Oregon Corporate Activity Tax (CAT)

Presentation outline

- Overview.
- Commercial activity.
- CAT taxpayers and exclusions.
- Cost subtraction.
- Calculating the CAT.
- Extension to file.
- Questions.

Overview

What is CAT?

- Modified gross receipts tax.
- Tax on business entities' **commercial activity in Oregon**.
- Unitary/consolidated returns are required.
  - Common ownership of more than 50 percent.
  - Centralized management.
  - Economies of scale.
  - Functional integration.
- First $1 million of commercial activity is exempt.

Eighteen temporary rules adopted

Temporary rules are located on our website: www.oregon.gov/DOR

- Definition of Commercial Activity
- Nexus Guidelines
- Determining Unitary Groups
- Sourcing of Commercial Activity (2 OARs)
- Agent Exclusion
- Property Transferred into Oregon
- Estimated Payments (3 OARs)
- Grocery Exclusion (2 OARs)
- Sales to Wholesalers
- Vehicle Dealer Trades
- Extension of Time to File
- Cost Subtraction
- Employee Compensation
- Definition of Single-Family Residential

Questions/future information

- Additional information is available on our website.
- Taxpayers can register and make payments through Revenue Online.
- CAT help phone lines and email open.

What is Commercial Activity?

Oregon commercial activity

- Amounts realized in the regular course of the trade or business that meet the transactional test in OAR 150-314-0335.
  - 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.
- Commercial activity is realized based on the accounting method for federal income tax purposes.

Thresholds

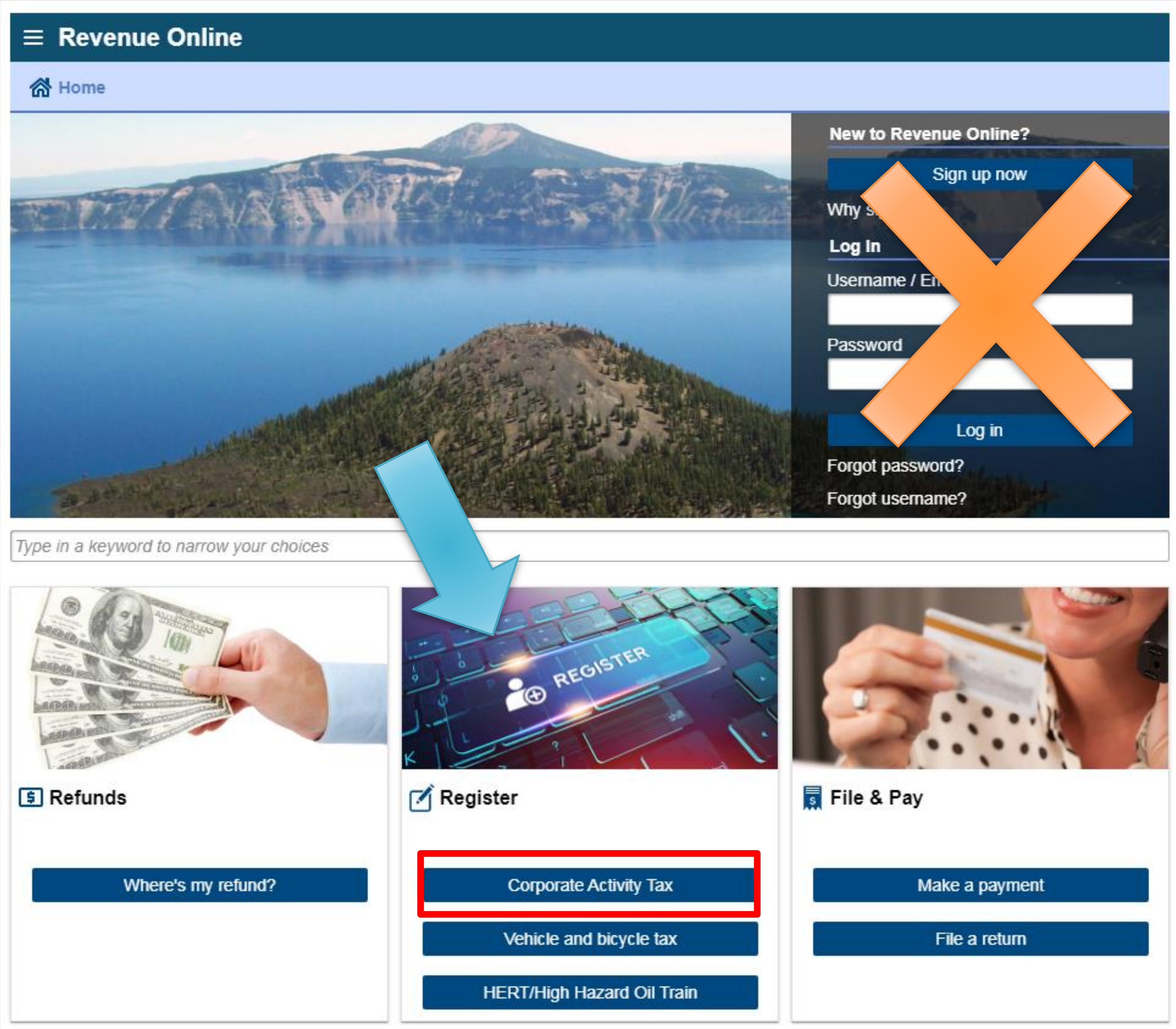
Threshold	Amount
Excluded	Less than $750,000 of Oregon commercial activity
Registration	$750,000 of Oregon commercial activity
Filing	$1 million of Oregon commercial activity
Tax Payment	Over $1 million of Oregon taxable commercial activity after expense subtractions

Register through Revenue Online

Under "Register" click on

Corporate Activity Tax

Do not sign-in to Revenue Online or create a Revenue Online account before registering.



CAT Taxpayers and Excluded Entities

CAT Taxpayers

- “Person” includes, but is not limited to:
  - Individuals
  - Estates
  - Partnerships
  - LLCs
  - Clubs
  - C-corporations
  - S-corporations
  - Trusts
  - Any other entity

Excluded persons

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

Substantial nexus

- Substantial nexus exists if a connection between the person and Oregon is sufficient to establish nexus under the U.S. Constitution.
- Substantial nexus exists where a person regularly takes advantage of Oregon's economy.

Sourcing of Commercial Activity

Sales of Tangible Personal Property

- Temporary Rule OAR 150-317-1030.
- Includes the ultimate recipient of property.
- Sourced to Oregon if the property is delivered to a purchaser within Oregon.
  - Regardless of F.O.B. point.
  - Whether transported by seller, purchaser, or common carrier.

Exception: Throwback rules do not apply to CAT.

Sourcing of Commercial Activity (cont.)

Sales other than tangible personal property

- Temporary rule OAR 150-317-1040.
- Rules are similar to market-based sourcing.
- If leasing or renting property, it is sourced to Oregon if the property is in Oregon.
- If services are delivered to a location in Oregon.

Unitary Groups

1. United by more than 50 percent common ownership.
2. Unitary business must have **<u>one</u>** of the following:
   A. Centralized management or a common executive force;
   B. Centralized administrative services or functions resulting in economies of scale; or
   C. Flow of goods, capital resources or services demonstrating functional integration.

Exclusions from Commercial Activity

Over 40 items are excluded from commercial activity:

- Medicare and Medicaid payments received by in-home care and residential care facilities.
- Sales of motor vehicle fuel.
- Receipts from transactions between members of the same unitary group.
- Distributive income received from a pass-through entity.
- And others.

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Exclusions: Agents

A person is an agent if the person acts <u>on behalf of</u> and <u>subject to</u> 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.

Exclusions: 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 transferee motor vehicle dealer's need to meet a specific customer's preference.
- Dealers must retain a resale certificate—any document may serve as a resale certificate, provided it has the information required in OAR 150-317-1410.

Exclusions: Sales to wholesalers subsequently sold out of state

- Receipts from sales to wholesalers in Oregon can be excluded, provided that:
  - The wholesaler certifies the items that will be sold out of state.
  - The wholesaler provides the taxpayer with out-of-state resale certification at the time of the sale.

A wholesaler who cannot determine the amount of purchased items to be sold out of state at the time of sale can approximate the amount (see OAR 150-317-1400 and DOR FAQ Sheet).

Exclusions: Retail and wholesale groceries

Receipts from the **retail** or **wholesale** sale of **groceries** are excluded.

- Groceries means food and beverages for home consumption that would be eligible for purchase under the Supplemental Nutrition Assistance Program (SNAP).
- Groceries does not mean: Alcoholic beverages, tobacco, cannabinoid edibles, hot food for immediate consumption, or food that is hot at the point of sale.
- Must be a wholesale or retail sale (see OAR 150-317-1140 and -1150 and DOR FAQ Sheet).

Retail Sales of Groceries

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 of the food 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

Wholesale Sale of Groceries

Requirement 1: Wholesale sale

Requirement 2: Sale is 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 made to a business entity for the purpose of reselling the food item, without processing, to the final consumer for home consumption

Requirement 4: Wholesale seller must obtain written certification from the purchaser (see OAR 150-317-1140)

Cost Subtraction

Cost inputs

- Cost inputs are defined as cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code.
- Refer to IRS Publication 538 for more information on cost of goods sold.

Labor costs

For purpose 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 Internal Revenue Code section 3121(d)(3).
- Independent contractors, as defined in ORS 670.600.

Limited to $500,000 paid to a single employee

Labor costs (cont.)

For purpose of the subtraction, “compensation” includes:

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

Compensation does not include:

- Employer payroll taxes.

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Calculating tax liability (overview)

You will need the following information:

- Amount of commercial activity sourced to Oregon.
- Amount of everywhere commercial activity plus exclusions.
- Amount of labor costs.
- Amount of cost inputs.
- For general contractors, the amount of qualifying payments to subcontractors for labor (single family residential construction only).

Calculating tax liability

Step 1: Determine your commercial activity ratio

$$\left(\text{Oregon Commercial Activity}\right) \div \left(\text{Everywhere Commercial Activity + Exclusions}\right) = \left(\text{Commercial Activity Ratio (CAR)}\right)$$

Note: If all of your commercial activity is in Oregon and you don't have any exclusions from commercial activity, then your ratio is 1.

Calculating tax liability (cont.)

Step 2: Determine your cost subtraction

- CAR x Total Labor Costs x 35% = Labor Costs Apportioned to Oregon.
- CAR x Total Cost Inputs x 35% = Cost Inputs Apportioned to Oregon.

The greater of either your labor costs or cost inputs apportioned to Oregon is your cost subtraction.

Note: Your cost subtraction may not exceed 95 percent of your Oregon commercial activity.

Calculating tax liability (cont.)

Step 3: Determine your taxable Oregon commercial activity.

- Oregon commercial activity – cost subtraction = taxable Oregon commercial activity.

Step 4: Determine your Oregon Corporate Activity Tax liability.

- (Taxable Oregon commercial activity – $1 million threshold) x 0.57% tax rate + $250 = Oregon Corporate Activity Tax liability.

Note: If your taxable Oregon commercial activity is $1 million or less your CAT tax liability is zero.

Calculating tax liability (Alternative)

- As an alternative to this method of determining your cost subtraction, you may use separate accounting to identify which specific labor costs or cost inputs are solely attributable to Oregon Commercial activity.

- Your cost subtraction may not include any labor costs or cost inputs that are not attributable to Oregon commercial activity, or any items specifically excluded from commercial activity.

Example: Grocery and TV Mart

Assume Grocery & TV Mart has:

- Oregon Commercial Activity of **$10 million.**
- Everywhere Commercial Activity + Exclusions of **$70 million.**
  - $50 million in commercial activity.
  - $20 million in exclusions from commercial activity.
- Labor costs of **$28 million.**
- Cost inputs of **$26 million.**

Example: Grocery and TV Mart (cont.)

Step 1: Calculate Commercial Activity Ratio (CAR).

(\$10M Oregon Commercial Activity) ÷ (\$70M Everywhere Commercial Activity + Exclusions) = (14.2857% CAR)

Step 2: Determine Cost Subtraction.

(14.2857% CAR) × (\$28M Labor Costs) × (35% Subtraction) = (\$1,399,999 Apportioned Labor Costs)

Example: Grocery & TV Mart (cont.)

Step 3: Determine taxable Oregon Commercial Activity.

($10M Oregon Commercial Activity) − ($1,399,999 Cost Subtraction) = ($8,600,001 Taxable Oregon Commercial Activity)

Step 4: Determine CAT Liability

($8,600,001 Taxable Oregon Commercial Activity) − ($1M Threshold) × (0.57% CAT Tax Rate) + ($250) = ($43,570 CAT Liability)

See DOR FAQ Sheet for additional information and examples

Estimated payments

- Only taxpayers expecting more than $5,000 of CAT liability for the year are required to make estimated payments.
- If required, estimated payments are due April 30, July 31, October 31, and January 31 for preceding calendar quarter.
- A taxpayer expecting $5,000 or less of CAT liability does not need to make estimated payments, but must file an annual return and pay CAT liability no later than April 15.
- Temporary rule OAR 150-317-1300

Estimated Taxes Example

Total Oregon Commercial Activity	$ 1,900,000
Less 35% of cost inputs or labor subtraction	(50,000)
Commercial activity before $1 million threshold Subtraction	1,850,000
Less $1 million threshold	(1,000,000)
Commercial activity	850,000
Multiplied by CAT .57%	.0057
CAT	4,845
Add	250
Total CAT	5,095

Extension of time to file

- An extension to file request must be made prior to April 15.
- This is not an extension to pay.
- The extension is six-months or until October 15.
- Extension for “good cause.”
  - Define in OAR 150-317-1330.
  - This is as required by ORS Chapter 317A.

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Questions

If you have additional questions after today, please contact:

Cat Help Team

Cat.help.dor@oregon.gov

(503) 945-8005