Oregon Corporate Activity Tax (CAT) Training

Session 1: October 19, 2020
Session 2: October 20, 2020

Session Agenda

Welcome and Ground Rules, Robin Maxey

Introduction to CAT, Leah Putnam

Training (Three sections with Q and A following each section)

Section 1, John Knieling	Section 2, Maribel Luna	Section 3, Emily Brandes
• Unitary Groups. • Sourcing. • CAT Subtraction. • Q and A.	• Cost Inputs & Labor Costs. • Filing and Payment. • COVID 19 Relief Options. • Q and A.	• Wildfire Relief. • Exclusions from Commercial Activity. • Q and A.

Online Resources Available, Robin Maxey

Ground Rules

- Due to the number of attendees and amount of information to cover, all participants are automatically muted.
- During the meeting send questions to cat.help.dor@oregon.gov and the policy team will answer them during the training.
  - Use the subject line "CAT live training."
  - Please **do not** send questions via Zoom's chat function.
  - If the policy team unable to address a question during this session, they will follow up via email.
- A copy of the PowerPoint presentation, as well as the questions and answers will be posted to the agency's website (www.oregon.gov/dor).

Introduction to CAT

Leah Putnam, CAT Program and Section Manager

Corporate Activity Tax (CAT) Overview

- Enacted in 2019 and effective January 1, 2020.
- Imposed on all types of business entities.
- Measured on taxable **commercial activity** in excess of $1 million.
- The tax is computed as $250 plus 0.57 percent of taxable Oregon commercial activity above $1 million.
- Revenue is transferred to the Fund for Student Success for education.

House Bill 4202

- Enacted June 30, 2020, effective for all tax years beginning January 1, 2020.
- Made various technical corrections and clarifications to the statutes governing the CAT.
  - Revenue is updating CAT forms, instructions, and administrative rules to reflect the changes enacted in HB 4202.

Check the CAT website or join the CAT email update list to be notified of new guidance, forms, and rules.

Administrative Rules

- Administrative rules provide taxpayers with additional guidance.
- Access department rules via the Secretary of State website: www.sos.oregon.gov and click “Oregon Administrative Rules.”
- Revenue is continuing to develop administrative rules for the CAT. Proposed rules are posted to the department’s website and the Oregon Bulletin for public comment.
- Subscribe to the mailing list on the agency’s website to be notified when new rules are available.

Commercial Activity

- Commercial activity means the fair market value of all amounts realized in the regular course of the trade or business that meet the transactional test in OAR 150-314-0335(5).
  - Includes money, property received, debt forgiven, and services rendered.
- Commercial activity does not include amounts that only meet the functional test under OAR 150-314-0335(6).

Thresholds

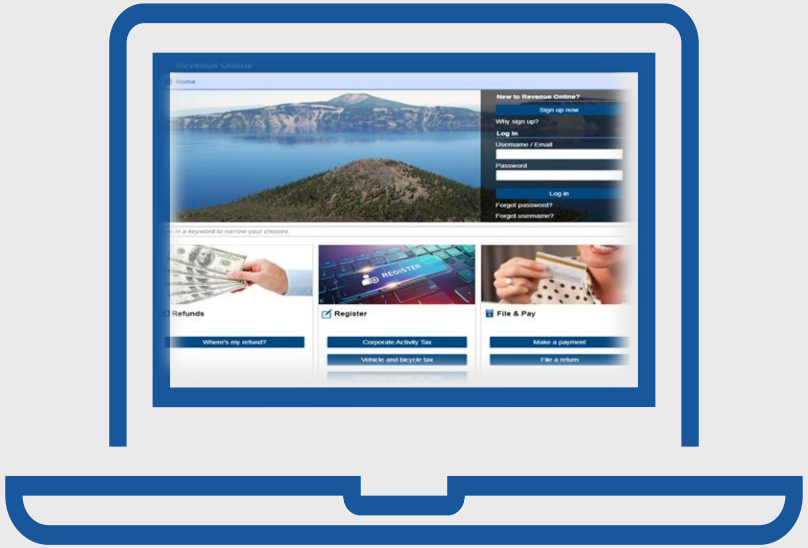
Threshold	Amount
No CAT requirements	Oregon commercial activity of $750,000 or less
Registration	Over $750,000 of Oregon commercial activity
Filing	Over $1 million of Oregon commercial activity
Tax Payment	Over $1 million of Oregon taxable commercial activity after expense subtractions and exclusions

Excluded Entities

- IRC 501 organizations.
- Farmers cooperatives, if under IRC §521.
- Governmental entities.
- State tuition programs under IRC §529.
- Hospitals and long-term care facilities that are Medicare providers.
- Businesses with less than $750,000 in Oregon commercial activity.
- Manufactured dwelling park non-profit cooperatives.

Registration

- Registration is due within 30 days of meeting the $750,000 registration threshold.
- Register through Revenue Online. Instructions are available on the CAT page of the Revenue website.
- Business entities must register the first year they meet the registration threshold.
- No requirement to re-register for CAT in future years.



Section 1

Unitary Groups, Sourcing of Commercial Activity, and CAT's 35 percent Subtraction

John Knieling, Operations and Policy Analyst

Unitary Groups

Unitary Groups

- United by **more** than **50 percent** common ownership.
- Unitary business must have **one** of the following:
  - A. Centralized management or common executive force.
  - B. Centralized administrative services or functions resulting in economies of scale.
  - C. Flow of goods, capital resources, or services demonstrating functional integration.
- OAR 150-317-1020 provides further guidance.

Unitary Group Election – HB 4202

- HB 4202 allows CAT unitary groups to elect to exclude non-U.S. members of the unitary group that:
  1. Have no commercial activity in Oregon; and
  2. Have no exclusions from commercial activity that would otherwise be sourced to Oregon.
- OAR 150-317-1025 provides further guidance.

Sourcing of Commercial Activity

Sourcing of Commercial Activity

Sales of Tangible Personal Property

- OAR 150-317-1030 provides further guidance.
- Gross receipts from sales of tangible personal property are sourced to Oregon if delivered to a purchaser in Oregon.
  - Includes the ultimate recipient of the property.
  - Regardless of F.O.B. point.
  - Whether transported by seller, purchaser, or common carrier.

Sourcing of Commercial Activity (Continued)

Sales other than Tangible Personal Property

- OAR 150-317-1040 provides detailed guidance.
- Receipts from leasing or renting property are sourced to Oregon if the property is in Oregon.
- Services are sourced to Oregon if delivered to a location in Oregon.

Sourcing of Commercial Activity (cont.)

Sales of Motor Carrier Transportation

- New rule OAR 150-317-1070 provides guidance.
- Sourced to Oregon to the extent the transportation occurs within Oregon.
- Wholly in-state travel is sourced 100 percent to Oregon.
  - Freight, mail, express apportioned by a mobile property mile ratio.
  - All other apportioned by mileage ratio.

CAT's 35 Percent Subtraction

CAT Subtraction

- CAT taxpayers subtract 35 percent of the greater of their **cost inputs** **or** **labor costs** attributable to commercial activity.
- The subtraction may not exceed 95 percent of the taxpayer's commercial activity.
- HB 4202 clarified provisions of the subtraction and how the costs are apportioned.
  - DOR is revising OAR 150-317-1200 to reflect the amendments made by HB 4202.
  - The public hearing took place October 27, 2020.

CAT Subtraction Proposed Rule

Taxpayers with commercial activity in and outside of Oregon must apportion eligible costs. Under the proposed changes to OAR 150-317-1200:

- If the CAT taxpayer is **identical** to the entity or group reporting income or excise tax, use the apportionment factor from income or excise tax apportionment schedule.
- If the CAT taxpayer is ***not*** identical to entity or group reporting income or excise taxes, compute the apportionment factor using the applicable method for income or excise tax, and use the newly computed factor.
- If the CAT taxpayer is a unitary group subject to multiple apportionment methods, compute the factor as summation of the apportionment factor percentages of each subgroup of members using the same apportionment method.
- Taxpayers may also elect to approximate and apportion eligible costs using the Commercial Activity Ratio (CAR).

Q and A

Send questions to
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Section 2

Labor Costs and Cost Inputs, Filing and Payment Requirements, and COVID-19 Relief Options

Maribel Luna, Operations and Policy Analyst

Labor Costs

"Labor costs" are defined as the compensation of all employees and is limited to $500,000 per employee.

For purposes of the subtraction, "employees" are not:

- Partners in a partnership who receive guaranteed payments or distributive income.
- Members of a limited liability company (LLC) who receive guaranteed payments or distributive income.
- Statutory employees described in the IRC §3121(d)(3).
- Independent contractors, as defined in ORS 670.600.

Labor Costs (cont.)

For purposes of the subtraction, “compensation” includes:

- Wages.
- Bonuses.
- Health insurance benefits.
- Retirement benefits.
- Other fringe benefits.

Compensation does not include:

- Employer payroll taxes.

Cost Inputs

"Cost inputs" are defined as cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code.

- Small businesses that are not required to report COGS for federal tax purposes may determine cost inputs in the same manner as calculated under IRC § 471 and applicable regulations.
- Generally, businesses must use the same method of accounting for determining cost inputs under the CAT as they use for determining cost of goods sold for federal income tax purposes.

Cost Inputs—Farming Operations

HB 4202 created a special definition of cost inputs for farming operations that do not report COGS for federal tax purposes.

- For these taxpayers, cost inputs are: “The taxpayer’s operating expenses excluding labor costs.”

“Farming Operations” means an entity doing business as defined in the North American Industry Classification System (NAICS) under the following codes:

- 111 – Crop Production.
- 112 – Animal Production and Aquaculture.
- 115 – Support Activities for Agriculture and Forestry.

Filing and Payment Requirements and COVID-19 Relief Options

Filing and Payment

- The CAT is an annual calendar year tax.
- Quarterly estimated payments required.
- Returns are due each year on April 15.
- A six-month extension is available (October 15).
- An extension request must be made prior to April 15.
- This is not an extension to pay.
  - The extension is allowed for “good cause” defined in OAR 150-317-1330.

HB 4202 and CAT Estimated Payment Penalty

- Businesses expecting to owe **$10,000 of CAT** or more in 2020 must make quarterly estimated payments.
- In 2021, the threshold for paying estimated taxes changes to $5,000.
- Payments are due on the last day of the month that follows the end of each calendar quarter: April 30, July 31, October 31, and January 31.
  - If the due date falls on a weekend or holiday, payments are due on the next weekday.

What is the required payment?

Tax Years 2020 and 2021

- Businesses must pay at least 80 percent of the tax computed on the taxable commercial activity earned for each quarter by the due date for that quarter.

  Example: ABC Inc. owes $28,750 in Corporate Activity Tax based on its commercial activity in the first quarter of 2020. ABC's required estimated payment due on April 30 is $23,000 ($28,750 * 80 percent = $23,000)

Tax Years 2022 and Forward

- Businesses must pay at least 90 percent of the tax computed on taxable commercial activity earned for each quarter by the due date for that quarter.

Quarterly Underpayment Penalty (QUP)

- If the required estimated payment is not made, the business may be subject to the QUP.
- The QUP is a penalty of 5 percent of the tax associated with the payment due for the corresponding quarter.

Example: In the previous example ABC Inc. was required to pay $23,000 ($28,750 * 80 percent = $23,000) however, ABC didn’t make any estimated payments on April 30. ABC Inc. is assessed a penalty of $1,150 ($23,000 multiplied by 5 percent).

Payment Relief

- No penalty is assessed if the taxpayer made a reasonable estimate of the quarterly installment based on information available.
- The department will not assess penalties for underestimating quarterly payments in 2020 due to COVID-19 if:
  - The taxpayer couldn’t reasonably determine if you had a CAT liability.
  - The business had insufficient funds when the required payment was due.
  - The taxpayer couldn’t reasonably calculate the required installment or annual tax liability.

Q and A

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Section 3

Wildfire Relief, Exclusions from Commercial Activity

Emily Brandes, Operations and Policy Analyst

Wildfire and Straight-line Wind Relief

Wildfire Penalty Relief

Taxpayers in counties impacted by wildfire or straight-line winds may qualify for penalty relief for any late third quarter estimated payments.

- DOR will waive penalty for payments due on or after September 7 and before January 15, 2021, if payment is made in full on January 15, 2021.
- Impacted counties include Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn, and Marion.
- For further information see DOR's September 29 News Release.

CAT Exclusions

Exclusions from Commercial Activity

Over 40 items are excluded from commercial activity.

For example:

- Receipts from the wholesale and retail sales of groceries.
- Certain motor vehicle dealer trades.
- Sales to wholesalers if the wholesaler certifies items will be resold out of state.
- Receipts from transactions between members of a unitary group.
- Distributive income received from a pass-through entity.

Exclusions and Offsets from Commercial Activity

HB 4202 adds and clarifies the following exclusions:

- Receipts from fluid milk sales by dairy farmers who are not members of an agricultural cooperative.
- Tax refunds from any tax program are not commercial activity.
- Crop insurance proceeds (except proceeds for loss of commercial activity) are excluded.
- Allows returns and allowances to be offset against commercial activity.

Sales to Wholesalers—Overview

Receipts from sales to wholesalers in Oregon are excludable, **if** the wholesaler provides the seller with a **certificate** stating the amount that will be resold out of state.

- The certificate must be provided at the time of the sale.
- Any document may serve as a certificate, provided it contains the required information.
- An example certificate template is available on Revenue's website.
- See OAR 150-317-1400 or Revenue's "Beyond the FAQ" webpage for further guidance.

Sales to Wholesalers—Certificate Requirements

Any document may serve as a certificate provided it contains:

- Wholesaler's legal name, Oregon address, and federal tax ID.
- Date of the purchase.
- Total amount purchased and price paid.
- Dollar amount that the wholesaler will resell out of Oregon.
- Signature of wholesaler, authorized representative, or employee certifying they are wholesaler as defined in statute.
- Template available on the CAT webpage (Beyond the FAQ)

Sales to Wholesalers—Approximation Methods

- Wholesaler must determine the amount that will be resold outside of Oregon based on facts at the time of the purchase.
- If unable, wholesaler may estimate amount by:
  - Using Revenue's approximation ratio of prior year's commercial activity from Oregon sales divided by prior year's commercial activity from all sales.
  - If this ratio does not provide an accurate estimation, wholesaler must use another method that fairly and accurately estimates amount to be sold out of state. Method must be documented.

Note: Refer to OAR 150-317-1400 for detailed guidance on approximation methods.

Sales of Agricultural Commodities

Farming operations selling agricultural commodities to a wholesaler or broker may determine amount of their out-of-state sales by:

- Obtaining a certificate from the purchasing broker or wholesaler that states the percentage of purchased commodities to be sold out of state; *or*
- Applying an industry average percentage from USDA National Agricultural Statistics Service or other sources of sales information.

Proposed OAR 150-317-1170 provides further guidance.

Sales of Agricultural Commodities (cont.)

- **Farming operation**: An entity doing business described in NAICS 111, 112, or 115.
- **Wholesaler**: A person primarily doing business by merchant distribution of tangible personal property to retailers or other wholesalers.
- **Broker**: A person, other than a dealer, commission merchant, or cash buyer, that negotiates the purchase or sale of an agricultural commodity but does not handle the commodity.
- **Agricultural commodity**: All agricultural, horticultural, viticultural, and vegetable products produced in Oregon (including bees and honey but does not include timber or timber products.

Vehicle Dealer Trades

Motor vehicle dealer trades are excluded, provided that:

- The transfer is made for the purpose of resale by the transferee dealer; and
- The transfer is based on the need to meet a specific customer's preference.
- The dealers must retain a resale certificate.

Vehicle Dealer Trades—Certificate Requirements

Any document may serve as a dealer trade certificate provided it contains the following information:

- Name, address, federal ID number, and dealer license number for both dealers.
- Description of the vehicle (e.g., VIN) make, model, and year.
- Signature of transferee dealer, employee, or authorized representative, affirming that the vehicle was transferred for the purpose of resale to meet a specific customer's preference.
- An example certificate template is available on DOR's CAT website.

Wholesale and Retail Sales of Groceries

Receipts from the **wholesale** or **retail** sale of groceries for home consumption are excludable.

- Groceries are defined as food items for home consumption that would be eligible for purchase under the Supplemental Nutrition Assistance Program (SNAP).
- Alcoholic beverages, tobacco, cannabinoid edibles, hot food for immediate consumption, and food that is heated at the point of sale are not grocery items.
- See OAR 150-317-1140 and 150-317-1150 or Revenue's "Beyond the FAQ" webpage for further guidance.

Excludable Retail Sales

Requirement 1: The sale is of a grocery item that would be eligible for purchase with SNAP benefits.

Requirement 2: The seller typically intends/expects that the sale is to the final consumer for home consumption.

- Average gross receipts from sale of groceries vs. receipts from the sale of hot food or prepared food.
- On-site dining facilities and percentage of floor space dedicated to dining vs. grocery shelving.
- Business advertising and marketing.

Excludable Retail Sales—Safe Harbor

Grocery items sold by stores that meet one of the following qualifications are excludable sales:

- Authorized by USDA to accept SNAP benefits (qualified SNAP retail food store).
- Meets the definition of a qualified SNAP retail food store, regardless of whether the authorized by USDA.

Excludable Wholesale Sales

Requirement 1: Wholesale sale.

Requirement 2: Sale of a food item that would be eligible for purchase with SNAP benefits, in a form that can be resold to the end consumer for home consumption.

Requirement 3: The sale must be for the purpose of reselling the food item, without processing, to the final consumer for home consumption.

Requirement 4: Wholesale seller must obtain written verification from the purchaser.

Excludable Wholesale Sales—Safe Harbor

A wholesale seller does not have to obtain separate verification if the sale was made for the purpose of resale without processing, and the purchaser is:

- A store authorized by USDA to accept SNAP benefits (qualified SNAP retail food store); or
- A store that meets the definition of a qualified SNAP retail food store.

Q and A

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Closing

Robin Maxey, Public Information Officer

Resources Available on DOR CAT Webpage

- Specific training presentations under “Quick Links.”
  - Registration training.
  - Estimated payment training.
- Estimated payment worksheet to assist in calculating estimated payments.
- Frequently Asked Questions (FAQ) and fact sheets.
- Links to administrative rules (proposed and adopted).

Resources Available

- Revenue is here to help! For general questions and taxpayer assistance:
  - Email: Cat.help.dor@oregon.gov.
  - Call 503-945-8005 8 a.m.—4 p.m. Monday-Friday.
  - Follow Revenue on Twitter at @ORRevenue, #oregonCAT.
  - Interested persons can also subscribe to the CAT mailing list via the Revenue website to receive additional information as it becomes available.