

Questions about tax relief options:

Q: To be clear the Paycheck Protection Program (PPP) loans or grants are not to be counted in CAT revenue?

A: PPP loans or grants are not CAT revenue. The Coronavirus Aid, Relief, and Economic Security (CARES) Act recently passed by Congress provides federal assistance to small businesses, including forgivable PPP loans, Economic Injury Disaster Loan (EIDL) emergency advances, and Small Business Administration (SBA) debt relief for certain business loans. Generally, an EIDL emergency advance, SBA debt relief payment, or forgivable PPP loan (whether or not forgiven) received by a business from these federal relief programs is not commercial activity and thus is not subject to the Corporate Activity Tax.

CAT taxpayers are allowed to subtract 35 percent of the greater of their cost inputs or their labor costs that are attributable to commercial activity. The amount of an EIDL emergency advance or PPP loan (forgiven or not) used to pay labor costs or cost inputs incurred over the year can be included in the taxpayer's costs eligible for the subtraction so long as those costs are attributable to commercial activity. Eligible labor costs attributable to commercial activity may include vacation, personal leave, sick leave, family leave, and compensation to retain employees when the taxpayer's operations are closed or substantially curtailed due to the COVID-19 pandemic, if and to the extent those employees' duties are attributable to commercial activity but for the pandemic. Additional information regarding CAT and Payroll Protection Loans is available on our [Beyond the FAQ](#) section of the CAT webpage.

Please refer to our "[How to Calculate CAT Liability](#)" FAQ for further information on using the commercial activity ratio to apportion costs. For CAT taxpayers who elect to use the separate accounting method to determine costs eligible for subtraction, the amount of an EIDL emergency advance or PPP loan (forgiven or not) used to pay labor costs or cost inputs may be included when calculating the 35 percent subtraction, if and to the extent those costs or cost inputs are attributable to commercial activity, including eligible labor costs as described above.

Q: Our headquarters are located in Washington state, but we have manufacturing locations in several states including Oregon. Two of those locations are in Lane and Lincoln counties (part of the IRS list of counties qualifying for federal individual assistance relief) and the other two are in Coos and Tillamook counties. Do we qualify for a penalty and interest waiver for paying the third quarter estimated payment after the due date? Or do we still owe a portion by the October 31 deadline? If we do qualify, do we need to apply or file for this waiver?

A: The Oregon Department of Revenue will not be imposing underpayment penalties if a taxpayer has a principal place of business in one of the eight counties impacted by the wildfires, or if the taxpayer shows they reside in, maintain tax records, or provide qualifying disaster activities in one of the eight counties. This will apply to the third quarter payment that

is due November 2, 2020 provided that the estimated payment is paid in full on or before January 15, 2021. There is a [wildfire relief FAQ page](#) on our website that may help in answering additional questions. This link will also give you the qualifying counties. Taxpayers outside one of the eight qualifying counties will be required to show circumstances beyond their control to claim penalty relief.

Q: With 2020 income being so unpredictable, due to COVID-19, and due to CAT guidance still being worked on, how were business owners supposed to have effectively estimated annual income in time to have made estimates?

A: A number of tax relief options have been established for businesses adversely affected by the COVID-19 pandemic. You can view our [tax relief options page here](#). Revenue announced relief options [April 29, 2020](#), and [July 7, 2020](#), and you can also refer to the [Director's Order FAQ](#), last revised July 27, 2020.

Specifically, for the CAT, the department will not assess penalties for underestimating quarterly estimated payments if the business has made a good faith effort to comply. A good faith effort can be demonstrated by the extent of the taxpayer's efforts to accurately estimate and pay the required quarterly installment.

For the 2020 tax year, the following circumstances demonstrate a good faith effort:

- The taxpayer was unable to pay a full quarterly installment because of insufficient funds due to COVID-19.
- The taxpayer not reasonably calculate a quarterly payment or annual tax liability due to the impact of COVID-19 on their business.
- The taxpayer had no ability to determine whether they will have CAT liability for the 2020 tax year, after taking into consideration exclusions and subtractions provided in ORS Chapter 317A.
- The taxpayer made a reasonable estimate of the quarterly installment based on information available to the taxpayer at the time the quarterly installment was due.

The department will not assess penalties for underestimating quarterly estimated payments if the business demonstrates a good faith effort as listed above. Taxpayers must use the best information available and document all information and assumptions relied upon. Taxpayers are not required to submit documentation to the department unless requested.

Information is also available on our CAT [Beyond the FAQ](#) webpage, and in [OAR 150-317-1500 \(Good Faith Effort\)](#). Additionally, a team dedicated to the CAT program can be reached directly at 503-945-8005 to assist with questions regarding estimated payments, calculating liability, and relief options available to taxpayers.

Q: Will there be penalties for the 2020 year for not having made estimated tax payments? Is there any grace period for late registration?

A: Due to the impact of the COVID-19 pandemic, the department has adjusted the Corporate Activity Tax estimated payment requirements for 2020. If businesses know they'll owe \$10,000 or more in annual corporate activity tax in 2020 and can pay, they should make estimated quarterly payments and comply with the law. For questions about calculating estimated payments for 2020, please see "[When are estimated payments required?](#)"

The department will not assess penalties for underestimating quarterly payments if the business has made a good-faith effort to comply. A good-faith effort can be demonstrated by the extent of the taxpayer's efforts to accurately estimate and pay the required quarterly installment.

To demonstrate a good-faith effort, business taxpayers should keep documentation showing:

- The taxpayer was unable to pay a full quarterly installment because of insufficient funds due to COVID-19.
- The taxpayer could not reasonably calculate a quarterly payment or annual tax liability due to the impact of COVID-19 on their business.
- The taxpayer can show that they had no ability to determine whether they will have CAT liability for the 2020 tax year, after taking into consideration exclusions and subtractions provided in ORS Chapter 317A.
- The taxpayer made a reasonable estimate of the quarterly installment based on information available to them at the time.

Taxpayers must use the best information available and document all information and assumptions relied upon. Taxpayers are not required to submit documentation to the department unless requested. Information on quarterly estimated payment penalty relief is also available on our CAT [Beyond the FAQ](#) webpage, and in [OAR 150-317-1500 \(Good Faith Effort\)](#). Additionally, a team dedicated to the CAT program can be reached directly at 503-945-8005 to assist with questions regarding estimated payments, calculating liability, and relief options available to taxpayers.

Registration is due within 30 days of meeting the \$750,000 registration threshold. A penalty of \$100 per month may be assessed for failing to register, up to \$1,000 per calendar year. We would advise taxpayers who are late in their registration to register as soon as possible and to contact us if they are having any issues in the registration process.

Q: We have been told that we have to claim the Payroll Protection Loan proceeds as miscellaneous income if it has been forgiven. Would that be functional income instead of transactional income as it is not earned in the regular course of business? Therefore, exempt from CAT?

A: Generally, amounts from Paycheck Protection Program (PPP) loans are not received in the normal course or trade of the taxpayer's business and are not commercial activity. Those amounts may remain eligible for the labor cost subtraction when the proceeds are used to pay compensation of employees for periods in which those employees were not performing any services due to the taxpayer's business operations being closed or curtailed as a result of the COVID-19 pandemic. Additional information regarding CAT and PPP loans is available on our [Beyond the FAQ](#) webpage.