

CORPORATE ACTIVITY TAX (CAT) – Q&A FROM 2021 ZOOM WEBINAR

Question: What do you do with a unitary group over \$1 million that contains a fiscal year corporation and calendar year individual with schedule C and rentals?

Answer: If all members of the unitary group use the same tax year for federal purposes, that is the group's tax year for CAT. If two or more members file a federal consolidated return, the group's tax year for CAT is the tax year of the federal consolidated group. In all other instances, the unitary group's tax year for CAT is the tax year used by the group's designated reporting entity. The third section of the December 07, 2021 CAT Zoom Training presentation includes information on how unitary groups with members that use different annual accounting periods are required to determine their tax year for CAT in the third section of the presentation.

Question: How will estimates that were paid for 2021 be applied to short year fiscal year tax returns?

Answer: Please see OAR 150-317-1300, this rule contains a section on due dates and estimated payments for short-period returns.

Question: Can you file CAT tax through revenue online?

Answer: No, CAT returns can't be filed through Revenue Online. Taxpayers can e-file their CAT returns. E-file software vendors that have passed Oregon Assurance Testing System (ATS) requirements are listed on the [DOR website](#). The list of approved vendors will continue to be updated for the 2021 filing season.

Question: If one company is owned 50 percent by two different people, but one of the owners, owns 100percent of another company, is a Unitary return required?

Answer: Unitary group returns are required when there is more than 50 percent common ownership. Please see [OAR 150-317-1020 Factors Used in Determining Whether a Group of Persons are Engaged in a Unitary Business and Filing Requirements for Unitary Groups](#).

Question: If labor expenses were reduced on the federal tax return because the taxpayer received the employee retention credit, how should that be treated for the CAT? Can labor expenses be increased back up for the CAT?

Answer: The CAT is not linked to the federal return. A company should be able to subtract actual eligible labor expenses paid.

Question: Can you send us the link to see e-file vendors?

Answer: Here is a link to the [DOR webpage](#) with the list of approved e-file software vendors that have passed Oregon Assurance Testing System (ATS) requirements. The list of approved vendors will continue to be updated for the 2021 filing season.

Question: Will the new Line 1 be Total Commercial Activity including Exclusions, or Total Oregon Commercial Activity including Exclusions. This is the confusing part about the Forms.

Answer: Line 1 of the 2021 return is Oregon Commercial Activity including Exclusions.

Question: If the filer of the unitary group (mix insurance and non-insurance) is a life insurance company that is no longer required to file, how do we go about changing the main filer?

Answer: The department recently proposed and public hearing was held on OAR 317-150-1023 for detailed guidance on unitary group designated reporting entities for filing the CAT. You can see the proposed changes in the Notice of Proposed Rulemaking by following [this link](#). Once finalized, the rule will be available on the Secretary of State website.

Question: So then in the following year they will receive an exemption over \$1 million to compensate for the short-year prorated amount?

Answer: The following full fiscal year return wouldn't prorate the \$1 million.

Question: Is there any plan for the state to combine the return extension? If you file with the state, it automatically applies to CAT?

Answer: CAT Extension requests must be filed separately. As of now there is no plan to combine CAT requests with other programs.

Question: For a unitary group, the extension filed by the reporting entity will automatically cover all the members in the group. Correct?

Answer: Correct. Unitary groups must register, file, and pay as a single taxpayer. If the unitary taxpayer requests an extension, it will cover all the CAT unitary group members.

Question: Is it correct that you are apportioning the expenses then you are electing to use the substitute method? If you're not making that election then you are supposed to only include your Oregon specific expenses, is that correct?

Answer: Costs eligible for subtraction should be determined in the manner described in sections (2) and (3) of OAR 150-317-1200. A taxpayer may, in lieu of calculating and apportioning eligible costs as required in those sections, elect to use the substitute method to approximate and apportion eligible costs by means of the commercial activity ratio as described in OAR 150-317-1200(4).

Question: If labor costs are included in the cost of goods sold for a manufacturer, can they then be part of the 35 percent COGS subtraction computation ...or do they go into the 35 percent labor subtraction computation?

Answer: Cost inputs are defined as cost of goods sold (COGS) as calculated in arriving at federal taxable income under the Internal Revenue Code [ORS 317A.100(2)]. If labor costs are included in COGS as calculated for federal income tax, those costs can be included as cost inputs.

Question: Can you speak a bit to the process of requesting the election to use the substitute method?

Answer: To use the substitute method, simply mark the checkbox on the return and include an attachment showing your calculations.

Question: But Oregon returns extension follows Federal...what does that mean to file separately?

Answer: CAT extensions are allowed per Oregon Chapter 317A and are not linked to the federal income tax extension. The CAT extension requires "good cause." More information is available in the [FAQ](#) "Will an extension to file a CAT return be allowed?" and in [OAR 150-317-1330](#) for more information on what circumstances qualify as "good cause."

Question: For a fiscal year filer, is the extension request available now to submit?

Answer: Extensions will be available through ROL in early 2022. Please note, a short tax period return shall be filed on or before April 15 of the calendar year following the calendar year in which the short tax period ends.

Question: When filing a short year, converting from fiscal year to annual year, if I have a negative balance owing on CAT, should that be submitted?

Answer: If you made your quarterly estimated payments during 2021 and, as a result, you have negative balance owing (overpayment of CAT) on your short year return you should file your return to claim the refund of the overpayment or indicate if you want that refund to be applied to the following full fiscal tax year.

Question: If a corporation has one store that conducts business in Washington state, do we back out that revenue and cost inputs? What are the nexus rules?

Answer: Only taxable commercial activity sourced to Oregon is subject to CAT. Information on sourcing commercial activity and determining eligible cost inputs is available on [DOR's CAT Training Materials](#) webpage. Please see [OAR 150-317-1030](#) for sourcing commercial activity from sales of tangible personal property. [OAR 150-317-1200](#) also provides guidance for determining your cost inputs. Multistate taxpayers may apportion eligible cost inputs or labor costs. Information is also available on [DOR's CAT Training Materials](#) webpage.

Question: Can you tell us the basis for the over 40 different items specifically excluded by law?

Answer: ORS 317A.100 defines what items are excluded. Exclusions from commercial activity are determined by the Oregon Legislature.

Question: How to file an amended return?

Answer: You can file an amended return by completing an updated Form OR CAT and checking the "amended" box at the top of the form.

Question: How do we go from fiscal to calendar year filing? If we are fiscal year filer and our YE is April 30. Then do we file first stub for May 1, 2021-- April 30, 2022 and then second stub for May 1, 2022-- December 31, 2022?

Answer: Assuming you are changing your filing tax year to follow the same annual accounting period used for federal income tax purposes under Internal Revenue Code section 441, you will file two 2021 CAT returns. One for January 1, 2021--April 30, 2021 and the second for May 1, 2021--April 30, 2022.

Question: In the fiscal year reporting requirement, if unitary groups with different year ends are involved when is filing required? Which entity's year end is used?

Answer: If two or more members file a federal consolidated return, the group's tax year for CAT is the tax year of the federal consolidated group. In all other instances, the unitary group's tax year for CAT is the tax year used by the group's designated reporting entity. The department's proposed OAR 317-150-1023 provides detailed guidance on selecting unitary group tax years for filing the CAT. You can access the rule by following [this link](#) to see the Notice of Proposed Rulemaking. Once adopted, the rule will be available on the Secretary of State's website. When switching from calendar year filing to fiscal year filing, the short year return is due on or before April 15 of the calendar year following the calendar year in which the short tax period ends. Subsequent full fiscal tax year returns are due the 15th day of the fourth month following the end of the tax year.

Question: We are a fiscal filer – year end is September 30.. So do we file a return as of December 31, 2021 in April 2022? Then file a fiscal year return from 2022?

Answer: You will need to file a short-period return that covers January 1, 2021–September 30, 2021, which is due April 15, 2022. For 2022, your fiscal period will start on October 1, 2021.

Question: What is the NAICS business activity code that should be used in conjunction with taking the subcontractor cost exclusion? There are clients whose activities may fit into several different codes.

Answer: To qualify to take the subcontractor cost exclusion, the taxpayer just needs to be a general contractor as defined in ORS 701.005. A taxpayer can use whichever NAICS best fits their business.

Question: What about cannabis businesses with medical patient sales? Are they excluded as well?

Answer: A business that holds a license under ORS 475B.010 – 475B.545 475B (e.g., a license to produce, process, or sell marijuana items) may exclude an amount equal to the federal and state excise taxes paid by any person on or for the sale of marijuana items under subtitle E of the Internal Revenue Code or ORS 475B.700 to 475B.760 and any local retail taxes authorized under ORS 475B.491

Question: Is cannabis considered retail sales too? Please address the cannabis industry...

Answer: Cannabinoid edibles and marijuana seeds do not qualify for the retail grocery exclusion. In order to qualify for the retail grocery exclusion, items sold must meet the definition of grocery as defined in ORS 314A.100(8). For CAT, at a high level, this would be food and food items that would qualify for purchase with SNAP benefits. You can find more information in the [grocery exclusion fact sheet](#) on our website, as well as [in OAR 150-317-1150](#).

Question: Clarification on grocery. We have a Senior Independent Living Community. It has a dining room for which we purchase groceries to prepare food for the dining room. It is included in their residency, not for sale. Can these food costs be considered an exclusion?

Answer: Generally, the retail exclusion applies to food sold to the final consumer for home consumption. There is also a wholesale exclusion available; however, the sale must meet several requirements, including being sold specifically for resale, in order to qualify for the wholesale exclusion. You can find more information in the [grocery exclusion fact sheet](#) on our website. Further detail on the exclusion and available safe harbor provisions can be found [in OAR 150-317-1150](#).

Question: Does the penalty relief if 80 percent of CAT is paid by due date apply to 2020 and 2021, or to the first two years of filing, whenever those may be? For example, a new company formed in 2023, does the penalty relief apply to 2023 and 2024 CAT returns?

Answer: The penalty relief applies specifically to tax years that begin on or after January 1, 2020, and before January 1, 2022.

Question: We are required to file one return for both companies because they have common ownership. They have different fiscal years. Last year we filed on the calendar year. The C Corp has a March 31 year end. The S Corp is December 31. The C Corp is the bigger company. Which year end do I use?

Answer: The unitary group's tax year for CAT will be the tax year used by the group's designated reporting entity. The unitary group here can designate either member as the reporting entity for CAT, provided that the designated member has substantial nexus with Oregon. The department recently proposed a new rule (OAR 317-150-1023) that would provide guidance for unitary group taxpayers when determining their designated entity. A public hearing was held on November 19. You can access

the rule by following [this link](#) to see the Notice of Proposed Rulemaking. Once the rule is formally adopted, it will be available on the Secretary of State website.

Question: What if two businesses are considered unitary but they have different fiscal years and they don't file a consolidated federal return, what fiscal year do you file under?

Answer: In that case you need to file using the accounting period used by the unitary group's designated reporting entity. The department recently proposed a new rule (OAR 317-150-1023) that would provide guidance for unitary group taxpayers when determining their designated entity. A public hearing was held on November 19. You can access the rule by following [this link](#) to see the Notice of Proposed Rulemaking. Once the rule is formally adopted, it will be available on the Secretary of State website.

Question: Does the new provision for vehicle trades mean that used vehicle trades are subject to the CAT? Doesn't that cause double taxation?

Answer: The new provision for vehicle trades does not change the prior existing rules regarding used vehicle trades. These trades may still be excluded if they meet the requirements of being made for the purpose of resale and are made to meet a specific customer preference.

Question: Could you please provide more examples and explanations that allow us a better understanding of what activities should be excluded from CAT? For instance, when a company has sales where the products purchased are taken out of Oregon by the purchaser.

Answer: You can find more information regarding exclusions in our [FAQs](#). There is a section dedicated specifically to exclusions from CAT. Commercial activity from sales of tangible personal property is sourced to Oregon if the property is delivered to a purchaser within Oregon. Information on sourcing commercial activity is available on DOR's CAT training materials webpage and in [OAR 150-317-1030](#) and [OAR 150-317-1040](#).

Question: SB 164 provides that an in-home care business can exclude from Oregon revenue receipts that were received for providing medical assistance or that were received from Medicare patients. If these receipts were included in the business's 2020 CAT filing, can the 2020 CAT return be amended to exclude these receipts, or is this effective starting January 2021?

Answer: The change is only effective for tax years beginning on or after January 1, 2021.

Question: If my company purchases a company that has filed CAT tax return, am I required to notify the State that the purchased company is no longer filing as they have been brought into our unitary group?

Answer: On Form OR-AF-CAT report when the entity you acquired joined the group.

Question: For penalty relief, what is the process? How do we apply the relief? Does the relief include interest? How about under-estimated taxes penalty? Will this be part of relief?

Answer: The voluntary disclosure program is available for the Corporate Activity Tax (CAT) and eligibility requirements follow those for other programs administered by the department. More details about written requests are available on [our website](#). Generally, the program is available to first time filers. More information on penalty relief is available on our website under the FAQ section.

Question: So, is there no e-file option for an amended CAT?

Answer: The department allows e-filed amended returns. Some vendors may not support it, though. Here is a link to the [DOR webpage](#) with the list of approved e-file software vendors that have passed

Oregon Assurance Testing System (ATS) requirements. The list of approved vendors will continue to be updated for the 2021 filing season.

Question: Are sales from a restaurant or other food establishment considered to be corporate activity?

Answer: Yes, sales of hot food and/or prepared food would be considered commercial activity.

Question: If your federal return is filed on a fiscal year, are you required to switch to a fiscal year filing for OR CAT?

Answer: Yes, SB 164 requires all CAT taxpayers use the same annual accounting period for CAT that they use for federal income tax purposes under Internal Revenue Code section 441.

Question: Please clarify whether or not labor costs can be included in COGS and also the labor calculation?

Answer: The CAT allows a subtraction for either 35 percent of labor costs or cost inputs, whichever is greater. Cost inputs are defined as cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code [ORS 317A.100(2)]. If labor costs are included in COGS as calculated for federal income tax, those costs can be included as cost inputs. Taxpayers can refer to IRS Publication 538, Accounting Periods and Methods, for more information.

Question: Re: Subcontractor cost exclusion. It appears the answer (and perhaps the question) was in relation to the additional subcontractor exclusion for home building. Just to confirm, other types of business activities would be able to exclude certain subcontractor expenses under the agency rule. Correct? There didn't appear to be a distinction in the rules insofar as the business activity for which the agency exclusion would apply.

Answer: The agent exclusion is not limited to a specific industry as long as an agent-principal relationship exists. The subcontractor exclusion is limited to home building.

Question: On the CAT return, if you normally categorize your labor costs as a COGS, do you want it in line 3 or pulled out and placed on line 4?

Answer: Cost inputs are defined as cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code [ORS 317A.100(2)]. If you have labor in your COGS, you can include it as cost inputs on the CAT return. Please note that the CAT allows a subtraction for either 35 percent of labor costs or cost inputs, whichever is greater. Labor expenses can be entered under both line 3 as "cost inputs" if related to COGS and line 4 "labor costs" when the taxpayer is determining whether their cost inputs or labor costs are greater. The greater amount is then eligible for subtraction.

Question: My previous question was not answered regarding what to include in labor costs. If I have COGS of \$20 million, and \$15 million of that is labor that is included in COGS. Would my cost inputs be \$20 million and my Labor Costs would be \$15 million?

Answer: Cost inputs are defined as cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code [ORS 317A.100(2)]. If you have labor in your COGS, you can include it as cost inputs on the CAT return. Please note that the CAT allows a subtraction for either 35 percent of labor costs or cost inputs, whichever is greater. Labor expenses can be entered under both line 3 as "cost inputs" if related to COGS and line 4 "labor costs" when the taxpayer is determining whether their cost inputs or labor costs are greater. The greater amount is then eligible for subtraction.

Question: After electing the fiscal year filing option, what is the due date for the full fiscal year return?
3 1/2 months after the end of the fiscal year?

Answer: For fiscal year filers, the CAT tax return will be due on the 15th day of the fourth month following the end of their tax year.

Question: To avoid penalties for underpayment of estimated taxes, is there a safe harbor provision if 100% of prior year tax is paid?

Answer: Yes, it is one of the exceptions on the 2021 OR-QUP-CAT.

Question: Is an adult foster home for "qualified foster care payment," per the Internal Revenue Code 131, included or excluded?

Answer: Receipts of residential care facilities as defined in ORS 443.400 or in-home care agencies as defined in ORS 443.305 are excluded, to the extent that the receipts are derived from or received as compensation for providing services to a medical assistance or Medicare patient.

Question: When fiscal year filing is allowed for 2022, will the return be required to be filed on 2022 returns or 2021 returns, as 2022 returns may not be released at the time of filing the fiscal year return?

Answer: You will file two 2021 CAT returns. One covering January 1, 2021 through the date your FY 2021 ends. This will be your short tax year return and is due on or before April 15, 2022. The second will be for your full FY that begins in 2021 and would be due on or before the 15th day of the fourth month following the end of the tax year.

Question: How does this work when my customers send their tuition to the head company and then we transfer the money to the correct school? Does the head company pay CAT on that money we got?

Answer: If these companies are a unitary group of businesses, they would file as a single taxpayer and transfers between the unitary group members would be excluded. Only one company would pay on the receipts. Intercompany transactions are excluded.

Question: Do fiscal year taxpayers need to register as fiscal year taxpayers with the Oregon DOR or will the DOR notify taxpayers that they will need to begin filing on a fiscal year basis.

Answer: If you are already registered you don't need to re-register. Simply file your short-year tax return followed by your full fiscal year return.

Question: In a restaurant, labor for wait staff is COGS, along with food. Is labor COGS for CAT purposes? Yes or No?

Answer: Cost inputs are defined as cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code [ORS 317A.100(2)]. If you have labor in your COGS you can include it as cost inputs on the CAT return.

Question: With regards to "agents" in the exclusions, does it encompass general contractors and subcontractors? For example, the general receives income of \$100,000 and \$80,000 of that is to pay the sub, with \$20,000 being considered the markup so only the \$20,000 is reportable by the general contractor?

Answer: The agent exclusion is very fact-specific to determine whether it might exist. Please refer to OAR 150-317-1100 (<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=271093>) for more information and examples.

Question: When is the short year CAT return due?

Answer: For taxpayers filing a short year return to transition to fiscal year filing, the short year return is due April 15, 2022.

Question: How much revenue did ODR collect from CAT during 2020? Where can we see the reports of what percent was spent on admin and utilized to fund student success?

Answer: For the 2019-21 biennium the department deposited \$1.36 billion into the Fund for Student Success. The Oregon Department of Education has a great deal of information on the Student Success Act and how funds are used. Here's a link to their [website](#).

Question: How do you calculate labor costs? Do you include wages reported on page one, labor included in COGS, and benefits (limited to the \$500,000 per employee)?

Answer: Labor costs include most types of compensation paid to employees, such as wages, health insurance benefits, retirement benefits, and any other fringe benefits, but it does not include employees' payroll taxes or compensation in excess of \$500,000 paid to any single employee. For purposes of the CAT, "employee" means an individual who provides services under the control of another person or organization. Generally, an individual will be considered to be an employee. [OAR 150-317-1220](#) provides further information on labor costs which may be helpful. Under the laws governing the CAT, taxpayers can subtract 35 percent of the greater of cost inputs or labor costs from commercial activity sourced to Oregon (ORS 317A.119). A subtraction is not allowed for expenses from transactions among members of a unitary group or cost inputs or labor costs associated with receipts from items excluded from commercial activity (ORS 317A.106). Taxpayers with commercial activity in and outside of Oregon, as well as those with excluded items, may have to apportion their cost inputs or labor costs. [OAR 150-317-1200](#) provides further information to assist taxpayers in calculating the subtraction.

Question: So, if we have a fiscal year of September 2020--August 2021, then we file a short return from January 2021--August 2021? Do we file anything for the period September 2020--December 2020?

Answer: The September 2020--December 2020 period would be included on your 2020 calendar year CAT return, the short year return for 2021 would cover the period from January 1, 2021--August 2021 . You will then file a full fiscal tax year return for September 2021--August 2022.

Question: When will short year fiscal year forms be available?

Answer: Forms will be available in early 2022. The same 2021 return can be used for short-year returns, but you will mark the short year checkbox and enter the period dates.

Question: For the short year return, will we have to manually calculate the short year returns for all of our entities or is there a way that we can prorate based on our fiscal year income tax returns filed?

Answer: You will need to calculate for the period beginning January 1, 2021 through the FY that ends in 2021.

Question: Are COGS labor costs included on BOTH line 3 and line 4?

Answer: Cost inputs are defined as cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code [ORS 317A.100(2)]. Please note that the CAT allows a subtraction for [either 35 percent of labor costs or cost inputs, whichever is greater](#). If you have labor in your COGS you can include it as cost inputs on the CAT return. Labor expenses can be entered under both line 3 as "cost inputs" if related to COGS and line 4 as "labor costs" when the taxpayer is determining whether their

cost inputs or labor costs are greater. The taxpayer can then subtract 35 percent of the greater of either their cost inputs or their labor costs.

Question: Does the form allow to correct calculations on an amended return? The situation we encountered when a client filed an initial return showing a refund before their federal return was finalized. The amended return showed tax due. The CAT form does not seem to address the correction.

Answer: You should be able to enter corrected amounts on an amended return. If you encounter issues or have questions, please contact us at cat.help.dor@oregon.gov or 503-945-8005.

Question: How about for those CAT returns that have been filed but file late without extension or without estimated taxes payment?

Answer: Filing a return without first registering as a CAT taxpayer will likely lead to delayed processing of your return. If you have questions about a return you filed, you may want to contact the department.

Question: Can we file an extension for the 2021 Short Period OR CAT return? If the original short period return is due April 15, 2022, can we file an extension on April 15, 2022 to extend the short period return to October 15, 2022?

Answer: Yes. An extension of up to six months will be allowed to file a CAT return (short period or full year return). An extension will be granted on the basis of good cause, which is defined as “circumstances beyond a taxpayer’s control” or if the taxpayer lacks the information needed to file an accurate CAT return. The extension of time to file should be requested in the form prescribed by the department on or before the due date of the return.

Question: Can estimate penalty apply even if payment of all four quarter is made?

Answer: It depends if the estimated payments requirements were not met. At least 80 percent of the balance due for the quarter, or an amount that is at least equal to the taxpayer’s required installment for the corresponding quarter of the preceding tax year.

Question: When would our calendar year return be due? Can the calendar year return be extended?

Answer: Calendar year returns are due April 15 and extensions for filing are available.

Question: What if it’s a commercial activity, but has a different jurisdiction? Will it be excluded or included? If included, how will the computation will be?

Answer: Only commercial activity sourced to Oregon is subject to the CAT. For example, commercial activity from sales of tangible personal property are sourced to Oregon if the property is delivered to a purchaser within Oregon. Information on sourcing commercial activity is available on DOR's CAT training materials webpage and in in [OAR 150-317-1030](#) and [OAR 150-317-1040](#).

Question: If a taxpayer did not register with DOR for the CAT tax but an extension and return was filed for 2020, does the taxpayer still need to register with DOR?

Answer: Registration was a requirement. Filing a return without first registering as a CAT taxpayer will likely lead to delayed processing of your return. If you have questions about a return you filed, you may want to contact the department.

Question: Can the commission I send out to agents be deducted from my CAT calculation?

Answer: You can only subtract either labor costs or cost inputs. Depending on the exact circumstances, there are certain exclusions that may be impactful.

For example, a business may exclude revenue that is mandated by contract or subcontract to be distributed to another person, **provided that**: (1) the revenue constitutes a sales commission (e.g., split fee real estate commission); *and* (2) the commission is paid to a person who is not an employee. In addition, there is another exclusion that allows an agent to exclude the fair market value of property, money and other amounts from their commercial activity, to the extent the property, money and other amounts are received or acquired on behalf of the person who controls the agent. For further information on this exclusion please see [OAR 150-317-1100](#).