

(a) Maintains continuous and systematic contacts with Oregon's economy or market;

(b) Conducts deliberate marketing to, or solicitation of, Oregon customers;

(c) Files or is required to file reports or returns with Oregon regulatory bodies;

(d) Realizes significant gross receipts attributable to customers in Oregon;

(e) Realizes significant gross receipts attributable to the use of the person's intangible property in Oregon; or

(f) Receives benefits provided by the state, such as:

(A) Laws providing protection of business interests or regulating consumer credit;

(B) Access to courts and judicial process to enforce business rights including debt collection and intellectual property rights;

(C) Highway or transportation system access for transport of the person's goods or services;

(D) Access to an educated workforce in Oregon; or

(E) Police and fire protection for property in Oregon that displays the person's intellectual or intangible property.

(4) The list of possible facts in section (3) that the department may consider in determining whether a person has substantial nexus with Oregon is meant to be nonexclusive, and those facts should be considered only to the extent they are relevant. The department may consider any other relevant facts and circumstances.

***Example 1*:** Brookland Distributing Company (Brookland), located outside of Oregon, distributes wine and beer throughout Oregon, through Oregon licensed distributors with whom Brookland has distribution agreements. Brookland is required to obtain and maintain a wholesaler's license from the Oregon Liquor Control Commission (OLCC). A condition of the license is that Brookland must make monthly reports of sales volumes to the OLCC. Brookland also periodically seeks advice and approval from the OLCC for special event activities in Oregon, where no sales are solicited by Brookland. Brookland has substantial nexus in Oregon.

***Example 2*:** Atlas Company (Atlas Co.), headquartered in Maryland, operates a website supporting internet sales, primarily to European country customers. Atlas Co. made approximately 10,000 sales at $99.00 per sale, to residents of Oregon during the year, realizing $990,000 of commercial activity. Atlas Co. contracts with an Oregon mailing service to deliver the merchandise in Oregon. While the amount of commercial activity realized by Atlas Co. is below the threshold to file a corporate activity tax return and pay tax, Atlas Co. does have substantial nexus in Oregon, and must register with the department when commercial activity exceeds $750,000.

[**Publications:** Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Stat. Auth.: ORS 305.100, Oregon Laws 2019, chapter 122, section 72

Stats. Implemented: Oregon Laws 2019, chapter 122, section 63, as amended by Oregon Laws 2019, chapter 579, section 52