

### **Questions and answers from April 8 call with out-of-state stakeholders**

**Q: Who on the Department of Revenue's Corporate Activity Tax (CAT) team has been working on transportation sourcing issues?**

**A:** Numerous people on the CAT team are currently working on sourcing rules for transportation services. At this time, we are not ready to share any drafts of the rules, but we will make them available as soon as possible. These rules are a high priority for the CAT team. We will most likely file these rules as temporary rules allowing us to make them available to the public sooner. If you have any input on these sourcing rules, please send them to our rules email: [catrules.dor@oregon.gov](mailto:catrules.dor@oregon.gov) and we will share it with the policy analyst that are working on these rules.

**Q: Would it be possible to set up a separate call to discuss transportation issues?**

**A:** Certainly. The department would appreciate additional input from stakeholders. Input from industry experts helps inform the development of administrative rules. As noted above, the department will most likely file these rules as temporary rules allowing us to make them available to the public sooner. Temporary rules are limited to 180 days. After the temporary rules are released, the department will also begin the permanent rulemaking process for the transportation rules, which includes an additional public comment period and public hearing. If you have any input on these sourcing rules, please send them to our rules email at [catrules.dor@oregon.gov](mailto:catrules.dor@oregon.gov), and we will share it with the policy analysts who are working on these rules.

**Q: What sourcing methodology should trucking companies use to assign commercial activity? Interstate mileage and intrastate receipts? Or something else?**

**A:** We are currently working on sourcing rules for the transportation services. At this time, we are not ready to share any drafts of the rules, but we will make them available as soon as possible. We will most likely file these rules as temporary rules allowing us to make them available to the public sooner. If you have any input on these sourcing rules, please send them to our rules email at [catrules.dor@oregon.gov](mailto:catrules.dor@oregon.gov), and we will share it with the policy analysts who are working on these rules.

**Q: Is the department still working on a commercial activity sourcing rule for financial institutions? If so, will that rule be based on the Corporate Income Tax sourcing rule for financial institutions? When does the DOR plan to release the rule?**

**A:** Yes, we are currently working on sourcing rules for financial institutions. At this time, we are not ready to share any drafts of the rules, but we will make them available as soon as possible. We will most likely file these rules as temporary rules allowing us to make them available to the public sooner. After the temporary rules are released, the department will also begin the permanent rulemaking process for the transportation rules, which includes an additional public comment period and public hearing. If you have any input on these sourcing rules, please send them to our rules email at [catrules.dor@oregon.gov](mailto:catrules.dor@oregon.gov), and we will share it with the policy analysts who are working on these rules.

**Q: While Oregon currently has in place an electronic funds transfer (EFT) process utilizing automated clearing house (ACH) debit for the corporation excise (income) tax and sales tax payments, it is not clear that the CAT will be paid using the regular Oregon Department of Revenue EFT process. Can you explain this process? Most companies want to use ACH debit, especially with the current working from home situations for most employees.**

**A:** The department does allow several methods of payments for CAT. Please refer to the [payment training PowerPoint](#) located on the CAT webpage. This question appears to be directed at the ACH credit many businesses use. The department does allow for ACH credit. First, the business must apply for ACH credit on Revenue Online. On the Revenue Online landing page, scroll halfway down and in the middle of the page, click [Apply for ACH credit](#). Select Corporate Activity Tax and complete the form. Once completed, a confirmation page will be mailed to the user with further instructions to set up the account correctly.

**Please Note:** If the business entity, such as a corporation, already has ACH credit established, do not use the same account numbers. The CAT must have its own registration as the funds must be kept separate.

**Q: Is the election to use cost of input or labor method applicable to the entire unitary group if it uses the alternative method (separate accounting)?**

**A:** Yes. Per [ORS 317A.106](#), a unitary group is required to register, file, and pay taxes as a single taxpayer. Further, a taxpayer must subtract 35% of either the taxpayer's cost inputs or the taxpayer's labor costs (whichever is greater). See [ORS 317A.119](#).

**Q: Are partnerships subject to CAT? If so, are the monetary thresholds to register and \$1 million exclusion applicable to each partnership?**

**A:** Yes, partnerships may be subject to CAT. Any business or unitary group of business doing business in Oregon may have responsibilities under the CAT. This includes all business entity

types, such as C and S corporations, partnerships, sole proprietorships, and other entities. The CAT sets three thresholds to determine whether a business or unitary group has CAT responsibilities. These thresholds are based on the amount of commercial activity the business or unitary group realizes in Oregon over the course of the year.

If the partnerships are separate entities and are not part of a unitary group, then the thresholds to register, file, and pay would apply to each partnership separately. However, if the partnerships are members of the same unitary group, the thresholds would apply to the unitary group as a whole. If you are unsure whether the partnerships may be part of a unitary group, you may wish to review our [unitary group FAQ](#).

**Q: What are safe harbors for quarterly estimates?**

**A:** The safe harbor in place for the first year of CAT includes:

- Making at least 80% of the required quarterly payment.
- If the commercial activity is not received evenly throughout the year, an annualization method may be used.
- If the CAT liability is not more than \$5,000, quarterly payments are not required. The taxpayer will pay the full amount when the return is filed.

A safe harbor provision allowing the taxpayer to refer to a previous year return, or same quarter of the previous tax year, which is common in other tax programs, will not be available for the first year of CAT.

**Q: Will interest and penalties be waived for first year filing if underpaid?**

**A:** The department will not assess underpayment penalties to taxpayers making a good faith effort to estimate their first quarter payments.

**Q: For the out-of-state wholesaler's certificate, the rule and representative states that the certificate must be provided at the time of sale. Many wholesalers and their vendors will enter into hundreds or thousands of transactions in a year. Can there be a blanket certificate? Similar to almost all state's resale certificates.**

**A:** A blanket certificate would not meet the requirements in state law. The state statutes (specifically ORS 317A.100(1)(b)(DD)) allow a seller to exclude receipts from sales to wholesalers, provided that the seller receives certification from the wholesaler, "at the time of the sale," that the wholesaler will subsequently sell the purchased property out of state. A

blanket certificate would not meet the statutory requirement that the certificate be provided to the seller at the time of the sale. The department cannot modify or change this statutory requirement.

DOR has adopted an administrative rule (OAR 150-317-1400), which simply provides taxpayers with guidance on what information must be included in the certificate. Generally, the rule allows any document to serve as a certificate, provided it contains the information listed in the rule and—as required in statute—is provided to the seller at the time of the transaction. Detailed information on this exclusion is available in the FAQ on the department’s website.

**Q: ABC Corp purchases hops directly from the Oregon growers, pays a third party for processing and storage, and eventually ships the hops to ABC Corp breweries around the world. ABC Corp is not a wholesaler but is a consumer with primary licensing outside Oregon. Are growers exempt for product that ships to our breweries outside Oregon? Are growers exempt for product sold to ABC but are eventually used by one of our craft breweries in Oregon?**

**A:** For purposes of CAT, ORS 317A.128 establishes that receipts from the sale of tangible personal property (i.e., hops) are sourced to Oregon, if and to the extent that the property is delivered to the purchaser in this state. As such, the answer to both of your questions rests on where the hops are delivered. The department has adopted a temporary rule ([OAR 150-317-1030](#)) providing additional clarity and guidance on sourcing receipts from sales of tangible personal property.

Based on the scenario you outlined in your email, ABC purchases hops from Oregon growers. The hops are delivered to an unrelated third party for processing and storage. At some point, ABC then arranges for the processed hops to be shipped to breweries around the world. However, it’s not entirely clear to us whether the unrelated third party is located in Oregon or not, which will impact whether the receipts from the grower’s sales are Oregon commercial activity subject to CAT.

- **Delivered outside of the state:** If we presume that the Oregon grower’s hops are delivered to the unrelated third-party processor outside of Oregon, then the receipts from that sale are not sourced to Oregon and would not be included in the grower’s commercial activity, nor subject to CAT. (See temporary [OAR 150-317-1030\(2\)](#), which provides that “Gross receipts from the sales of tangible personal property are sourced to

Oregon if the property is delivered to a purchaser within Oregon regardless of the f.o.b. point or other conditions of sale, whether transported by seller, purchaser, or common carrier.”) This assumes that, in the scenario outlined, the hops are originally shipped and delivered to a location outside of Oregon. If this is not the case—if, for example, the hops are originally shipped to Oregon, but diverted en route—then the outcome may be different. The department’s rule [OAR 150-317-1030](#) includes some examples providing further information.

- **Delivered in Oregon:** If we assume that the Oregon grower’s hops are delivered to the unrelated third-party processor in Oregon, then the receipts from the sale are sourced to Oregon, would be included in the grower’s commercial activity, and subject to CAT. (See temporary [OAR 150-317-1030\(4\)](#), which provides that “Property is delivered to a purchaser within Oregon if the delivery terminates in Oregon, even though the property is subsequently transferred by the purchaser to another state.”)

**Please note:** Under [ORS 317A.109](#), if a taxpayer, with the intention of avoiding the CAT, receives property outside of Oregon and subsequently transfers the property into Oregon for use in the business, the taxpayer is then required to include the fair market value of that property in their taxable commercial activity, subject to CAT. [OAR 150-317A-1130](#) provides further detail on this requirement. We are assuming there is no intent to evade tax in this scenario.

**Q: The subtraction rule currently indicates that the apportionment percentage is all receipts plus exclusions. One exclusion is intercompany activity. The statute also requires that expenses associated with the intercompany activity be removed. If the expenses are removed, this will greatly distort the everywhere receipt number. Can you explain the DOR’s rationale?**

**A:** The rationale for the commercial activity ratio is to allow for a simple calculation for approximating the amount of costs of goods sold (COGS) or labor costs attributable to commercial activity. In some cases, such as your example, the commercial activity ratio may produce a distortive result. The temporary rule provides you with the option to use separate accounting or you may petition for an alternative method. Also, for the permanent rule we are exploring the possibility of modifying the commercial activity ratio and adding an additional option where you may be able to use your excise/income tax apportionment percentage.

**Q: When are the round two permanent rules estimated to go into effect? I heard round one was supposed to go in June 2020 but nothing on round two.**

**A:** We will have a public hearing for round one on May 26, 2020 for round one rules with an effective date of June 28. For round two rules, the public hearing is currently scheduled on June 23, 2020, and the effective date is set for July 29, 2020.

**Q: How do fiscal year taxpayers report OR CAT? We are a September 30 year-end.**

**A:** CAT is an annual tax based on calendar year. Businesses that use an alternate fiscal year must still file and pay based on the calendar year.

**Q: Any delay, waiver of penalties, etc., for April estimated payment for COVID-19? Also, as a fiscal year taxpayer, what period should our estimate be based on?**

**A:** Initial quarterly payments for CAT are due April 30, 2020. The department understands that the pandemic may impact commercial activity, up or down, to an extent that makes it difficult for businesses to estimate their first payment. The department will not assess underpayment penalties to taxpayers making a good faith effort to estimate their first quarter payments.

Taxpayers may demonstrate good faith effort by using the best information available to them at the time to estimate their payment. Taxpayers should document and retain the information they used to estimate their commercial activity as well as documentation used to show how they calculated their estimated payments. Taxpayers will not be required to submit this information to the department when they file their return or make estimated payments, but should keep the information in their records.

**Q: We are unitary group, some of our entities report COGS on 1120 for sale of tangible personal property, and some entities provide services and do not report COGS. It appears a unitary group is treated as a single taxpayer. So, if we elect COGS, the labor of the service entities would not be included. But if we elect labor method, the entities that produce TPP will lose the cost of food. Can we use COGS for sale of TPP entities and labor for the service entities?**

**A:** No. Per [ORS 317A.106](#), a unitary group is required to register, file, and pay taxes as a single taxpayer. Further, a taxpayer must subtract 35% of either the taxpayer's cost inputs or the taxpayer's labor costs (whichever is greater). See [ORS 317A.119](#).

**Q: Is COGS/labor election binding or can it change annually?**

**A:** The election to subtract 35% of cost inputs or 35% of labor costs may change annually. ORS 317A.119 directs taxpayers to subtract 35% of either the taxpayer's cost inputs or the taxpayer's labor costs (whichever is greater) on each annual return.

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