

ADMINISTRATIVE RULE REVIEW

<p><del>Adopt</del> <u>Amend</u> Rule</p> <p>Permanent Rule</p>	Rule No. 150-317-1025	
	Page Page 1 of 3	Last Revised Date <del>June 15</del> <u>September 22</u> , 2020
	NOTICE OF INTENDED ACTION	
	Bulletin Dated <del>May</del> <u>October</u> 2020	Hearing Scheduled <del>May 26</del> <u>October 27</u> , 2020

PURPOSE: ~~Allows certain~~ Provides guidance for the election to modify unitary groups with non-U.S. members that have no commercial activity ~~in Oregon~~, or ~~expenses related to~~ have amounts realized but by definition are excluded from commercial activity ~~in Oregon~~, that is sourced to ~~omit information about those members from the group Corporate Activity Tax return.~~ Oregon.

1 **150-317-1025**

2 **Corporate Activity Tax: ~~Unitary Groups with~~ Election to Exclude Non-U.S. Members ~~—Reporting~~**  
 3 **~~Requirements from Unitary Group~~**

4 (1) ~~General Rule:~~ For purposes of the Corporate Activity Tax (CAT), a unitary group is defined as ~~being~~  
 5 a group of persons with more than 50 percent common ownership, either direct or indirect, that is  
 6 engaged in business activities that constitute a unitary business. Unitary group members ~~may~~ include  
 7 entities formed in the United States and entities formed outside the United States (“non-U.S. members”).  
 8 Generally, a unitary group must file a group return that includes all members that are part of the unitary  
 9 group unless a modified unitary group election is made pursuant to and sections (2) and (3) of this rule.

10 (2) ~~Special Rule: Certain~~ Modified Unitary Group Election. A unitary ~~groups may file a modified~~ group  
 11 ~~return omitting~~ may elect to modify unitary group membership to exclude all non-U.S. members from the  
 12 ~~return a non-U.S. member’s information as provided in section (3) if~~ unitary group that:

13 (a) ~~The non-U.S. member has~~ have no commercial activity sourced to Oregon under ORS 317A.128; and

14 (b) ~~The non-U.S. member has~~ have no commercial activity excluded under ORS 317A.100(1)(b) that  
 15 would otherwise be sourced to Oregon if it were included in commercial activity, including, but not  
 16 limited to, ORS 317A.100(1)(b)(FF) (receipts from transactions among members of a unitary group);

17 ~~and~~. If a unitary group makes an election under section (3), it may not include in the unitary group any  
 18 non-U.S. member that meets the criteria for exclusion under this section.

19 ~~(c) The omission of the information of one or more non-U.S. members described in subsection (3)(a)~~  
 20 ~~and (b) of this section (2) does not result in omission of more than 5 percent of total amounts of~~  
 21 ~~commercial activity that would otherwise be included in the denominator of any method used for~~  
 22 ~~apportioning commercial activity for purposes of the subtraction under ORS 317A.119 as calculated~~  
 23 ~~under OAR 150-317-1200.~~

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~~(3) Omission of Information and Relationship to Subtraction Under ORS 317A.119.~~

~~(a) If a~~ A unitary group ~~has one or more~~ must make an election to exclude all non-U.S. members described in section (2) of this rule, ~~the group may omit all financial information of or relating to the non-U.S. member or members from the group's CAT on an original or amended return that would otherwise be required to be reported on the~~ filed on or before the due date including extensions or an original return according to the department's filed after the due date of the return including extensions in accordance with forms and instructions. The election is an annual election and must be made separately for each tax year. An election under this rule is binding for and applicable to the tax year it is made.

(b) For purposes of the subtraction under ORS 317A.119 and OAR 150-317-1200, the unitary group's labor costs or cost inputs attributable to receipts from an item that is commercial activity and any amounts used to apportion costs to Oregon in the manner provided in ORS 317A.119 ~~(23) or (4)~~ may not include any financial information of a non-U.S. member ~~or members whose financial information is omitted~~ excluded from the unitary group under this section ~~(2)~~.

~~(4) If the omission of the non-U.S. group member's information under section (3) of this rule does not fairly represent the extent of the unitary group's labor costs or cost inputs attributable to commercial activity in Oregon under ORS 317A.119, the unitary group may not omit the non-U.S. member's information from the return.~~

~~(5) If a~~ unitary group ~~omits the financial information of~~ excludes non-U.S. ~~group~~ members from the ~~CAT return~~ unitary group under section (3) of this rule, the group must maintain a list of ~~omitted~~ excluded non-U.S. members and keep the list in the unitary group's records. The list must include the name of the excluded entity, the tax identification number of the excluded entity (including federal tax identification number, if applicable), contact information for the excluded entity, and any other identifying information related to the ~~entity omitted from the return, including contact information for the~~ excluded

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1 entity- specified in forms or instructions. The list must be made available to the department upon request  
2 of the department.

3 (6) Upon examination of the return that is filed, the department may determine the ~~omission of the~~  
4 election to exclude one or more non-U.S. ~~member's information~~ members from the unitary group is not  
5 proper ~~under sections (2) and (3) of this rule and may include the financial information of that member~~  
6 may disallow the election in whole or in part ~~in~~. Such determination may be based on consideration of all  
7 facts and circumstances with respect to the election and may include, but is not limited to:  
8 (a) whether any member of the unitary ~~group's Oregon return as required under ORS 317A.100 to~~  
9 ~~317A.158.~~ group fails to comply with any provisions of this rule; or  
10 ~~(b) whether a member was excluded from the unitary group with a substantial objective of avoiding the~~  
11 CAT.

12 (6) Notwithstanding sections (2) and (3) of this rule, if property is transferred into Oregon under ORS  
13 317A.109(1)(b) that is included in taxable commercial activity of the modified unitary group, the group  
14 must maintain information about any member, including non-U.S. members excluded by election, that  
15 transferred property to or received property in a location outside this state within one year before the  
16 transfer of the property into this state. The information must be made available to the department upon  
17 request of the department.

18 **Stat. Auth.:** ORS 305.100, ORS 317A.106, ORS 317A.143

19 **Stats. Implemented:** ORS 317A.106, ORS 317A.119, ORS 317A.134, ORS 317A.137