

## Questions about unitary groups

**Q: Are related party transactions subject to CAT since it's based on gross receipts? A simplified example. LLC A (management business) wholly owns LLC B (Construction business). If LLC A pays LLC B a fee, will LLC B have to register/file and/or pay the CAT? For federal purposes, the income/expense would eliminate each other at LLC A's level.**

**A:** If the businesses meet the requirements of a unitary group, then receipts from transactions between group members are excluded from commercial activity and a subtraction is not allowed for any expenses from transactions among members of the group.

Under the laws governing the CAT, a unitary group is defined as a group of entities that form a unitary business enterprise in which members share or exchange value. A unitary group of entities is united by more than 50 percent common ownership. In addition, a unitary business enterprise exists if at least one of the following conditions is met:

- Centralized management or a common executive force;
- Centralized administrative services or functions resulting in economies of scale; or
- Flow of goods, capital resources or services demonstrating functional integration.

Members of a unitary group may be in the same general line of business, such as manufacturing, wholesaling or retailing. Or members may be in multiple lines of business that constitute steps in a vertically integrated process, such as the steps involved in the production of natural resources, which might include exploration, mining, refining, and marketing.

Unitary groups must register, file, and pay as a single taxpayer.

[OAR 150-317-1020 \(Unitary Business Factors, Common Ownership and Filing Requirements for Unitary Groups\)](#) also provides detailed guidance regarding unitary groups.

**Q: For a company that owns real estate in Oregon, and collects rent from renting out the space, the rent is subject to CAT. Are there any deductions available? Property tax, common area maintenance, repairs, management fees, utilities? What if one partnership owns one building in Oregon right now through a 100 percent owned SMLLC. For registration, should the disregarded SMLLC register, or should the parent partnership (filer of 1065) register? What if the parent partnership plans to acquire another building in Oregon in 2021? If rent from each building in Oregon is separately identifiable, should we use separately identifiable rental receipts, rather than apportion (to match income tax return)?**

**A:** To the first question, CAT provides a subtraction of 35 percent of eligible cost inputs or labor costs attributable to commercial activity (whichever is greater). The terms "cost inputs" and "labor costs" have been specifically defined in law. [[ORS 317A.100\(12\)](#), [Section 1, HB 4202 \(First Special Session\)](#)]. The laws governing the CAT do not provide any other allowed

deductions for other expenses. It is possible that a business may not have cost inputs or labor costs eligible for the 35 percent subtraction. Further guidance to assist taxpayers in determining whether they have eligible cost inputs or labor costs is available on CAT's [Beyond the FAQ](#) webpage and in [OAR 150-317-1220 \(Employee Compensation: Labor Cost Subtraction\)](#). The laws governing the CAT do not provide any other allowed deductions.

Companies that meet the definition of a unitary group, must register, file, and pay as a single taxpayer. Unitary group taxpayers may choose which company to register for CAT.

To the second question, based on the information provided, it appears that the companies may meet the unitary group requirements and wouldn't need to apportion receipts between the partnerships. [OAR 150-317-1020 \(Unitary Business Factors, Common Ownership and Filing Requirements for Unitary Groups\)](#) provides detailed guidance regarding unitary groups, which may be helpful.

**Q: Are there attribution rules for determining the greater than 50 percent common ownership for a unitary group?**

**A:** Yes. [OAR 150-317-1020 \(Unitary Business Factors, Common Ownership and Filing Requirements for Unitary Groups\)](#) provides detailed information for unitary group taxpayers, including attribution rules for determining common ownership. Generally, if a person owns, directly or indirectly, more than 50 percent of the voting power and value of the ownership interest of an entity, then the person and entity are under common ownership. Voting power generally means the right to control or determine the management of an entity. Stock or an ownership interest is owned when the title to the stock or ownership interest is directly or indirectly held, or if the stock or ownership interest is constructively owned. Ownership attribution rules apply to an individual's spouse, parents, brothers or sisters, grandparents, children, grandchildren, and an estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the trust or estate is for the benefit of that individual's spouse or children.

**Q: To confirm my understanding of unitary, we have a C Corp that rents from an LLC. Both entities have the same ownership and management team. They would file as unitary and the rent expense of the C Corp and the rental income of the LLC (same dollar amount) would be excluded from the CAT calculation?**

**A:** Based on the information provided, it appears likely that the entities would qualify as a unitary group because they have more than 50 percent common ownership and centralized management. Receipts from transactions between unitary group members are excluded from commercial activity. [OAR 150-317-1020 \(Unitary Business Factors, Common Ownership and](#)

[Filing Requirements for Unitary Groups](#)) also provides detailed guidance to assist unitary group taxpayers.

**Q: If you have a joint venture commercial rental building, the joint venture itself is not an entity. Would each owner of the joint venture apply their ownership percentage to determine if they are subject to the CAT tax?**

**A:** Any business or unitary group of businesses 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, as well as joint ventures and other entities. [\[ORS 317A.100\(14\)\]](#).

If the joint venture and owner(s) meet the requirements of a unitary group, then receipts from transactions between group members are excluded from commercial activity and a subtraction is not allowed for any expenses from transactions among members of the group.

Under the laws governing the CAT, a unitary group is defined as a group of entities that form a unitary business enterprise in which members share or exchange value. A unitary group of entities is united by more than 50 percent common ownership. In addition, a unitary business enterprise exists if at least one of the following conditions is met:

- Centralized management or a common executive force;
- Centralized administrative services or functions resulting in economies of scale; or
- Flow of goods, capital resources or services demonstrating functional integration.

Members of a unitary group may be in the same general line of business, such as manufacturing, wholesaling, or retailing. Or members may be in multiple lines of business that constitute steps in a vertically integrated process, such as the steps involved in the production of natural resources, which might include exploration, mining, refining, and marketing.

Unitary groups must register, file, and pay as a single taxpayer. [OAR 150-317-1020 \(Unitary Business Factors, Common Ownership and Filing Requirements for Unitary Groups\)](#) provides detailed guidance for unitary group taxpayers.

**Q: Does a unitary group need to apportion its commercial activity similar to how that group would apportion income for income tax purposes? Or can the unitary group identify the commercial activity specially attributable to Oregon without using any apportioning method?**

**A:** Taxpayers with commercial activity in and outside of Oregon must apportion eligible costs.

If the CAT taxpayer is identical to the entity or group reporting income or excise tax, the taxpayer must multiply its eligible costs by the apportionment factor percentage from the taxpayer's Oregon apportionment schedule filed under ORS Chapters 314, 316, 317, or 318 to calculate the subtraction amount.

If the CAT taxpayer is *not* identical to the 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 the 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).

The department is amending OAR 150-317-1200 (Cost Input or Labor Cost Subtraction) and other guidance regarding the 35 percent subtraction to reflect changes made by [HB 4202 \(First 2020 Special Session\)](#). The administrative rule provides guidance on calculating the subtraction. The updated rule will be finalized by December 1, 2020 and will be available on the [Secretary of State website](#). Guidance will also be available on our CAT [Beyond the FAQ](#) webpage. The October [Notice of Proposed Rulemaking—CAT October 1, 2020](#) document has information on proposed rules and proposed amendments to rules.

For information on sourcing commercial activity to Oregon, see [OAR 150-317-1030 \(Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property\)](#) and [150-317-1040 \(Sourcing Commercial Activity to Oregon of Other than Sales of Tangible Personal Property\)](#).

**Q: Does a unitary group include businesses that have unrelated activities—for example, a rental partnership and a lawyer?**

**A:** A unitary group means a group of persons with more than 50 percent common ownership engaged in business activities that constitute a unitary business. The presence of a unitary business may be demonstrated by centralized management, economies of scale and functional integration. Members of a unitary group may be in the same general line of business, such as manufacturing, wholesaling, or retailing. Or, members may be in multiple lines of business that constitute steps in a vertically integrated process, such as the steps involved in the production of natural resources, which might include exploration, mining, refining, and marketing.

[OAR 150-317-1020 \(Unitary Business Factors, Common Ownership & Filing Requirements for Unitary Groups\)](#) also provides detailed guidance.