

Questions about the agent exclusion:

Q: Are managing general agents for insurers exempt from OR-CAT? Could you explain the agency exclusion a bit more?

A: For purposes of the CAT, a person is an agent if the person acts on behalf of and subject to the control of another person (a principal). A determination of whether a person is acting as an agent is based on a consideration of the facts and circumstances surrounding the relationship between the agent and the principal. A contract purporting to establish an agent-principal relationship is just one relevant fact to consider when determining if an agent-principal relationship exists. [OAR 150-317-1100 \(Agent Exclusion\)](#) provides information regarding the agent exclusion and includes a number of examples to assist taxpayers.

Q: For companies providing professional services, are receipts for pass-through services on behalf of sub-consultants subject to CAT as this is gross receipts? If so, for services provided as a sub-consultant where CAT has been collected by a prime-consultant also subject to CAT (double tax)?

A: The CAT is imposed on each person with taxable commercial activity of more than \$1 million. Taxable commercial activity means commercial activity sourced to Oregon, less a subtraction of 35 percent of the greater of labor costs or cost inputs attributable to commercial activity. Commercial activity means the total amount realized from transactions and activity in the regular course of a person's trade or business.

The laws governing the CAT specifically exclude property, money and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee or other remuneration. [[ORS 317A.100\(1\)\(b\)\(M\)](#)].

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Q: Are the members PC's required to pay CAT taxes on the distributions received from the medical practice LLC even though the income/commercial activity has already paid the CAT tax?

A: The CAT is imposed on each person with taxable commercial activity of more than \$1 million. Commercial activity means the total amount realized from transactions and activity in the regular course of a person's trade or business. Distributive income received from a pass-through entity is excluded from commercial activity. Based on the information provided, it

seems likely the distributions received by owner/members of the practice would be exempt from the CAT.

Q: In the construction industry, general contractors work for the owner. They hire subcontractors to perform work on the project. The owner pays the general contractor who pays the subcontractor. The general contractor has the ability to pick and hire the subcontractor without input from the owner. No specific language in any contracts regarding an agent relationship. If you have to say yes or no based off just this general info, would you think this serves as an agent relationship?

A: For purposes of the Corporate Activity Tax (CAT), a person is an agent if the person acts on behalf of and subject to the control of another person (a principal). A determination of whether a person is acting as an agent is based on a consideration of the facts and circumstances surrounding the relationship between the agent and the principal. A contract purporting to establish an agent-principal relationship is just one relevant fact to consider when determining if an agent-principal relationship exists. Based on the facts and circumstances you presented, the general contractor does not appear to be considered an agent of the owner.

For further information regarding an agent relationship, please see [OAR 150-317-1100 \(Agent Exclusion\)](#). This rule also includes a number of examples to assist taxpayers in identifying agent-principal relationships.

As this question pertains to construction, we would note that if the business is a general contractor working on single-family residential construction, it may be eligible to exclude some portion of payments to subcontractors. [OAR 150-317-1120 \(Exclusion for Subcontracting Payments\)](#) provides further information.

Q: Wouldn't payments to real estate agents from a broker be considered agency income and not included in commercial activity?

A: Real estate agents generally fall under the agent exclusion. This would mean that generally only the commission they receive would be considered as their commercial activity. In addition, the laws governing the CAT specifically exclude revenue received by a business entity that is mandated by contract or subcontract to be distributed to another person or entity if the revenue constitutes sales commissions that are paid to a person who is not an employee of the business entity, including, without limitation, a split-fee real estate commission. [[ORS 317A.100\(1\)\(b\)\(UU\)](#)]