

ADMINISTRATIVE RULE REVIEW

New Rule	Rule No. 150-317-1200	
	Page Page 1 of 3	Last Revised Date December 20, 2019
	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled
Temporary Rule - DRAFT		

PURPOSE: Provides guidance to assist taxpayers in how to compute the cost input or labor cost subtraction for purposes of the Oregon Corporate Activity Tax (CAT).

1 **150-317-1200**

2 **Cost Input or Labor Cost Subtraction**

3 (1) The subtraction provided in Oregon Laws 2019, chapter 122, section 64 includes all labor cost or cost
 4 input expenses of a taxpayer regardless of the place the labor cost or cost input is incurred. If a taxpayer
 5 excludes the 15 percent of labor costs paid to subcontractors from the taxpayer's commercial activity
 6 pursuant to Oregon Laws 2019, chapter 579, section 58, the taxpayer must reduce the total cost inputs
 7 described in Oregon Laws 2019 chapter 122, section 64(1)(a) [before applying the 35 percent limitation
 8 in Oregon Laws 64(1)] by an amount equal to the amount excluded from commercial activity pursuant to
 9 Oregon Laws 2019, chapter 579, section 58.

10 (2) A taxpayer must apportion the labor cost or cost input subtraction, computed as provided in section
 11 (1), by means of a commercial activity ratio. The commercial activity ratio is a fraction, the numerator of
 12 which is the taxpayer's commercial activity sourced to Oregon and the denominator of which is the
 13 taxpayer's total commercial activity everywhere plus exclusions from commercial activity. A taxpayer
 14 determines the costs apportioned to Oregon by multiplying the total labor costs everywhere or total cost
 15 inputs everywhere by the taxpayer's commercial activity ratio.

16 **Example 1:** Grocery & TV Mart has \$10 million of Oregon commercial activity and \$70 million of
 17 everywhere commercial activity plus exclusions (\$50 million in commercial activity and \$20 million in
 18 exclusions from commercial activity). Grocery & TV Mart has an everywhere labor cost of \$28 million
 19 and everywhere cost input of \$26 million.

20 Grocery & TV Mart computes the Oregon subtraction as follows:

21 Step 1: Determine the commercial activity ratio.

22 Oregon commercial activity of \$10 million / everywhere commercial activity plus exclusions of \$70
 23 million = 14.2857% commercial activity ratio.

24 Step 2: Determine the cost subtraction. In this example, labor costs are greater than cost inputs. Total
 25 labor cost of \$28 million x commercial activity ratio of 14.2857% x 35% = \$1,399,999 cost subtraction.

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	Page Page 2 of 3	Last Revised Date December 20, 2019
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- 1 **Example 2:** Construction Company XYZ has \$10 million of Oregon commercial activity and \$70 million
2 of everywhere commercial activity plus exclusions (\$50 million in commercial activity and \$20 million
3 in exclusions from commercial activity). Construction Company XYZ has an everywhere labor cost of \$2
4 million and everywhere cost input of \$38 million. A total of \$3 million of Construction Company XYZ's
5 cost input represents labor costs paid to subcontractors for the construction of single family residential
6 construction in Oregon and qualifies as an exclusion pursuant to Oregon Laws 2019, chapter 579, section
7 58.
- 8 Construction Company XYZ computes the Oregon subtraction as follows:
- 9 Step 1: Determine the commercial activity ratio.
- 10 Oregon commercial activity of \$10 million / everywhere commercial activity plus exclusions of \$70
11 million = 14.2857% commercial activity ratio.
- 12 Step 2: Determine the cost subtraction. In this example, cost inputs are greater than labor costs. If
13 Construction Company XYZ excludes labor costs paid to subcontractors from the commercial activity
14 pursuant to Oregon Laws 2019, chapter 579, section 58, the everywhere cost input must be reduced by an
15 amount equal to this exclusion. The \$38 million of total cost inputs must be reduced by \$450,000 (15%
16 of the \$3 million of qualifying labor costs paid to subcontractors). Adjusted cost inputs of \$37,550,000
17 (\$38 million - \$450,000) x commercial activity ratio of 14.2857% x 35% = \$1,877,498 cost subtraction.
- 18 (3) As an alternative to the method described in section (2), a taxpayer may elect the use of separate
19 accounting to remove all cost inputs or labor cost from the subtraction that are attributable to a person's
20 receipts from an item that is not Oregon commercial activity.
- 21 (4) The subtraction is 35 percent of the taxpayer's costs apportioned to Oregon, limited to 95 percent of
22 the taxpayer's Oregon commercial activity.
- 23 (5) Notwithstanding section (1), a taxpayer may petition the department for alternative apportionment, or
24 the department may require alternative apportionment if the application of section (2) does not fairly
25 represent the labor cost or cost input subtraction attributable to the taxpayer's commercial activity.

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- 1 (6) A petition to use an alternative method of apportionment must be filed in writing with the department.
 2 The request must be signed by the taxpayer or the taxpayer's authorized representative and must be filed
 3 separately from the taxpayer's return. The request must include a complete explanation of the alternative
 4 method as well as an explanation why the application of section (2) should not be used. Upon receipt of
 5 the request, the department will review the request and issue a letter either authorizing or denying the
 6 request. If denied, the taxpayer can appeal that action as provided in ORS 305.275. An alternative
 7 apportionment method may be used only after receiving written authorization from the department. The
 8 authorization may be revoked if, upon audit, the department determines that the alternative method does
 9 not arrive at a fair and accurate measure of commercial activity in Oregon. Once an alternative method
 10 has been authorized, that method must be used until a request to change is made and approved by the
 11 department or until the authorization is revoked after audit.
- 12 (7) Examples of alternative methods of apportionment include:
- 13 (a) A modification to the ratio which will fairly and accurately reflect the taxpayer's costs attributable to
 14 receipts from commercial activity in Oregon; or
- 15 (b) The employment of any other method to effectuate an equitable allocation and apportionment of the
 16 taxpayer's costs attributable to receipts from commercial activity.
- 17 **Stat. Auth.:** ORS 305.100, Oregon Laws 2019, chapter 122, section 72
- 18 **Stats. Implemented:** Oregon Laws 2019, chapters 122 and 579