

Questions about sourcing of commercial activity:

Q: So did I catch the part on moving people or goods correctly and that if the item is not delivered to a location in Oregon then the CAT expense would be calculated on a prorated basis of total miles versus miles driven in the state of Oregon?

A: The prorated basis of total miles versus miles driven in the state is used to determine the amount of commercial activity that is sourced to Oregon for transportation companies. Receipts from a transportation service that passes through, into, or out of Oregon is determined by the miles traveled in Oregon to the total miles traveled from the point of origin to destination. This calculation is not used for the subtraction. [OAR 150-317-1070 \(Sourcing of Motor Carrier Transportation Services\)](#) also provides guidance that may be useful in determining commercial activity sourced to Oregon.

The Corporate Activity Tax subtraction is calculated by using an apportionment percentage based on total commercial activity inside the state versus outside of the state. The subtraction apportionment is not based solely on miles traveled in the state. OAR 150-317-1200 (Cost Input or Labor Cost Subtraction) provides detailed information to assist taxpayers in calculating the 35 percent subtraction for labor costs or cost inputs attributable to commercial activity. The department is amending the rule and guidance to reflect changes made by [HB 4202 \(first 2020 Special Session\)](#). 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.

Q: If a rancher sells cows at a livestock auction, is the auction company required to let the rancher know the buyer of their cattle was out of state?

A: The Department of Revenue does not require the auction house to tell you if the sale was out of state. However, in order to exclude out-of-state receipts, you will need to determine your percentage of in-state versus out-of-state sales. See [OAR 150-317-1170 \(Farming Operations: Clarifying Definitions for Agricultural Commodities, Farming Operations, Out of State Sales Based on Industry Averages\)](#) for additional guidance.

Q: We are a motorcycle dealer in Oregon and sell service, maintenance, and GAP contracts to go with the motorcycles. Are those contracts considered tangible personal property? Are they subject to the CAT?

A: Contracts are not tangible personal property, but receipts from service contracts would be subject to CAT as the business is realizing commercial activity with the sale of services.

Q: What if all sales are produced in Oregon but some tangible property is shipped outside of Oregon? Are those sales excluded? What about throwback sales?

A: If the sale is not sourced to Oregon, then it is excluded from CAT. CAT does not have a rule about throwback sales.

Q: We are an automobile dealership. If we sell a vehicle to an out-of-state customer, would the sale be taxable? Does it make a difference if the customer takes delivery of the vehicle in Oregon versus if we deliver the vehicle to the customer out of state? We get a lot of customers from California.

A: Commercial activity is sourced to Oregon as follows:

- In the case of the sale, rental, lease or license of real property, if and to the extent the property is located in this state.
- In the case of the rental, lease or license of tangible personal property, if and to the extent the property is located in this state.
- In the case of the sale of tangible personal property, if and to the extent the property is delivered to a purchaser in this state.

By “delivered” we mean the end destination of the property. [OAR 150-317-1030 \(Sourcing Commercial Activity from Sales of Tangible Personal Property\)](#) provides detailed information, including examples. 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 free on board (FOB) point or other conditions of sale, whether transported by seller, purchaser, or common carrier. The mode of delivery doesn’t matter. If the purchaser picks the property up in Oregon, but they live in California and will use the property in California, then that sale is not sourced to Oregon.

Q: Please review the guidelines if we sell to a distributor who is based in Oregon. This distributor sells its goods both inside and outside of Oregon. Do we need to estimate the portion of the goods we sell to them that they, in turn, sell to others within Oregon and capture this as part of our Oregon-source income?

A: CAT provides an exclusion for a business’s sales to Oregon wholesalers, if the wholesaler provides the seller with an out-of-state resale certificate showing that the purchased items will be resold outside of the state. The certificate must be provided by the purchasing wholesaler. Please keep in mind that in order to qualify for this exclusion the sale must be to a wholesaler as that term is defined in law: “a person primarily doing business by merchant distribution of tangible personal property to retailers or to other wholesalers.” [See [ORS 317A.100\(1\)\(b\)\(DD\)](#) and [317A.100\(20\)](#)]

Further guidance regarding the exclusion for a seller’s receipts to a wholesaler is available in our [Excludable Sales to Wholesalers Fact Sheet](#) and [OAR 150-317-1400 \(Determining Property Resold Out-of-State and Methods of Determining\)](#).

Q: Is the Oregon commercial activity tax based on activity shipped to in Oregon or billed to in Oregon?

A: 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 FOB point or other conditions of sale, whether transported by seller, purchaser, or common carrier. Property is deemed to be delivered to a purchaser within Oregon if the recipient is located in Oregon, even though the property is ordered from outside of Oregon.

For additional guidance and examples on sourcing commercial activity to Oregon from sales of tangible personal property see [OAR 150-317-1030 \(Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property\)](#). For guidance on sourcing commercial activity to Oregon of sales of other than tangible personal property, see [OAR 150-317-1040 \(Sourcing Commercial Activity to Oregon of Other than Sales of Tangible Personal Property\)](#).

Q: Could you confirm that if a retailer sells property to a Washington resident from an Oregon retail location that the sale is excluded from CAT?

A: 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 FOB point or other conditions of sale, whether transported by seller, purchaser, or common carrier. If the Oregon retailer sells property to a Washington resident, and that property is delivered to Washington or the resident takes it directly to their Washington address that sale would then be excluded from Oregon commercial activity. [OAR 150-317-1030 \(Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property\)](#) also provides further information to assist taxpayers in sourcing sales of tangible personal property.

Q: If customer from out of state picks up equipment sold to them and they will directly be transporting it out of state, do you need to inquire which state they'll be taking it to or is it just out of state? How would you need to show that to exclude from OR receipts?

A: If the purchaser is picking up the item and taking it out of state it would still be an out of state sale, because it is ultimately being delivered out of state. An invoice showing the purchaser's address may be used to show the item was for an out-of-state customer.

Q: For a mechanic working on vehicles for out-of-state owners or on government vehicles, would this income be excluded for CAT?

A: Receipts from work conducted out of state or government-owned vehicles would still be Oregon-sourced commercial activity because the work is taking place in Oregon and is in the normal course of the mechanic's business. The work that the mechanic performs on the government vehicles would still be subject to CAT. Government entities are exempt from paying CAT on any commercial activity the government entity receives, but any payment received for work performed for them is not excluded. Detailed information and guidance on

how to source receipts from the sale of services is also available in [OAR 150-317-1040 \(Sourcing Commercial Activity to Oregon of Other than Sales of Tangible Personal Property\)](#).

Q: Is there any leverage available for uncooperative purchasers? We know the shipment is for out of state, but our customer is uncooperative.

A: This question appears to be related to the exclusion allowed for a business's sale to Oregon wholesalers. This exclusion applies only if the wholesaler provides the seller with an out-of-state resale certificate showing that the purchased items will be resold outside of the state. The law does not require the wholesaler to provide the certificate.

Further information on this exclusion is available in the [Excludable Sales to Wholesalers Fact Sheet](#) and [OAR 150-317-1400](#).

Q: In determining the subtraction amount of cost input expenses of a taxpayer, the taxpayer must multiply eligible costs by the ratio of commercial activity as would be sourced to Oregon in a manner as provided in ORS 314.605-314.675 to the amount of commercial activity as would be sourced everywhere in the manner provided under ORS 314.705-314.675. The taxpayer subtraction equals 35 percent of the apportioned costs. For clarification, does the ratio above only include taxpayer commercial activity and not activity of a joint venture or partnership in which the taxpayer owns a 50 percent or less interest?

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. For purposes of the CAT, a unitary group of entities must be united by more than 50 percent common ownership, and at least one of the following conditions must be met:

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

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

Based on the information provided the concern is whether commercial activity from entities that are not members of a unitary group must be included when calculating the subtraction. In this example, you would include commercial activity of other businesses only if they qualify as a unitary group. [OAR 150-317-1020 \(Unitary Business Factors, Common Ownership and Filing Requirements for Unitary Groups\)](#) provides further information regarding unitary group filing requirements.